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LEGAL MEDICINE: THE OMBUDSMAN OF MEDICAL ETHICS*

*Bernard J. Ficarra***

Indeed the Idols I have loved so long
Have done my credit in men's eye much wrong:
Have drown'd my Glory in a shallow Cup,
And sold my Reputation for a Song.
RUBAIYAT OF OMAR KHAYYAM 129 (E. Fitzgerald trans. 1952).

To obtain immortality on any plane of life through dishonesty, evil, or notoriety is the poltroon that insidiously poisons all those lofty, sublime human attributes made to the image and likeness of God. Nothing is more miasmatic than unethical behavior in the biological sciences. Moral pollution dilutes ratiocination which inevitably destroys medical intellectualism. Immorality in any form is alien to the historical nobility of medical pursuits. Modern university scholars are emphasizing a return to the mores of yesteryear.

Without ethical integrity, falsity will flourish. High ethical demeanor plus hard work are the companions to medical progress. Both are mutually sustaining and each demands awareness of the other. The majesty of modern life consists in chosen work. What persons can achieve through professional or occupational labor is their greatest ornament.

The central purpose of this essay is to examine the complex scope and application of the physician's ethical conduct as a practitioner of medicine, as a research scientist, or more simply as a participant in human society as

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created and shaped by peers, associates, superiors, religion, law, education, knowledge, and individual conscience. Without inserting the theme of religion as a primary force, nevertheless, it would be a remission not to be cognizant of the concept that no upright medical spirit can survive without spiritual nourishment. Intellectual, ethical inanition can destroy cerebral growth, with Alzheimer's disease appearing miniscule by comparison.

I. CHALLENGES TO SCIENTIFIC RESEARCH

Havelock Ellis, a pioneer in sexology, observed that, "If at some period in the course of civilization we find seriously that our science and our religion are antagonistic, then there must be something wrong either with our science or with our religion."¹ Ethical standards must be plenary in composition without any subtle nuance to diminish their monism. Stifling the medical researcher's moral conscience is the *conge* to ethical deportment. Under the canopy of proper ethical conduct, scientific research activity becomes intellectual productivity. Thus many enunciated thoughts are amalgamated into one by means of a mental conjunction.

Precedents have been established for the inchoate recognition of uplifted ethical norms in medical practice. Over the past decades, with the rising complexities in medicosurgical technology, the ethical consciousness sometimes was subdued. However, many subjects of medical origin were categorized as morally demanding a solution. Ethical aspects of medical practice have been circumscribed about the specific performance of a physician or a surgeon in rendering health care.² Among the foremost topics under this professional relationship of physicians to patients are these following titles:

1. Ethics of brain death, dying, and the definition of death;
2. Ordinary versus extraordinary medicosurgical therapy;
3. Use of placebos;
4. Medicolegal concerns of human organ transplantation including xenografts (cross-species transplants such as the baboon heart);
5. To resuscitate or not to resuscitate the critically ill or terminally ill patient;³
6. The ethical pros and cons of abortion;

1. H. ELLIS, *DANCE OF LIFE* ch. 5 (1923). See generally Smith, *Intrusion of a Parvenu: Science, Religion and The New Biology*, 3 *PACE L. REV.* 68 (1982).

2. See Pellegrino, *Rationing Health Care: The Ethics of Medical Gatekeeping*, 2 *J. CONTEMP. HEALTH L. & POL'Y* 23 (1986).

3. See Smith, *Triage: Endgame Realities*, 1 *J. CONTEMP. HEALTH L. & POL'Y* 143 (1985). See generally Ebert, *Medical Education at the Peak of the Era of Experimental Medicine*, 115 *DEADALUS* 55 (1986); Kilbourne, *The Emergence of the Physician - Basic*

7. The right-to-life crusade against the denial of medicosurgical treatment to infants born with remedial or nonremedial birth defects;⁴ and,

8. "Baby Doe" rules and regulations concerning handicapped at-risk newborns postulated by the federal government.⁵

When ethical manners reign supreme there is no need for an overseer to monitor human behavior. A deviation from the accepted moral pattern of human existence usually is instigated by the desire to be successful. This drive can be nature's trap. Sometimes the mirage of success becomes a person's religion to their own detriment. In this way an intended virtue is metamorphosed into a disguised vice.

Somewhere in the archives of European literature is scrolled the thought that the ladder of success is difficult to climb. It is slippery at the top and easy to fall down. If success is founded on a firm ethical basis, there is a lesser chance of falling downward. Therefore, an understanding of the true meaning of ethics is essential for the successful physician. Ethical strength is a necessity for any harmoniously conceived medical career that is conducive to a sound mind in a sound body.

A moiety of dishonor can destroy, in a twinkling of an eye, the quantum of talent hewn from decades of dedicated study. Straying from honor often is incited by inordinate pride. False pride begets arrogance which may be an appropriate part of the dramatic role assumed by barristers. Any histrionic costume is not an amenable mantle to be painted on the portrait of a medical scientist. What is more devastating is that uncomely arrogance ensnarls the physician into the morass of malpractice.

All fiduciary relationships between medical scientists and other human beings must be endowed with honesty. What is of equal solemnity is the scientist's adherence to his or her own untainted conscience. This is medical ethics in action. It does not infer that honest errors, mistakes, misjudgments, or inexperience are synonymous with dethroned ethics. Exaggeration in science is tinged with ethical misconduct. Poor judgment is not equated with subtle or bombastic exaggeration. "Everyone complains of his or her judgment. Our virtues are most frequently but vices disguised," wrote the

Swintest in America, 115 DEADALUS 43 (1986); Petersday, *Medical Schools and Research: Is the Tail Wagging the Dog*, 115 DEADALUS 99 (1986).

4. See Smith, *Quality of Life, Sanctity of Creation: Palliative or Apotheosis*, 63 NEB. L. REV. 709, 724-29 (1984).

5. See Smith, *Long Days Journey Into Night: The Tragedy of the Handicapped At Risk Infant*, in MORAL ISSUES IN MENTAL RETARDATION 129, 132-35 (R.S. Laura ed. 1984). See also Destro, *Quality-of-Life Ethics and Constitutional Jurisprudence: The Demise of Natural Rights and Equal Protection for the Disabled and Incompetent*, 2 J. CONTEMP. HEALTH L. & POL'Y 71, 104-15 (1986).

French writer La Rochefoucauld.⁶

Specifically applied to medical scientists, ethical performance is an intrinsic understanding of the meaning of right and wrong, with an ability to distinguish between the two, plus the acceptance of good over evil. Thus personal recognition is given to objective morality that demands subjective culpability. Medicosurgical practice is an ethical regard for the welfare of patients which forbids the use of untried, uncertain, new, or untested experimental remedies. Ethics and science should embrace each other in the eternal clasp of dedication to humanity.

When ethical transgressions are suspected, it is not uncommon for the accuser to seek redress in a court of law. A modern day revitalization of medical ethics through law has added a newer facet to the diadem of the medicolegalist. Legal medicine breathes on physicians as it enlightens the rekindled ethical spirit in medicosurgical practice and research. This mythological affectation symbolizes the conjoined reality that science and morality cannot be separated from each other. Not to call attention to unethical practices in the medical profession is to condone it.

Medical Ombudsmen

The discipline of medicine has among its integral constituents a high esteem for ethical professionalism. Therefore over the past half century, it has been a forerunner in the establishment, maintenance, and intensification of dramatically higher and higher ethical deportment. Verification of this perpetual interest is exemplified in the multiple medical examining bodies in existence at the present time.

Practitioners of medicine have had their seen and unseen ombudsmen for many years. These overseers appeared in the form of insurance carriers, medicare rules, medicaid regulations, and second opinion requirements prior to hospitalization for surgery. From within the ranks of medicine itself, its members created peer review organizations, hospital committees, utilization restrictions, screening panels, specialty board certification, continuing medical education, state society ethical practice committees *et sic ad infinitum*. The place of the ombudsman in medical research and scientific publications has been extended through the aegis of legal medicine. Medicolegalists have entered this esoteric *sanctum sanctorum* of medical ethics by the dint of adverse lay publicity. The malodor has arisen from the smoldering ashes of

6. WRITINGS OF FRANCOIS, DUC DE LA ROCHEFOUCAULD (1613-1680). Alexandre Dumas expressed a similar thought through the Count of Monte Cristo when he observed that, "[t]here are virtues which become crimes by exaggeration." See A. DUMAS, THE COUNT OF MONTE CRISTO ch. 90 (1941).

faltering moral research activities which lead to the bankruptcy of proper medical conduct.

For the sake of accuracy, consistent with completeness, a distinction is necessary between research and standard medical practice. A defining differentiation was made indirectly between these two units by an act of Congress. The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research evaluated this dissimilarity to a definite promulgated explanation.⁷ Through the medium of the "Belmont Report," the commissioners stated:

For the most part the term "practice" refers to interventions that are designed solely to enhance the well-being of an individual patient or client and that have a reasonable expectation of success. The purpose of medical or behavioral practice is to provide diagnosis, preventive treatment or therapy to particular individuals. By contrast, the term "research" designates specifically an activity designed to test a hypothesis, permit conclusions to be drawn, and thereby to develop or contribute to generalizable knowledge (expressed, for example, in theories, principles, and statements of relationships). Research is usually described in a formal protocol that sets forth an objective and a set of procedures designed to reach that objective.⁸

The legal duty of the physician to act with the utmost good faith toward the patient can be traced to fundamental ethical principles that underlie standard medical practice.⁹

Utilizing an ombudsman does not automatically stamp with scarring disapproval or exhilarating approval of the medical actions supervised. Interestingly, the very concept of ombudsman is but an appellation given to a Swedish commissioner appointed by the legislature. The same designation is used in other Scandinavian countries, New Zealand, and elsewhere. The ombudsman investigates complaints by private citizens against government officials, employees, or agencies. The literal meaning of ombudsman in Swedish is a commissioner whose purpose generally is to look after the welfare of the populace. More specifically the ombudsman is the receiver of complaints in the politicosocial relationship between the citizenry and its

7. National Research Service Award Act of 1974, Pub. L. No. 93-348, § 201(a), 88 Stat. 342, 348 (1974).

8. NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH, THE BELMONT REPORT: ETHICAL PRINCIPLES AND GUIDELINES FOR THE PROTECTION OF HUMAN SUBJECTS OF RESEARCH 2-3 (1978).

9. Cowan & Bertsch, *Innovative Therapy: The Responsibility of Hospitals*, 5 J. LEGAL MED. 219, 251 (1984). See also Walshe, *Humanism in Medicine*, 67 CAN. MED. A. J. 397 (1952).

government.¹⁰

The origin of the ombudsman arises from the Roman official known as a tribune. The name is taken from the Latin noun *tribunus*. Analogous to another similar word it means tribe which, in subsequent centuries, was adopted into medieval English. Historically interpreted, it is an elevated social degree designating one of several constituted officials in the Roman administration. A tribune of the people (*tribunus plebis*) was the complete titular description identifying this governmental status. Originally the office of tribune required one or two, later five then ten officers appointed to protect the public interests and legal rights of the plebeians from the aristocratic Roman patricians.¹¹

Research with Dignity

The holistic embodiment of scientific research, medical or otherwise, demands coaptation of physical stamina with spiritual austerity. Research is silent teaching. Nevertheless, research productivity can bring forth a volcanic eruption of oral and written controversy. The keystone supporting the entire mechanical system of scientific research is the vital cinctural relationship between accurate observation and ethical probity. This fundamental exordium demands an acceptance with unadulterated exactitude of the experimental results of parthenic laboratory investigation.

All scientific research requires deportment that is allied to prudent decorum which in turn is bereft of all shame, editorial intemperance, calumny, pontification, and theatrical disguises. It is endowed with the implicated landmarks of honesty, honor, ethics, and morality. The impetus to medical research motivates automatically the breeding of these repeatedly ascribed, elevated endowments. An ethical conscience in research means integrity, sincerity, and fairness on the part of the investigator. The analyzed results from the laboratory efforts inevitably must signify that, unimpeachable, unquestioned, unalterable, rigidly correct conclusions have been obtained.

Honor decrees that disputed scientific findings be cleansed of imperfections. The conclusions must be well-earned, unprecedented, academic, unviolated, unsullied, unblemished, unsolicited, professional, and actual. Such data can be obtained only if the experimenter is involved sensitively, disinter-

10. See Schiff, *Ombudsman: Sweden's Guarantor of Open Government*, 50 N.Y. ST. B. J. 296 (1978); see also Hennessey & Goldring, *Administrative Character (of the Ombudsman)*, 59 AUSTL. L.J. 659 (1985).

11. See generally Fea, *The Law Society Ombudsman: Profile of a Lay Observer in New Zealand*, 3 WINDSOR Y.B. ACCESS JUST. 403 (1983); Weir, *Legislative Ombudsman*, 14 ALBERTA L. REV. 256 (1976); Yardley, *Local Ombudsman in England: Recent Trends and Developments*, 1983 PUB. L. 552.

ested in financial remuneration, and worthy of singular recognition. In this manner, a fulfillment of Socrates' famous maxim addressed to the court that condemned him to death is applicable: "The unexamined life is not worth living."¹² This adage is a golden philosophical credo for universal research scientists.

Personal *noblesse oblige* in the character of researchers bears the burden of exemplary ethical demeanor. This dignified carriage is adorned by strict, inflexible, legal, ministerial, and professional accoutrements. Moral virtue in scientific investigations involves fear of deception, inflexible truthfulness, intellectualism, admirable austerity, public righteousness, immovable credibility, abstractness, and syllogistic deduction.

A starry example of dignified research is the development of human kidney transplantation:

As in so many things in medicine, our entrance into the field of human transplantation was serendipitous. In 1950, we read that a human kidney had been transplanted successfully in Chicago by a Dr. Lawlor. Since we had the team, equipment, and knowledge, as well as a supply of donor kidneys, we were stimulated to do the first human transplant from a cadaver to a uremic recipient maintained by the artificial kidney. Nine human transplants were done before we learned that the report from Chicago had been a mistake and the result had been retracted by the author in a subsequent publication. Nevertheless, our transplanted kidneys functioned far better than we had expected.¹³

To its credit, the entire early history of kidney transplantation is unsullied by any moral discord. It was synchronized with symphonic fidelity.

Many more phases of clinical medical ethics will arise to be added to those already in existence. The variegated, entangled intransigences thrust upon medicolegal research will compound the bioethical conundrums that may be inherent to them. "Difficult, value-laden decisions arise at every turn in clinical medicine, and decisions are forced One cannot wait until all the uncertainties are cleared up. People have to act, and whatever they do becomes a value choice."¹⁴

12. Von Baeyer & Ranbaws, *Whirlpools and Clouds*, 24 SCIENCES 24, 37 (July-Aug. 1984).

13. Merrill, *The Development of Human Kidney Transplantation — Personal Recollections*, 47 PHAROS 22, 24 (Spring 1984).

14. Hunter, Book Review, 47 PHAROS 44 (Spring 1984) (reviewing Jonsen, Siegler & Winslade, *Clinical Ethics: A Practical Approach to Ethical Decisions*, in CLINICAL MED. (1984)).

Research Financing

Falsification of medical records in any manner or for any reason is an act abhorrent to the innate purpose of science which is the search for truth. Any deviation from exactitude can jeopardize human life. The indispensable idealism of medicosurgical proceedings is at the antipodes to any imperiling or impalement of human living functions. Preserving health, combatting disease, detouring the path of death (if possible), and calming the anxieties of pain, illness, and dying are the scintillating shields of the medicosurgical art.

Law, as a monitoring ombudsman, assists in preserving ethical medical behavior through the judicial vehicle of legal redress via potential lawsuits. These legal actions may be founded upon libel, slander, malpractice, negligence, other torts, failure to administer ordinary or extraordinary medicosurgical care, and even the threat of criminal charges. This last category of legal invective was typified in a highly publicized medicolegal contretemps in California, where the ethical debate on determining the optimal use of medical technology to prolong life, without crossing over into prolonging death, was heard. This legal adversity had a grotesque twist when physicians became involved with criminal law. Never before in the history of American medicine have physicians been accused of murder for disconnecting a patient from life support systems. On May 9, 1983, a municipal court judge dismissed the charges against the physicians. Two months later, a supreme court judge ruled that California law had not been applied properly and reinstated the cause of action for murder. In a twenty-five page opinion a California appellate court panel vacated the lower court's reinstatement of murder charges.¹⁵

The advancement of biological sciences in all its phases depends upon intelligent research, imaginative inventions, astute clinical observation, reliable statistical documentation, and precise authentication of programmed preclinical studies. All these educational endeavors must have certain philosophic base lines as their guiding spirit. These are moral stability, strict reliability, and untarnished, enthusiastic adherence to transcendental truthfulness. Succinctly, it promulgates a strong commitment to the full score of an elevating medical ethos from defined norms to professional attitudes. The aim of progressive, developmental advancement in medicine is not to obtain glamorous publicity. Neither does it seek to achieve more lu-

15. *Barber v. Superior Court of State of Cal.*, 147 Cal. App. 3d 1006, 195 Cal. Rptr. 484 (1983). See also *M.D.'s Face Unprecedented Murder Charges*, AM. MED. NEWS, Sept. 16, 1983, at 1, col. 1; *California Case Generates Comments*, AM. MED. NEWS, Nov. 25, 1983, at 26, col. 1; *Court Vacates Murder Charges Against M.D.'s*, AM. MED. NEWS, Oct. 28, 1983, at 1, col. 1.

crative financial grants to augment the coffers of universities, nor to be a means of spiralling to fame a hospital's increasing future reputation. "Research has been called good business, a necessity, a gamble, a game. It is none of these — it's a state of mind."¹⁶

If an improper research goal is sought, then the intrinsic golden beauty of scientific efforts will be minimized into the obscurity of nothingness. Medical research especially is a song in studious minds and loving hearts that must be sung for the physical salvation of humanity. Falsification of records or data in order to obtain or continue research grants is not justified under any circumstance. Research financing is needed, but altering moral standards either for money or to maintain a position at a prestigious university is to accept evil. Principles of research must be unblemished if they are to be the luminaries to scientific perseverance and victorious accreditation.

In former years, before World War I, any person found to be interested in real research was considered to be a bit odd. Today, in the absence of flair or aptitude, countless dollars lure many into a new world of research.¹⁷ Public opinion, however, is not as discriminating today and is likely to interpret the agitation for the endowment of science as meaning that science can be "had" for money.¹⁸

Dr. William S. Middleton observed in 1966 that the laity cherishes naively the belief that money will purchase the answer to all the secrets of nature.¹⁹ As might be expected, qualitative results have not regularly attended such quantitative efforts. It is almost a Pavlovian reflex for human beings to cherish for themselves the sweetness in life and to scorn that which is bitter. When a choice entails a personal aggrandizement, often the selectivity process is misaligned. Many people seem to prefer the easiest pathway to success rather than the rugged road to achievement which often is more parallel with truthfulness.

II. DECEPTIVE AND UNETHICAL PRACTICES IN THE SCIENCES

On May 1, 1984, the electronic news media reported to the point of echolalia that 45,000 out of 400,000 physicians were practicing unethically. The illicit practitioners had either lost their licenses or had been suspended from practicing by a state licensing board. These 45,000 physicians apparently obtained a license in another state prior to being defrocked by the state in which they were initially licensed. Many of these physicians obtained coun-

16. FAMILIAR MEDICAL QUOTATIONS 505 (B. Strauss ed. 1968).

17. Bock, *Arlie V.*, 40 HARV. MED. ALUMNI BULL. 2 (Fall 1965).

18. FAMILIAR MEDICAL QUOTATIONS, *supra* note 16, at 510.

19. *Id.*

terfeited, fraudulent, dishonest, or similarly perverted diplomas from non-American medical schools.²⁰

A month after this adverse publicity, on Friday June 8, 1984, a special article appeared in the New York Times on the subject of plagiarism by a professor of medicine, reporting the resignation of a Stanford University professor from the chairmanship of the Department of Medicine after an investigation had determined that he had been grossly negligent in his scholarship by plagiarizing twenty-four percent of a chapter in a medical textbook.²¹ The doctor's explanation was that he was so engrossed in his new position as chairman of the Stanford University Department of Medicine that he "did not get around to making sure permission had been granted to use some material he borrowed for a textbook he was preparing." The professor said, "[t]he vast majority of my colleagues at Stanford and elsewhere who have spoken out deeply feel the ultimate result of my resignation as chairman in addition to censure has been more than sufficient response to my mistake."²²

Priority claim for an AIDS antibody test reached a legal contretemps in December, 1985, when researchers at the Louis Pasteur Institute in Paris commenced a legal action against the National Cancer Institute in the matter of a patent on the specified test. The bill of particulars indicates that American research scientists used laboratory materials and information supplied by the Pasteur Institute in developing their AIDS test. The plaintiffs in Paris alleged that the American scientists violated an agreement stipulating that the materials were to be used only for research.²³ The defendants responded that they had inadvertently published the wrong photographs in a 1984 scientific journal. American researchers involved in the lawsuit maintained that a contractor hired to take photographs of the viruses suspected of causing AIDS mistakenly included those of a similar French virus.²⁴

A discussion of the Krebiozen chapter in past medical annals inspired a thought-provoking article under the novel title, *Who Will Bell the Cat?*²⁵ In it the author states the following:

20. N.Y. Times, Apr. 29, 1984, § 1, at 1, col. 1; see also, Lyons, *Dominican Inquiry Points to 2,000 Fraudulent M.D. Degrees in U.S.*, N.Y. Times, Apr. 27, 1984, § 1, at 28, col. 1.

21. Blakeslee, *Stanford's Censure of Plagiarism Leads Medicine Chief to Quit Post*, N.Y. Times, June 8, 1984, § 1, at 14, col. 5.

22. *Id.*

23. Wash. Post, Apr. 14, 1986, at A5, col. 1. See generally Duncan, *Public Policy and the AIDS Epidemic*, 2 J. CONTEMP. HEALTH L. & POL'Y 169 (1986); Comment, *Protecting the Public From AIDS: A New Challenge to Traditional Forms of Epidemic Control*, 2 J. CONTEMP. HEALTH L. & POL'Y 191 (1986).

24. See sources cited *supra* note 23.

25. Ward, *Who Will Bell the Cat?: Andrew C. Ivy and Krebiozen*, 58 BULL. HIST. MED. 28, 52 (1984).

There is, alas, no Bell-the-cat to be found in the complex, convoluted, often incredible story of Andrew Ivy, a once respected scientist who spent the last twenty-seven years of his life advocating an alleged anti-cancer substance called Krebiozen. The story began in 1951 and ended only with Ivy's death in 1978.²⁶

During the early years of Ivy's involvement, many contenders for the title of "Bell-the-cat" arose at the University of Illinois College of Medicine. Before the fiasco had exhausted itself after some twenty-seven years, the already long list of would-be "Bell-the-cats" had expanded to include the Chicago Medical Society, Illinois State Medical Society, American Cancer Society, American Medical Association, National Research Council, National Cancer Institute, and the Food and Drug Administration. This humiliation of science was the subject of retrospective examination by many participants.²⁷

The incalculable sheafs of papers forming the multiple manuscripts published on Krebiozen were written without conclusions founded on scientific facts. This is the sort of entrapment that easily seduces some research scientists. Without checks and balances, and the threat of disputation, the beauty of verifiable scientific observations is lost. Positive affirmation by pure repetition or duplication adds a new scene to the ever-moving drama of research as it is admitted into the archives of philosophy, natural history, and revered science. Thus, the authentic author of these accomplishments has placed a right foot on the pathway that leads to immortality.

Unethical Practices

All dutiful, productive research of every category is cultivated in silent dignity without showmanship. When adjective law is called upon to solve, correct, restrain, or redirect the mannerisms of medicine in general or medicosurgical research in particular, then legal medicine is resurrected as a restraining entity in one form or another. Under the fear of legal actions, unethical behavioral patterns become alien to scientific research because of the umbrage of a monitoring ombudsman. Hence, legal medicine is clothed in a newer toga which is reminiscent of the archaic tribune during the glorious Roman Empire.

In 1984, the managing editor of a distinguished New York publishing house asked for a review of a manuscript submitted to his firm. It was the literary product of Dr. Alexander Kohn of the Israel Institute for Biological Research at Ness Ziona, Israel. This writing contained in concise, concen-

26. *Id.* at 28.

27. *Id.* See also G. STODDARD, *KREBIOZEN: THE GREAT CANCER MYSTERY* (1955).

trated documentation, some material depicting the ugly strain of unethical scientific proclamations.²⁸ In his preface, Dr. Kohn acknowledges that the ethical problems of misconduct encountered in scientific research range from outright fraud and deliberate falsification through concealment of information to less significant or minor infractions relating to grantsmanship and author-editor interactions. In highlighting specifically the issue of fraud, Dr. Kohn states:

Quite often the term fraud was used as a denominator for scientific misconduct. Actually in everyday and in legal language fraud is defined as criminal deception, or the use of false representation intended to benefit the deceiver. The scientist who is cheating knowingly, who falsifies or invents research data, who lies about them is not fraudulent *sensu stricto* as long as he (or she) is not using false data to obtain financial support from public or governmental agencies, or from private funds. Fraud is committed also, when on the basis of false data the scientist is trying to secure a research job, to prove that public funds have been used properly, to convince the grantors or the public that a certain procedure, material, or drug is acceptable and safe.²⁹

Cheating in science has been expressed in various forms which have been called forging, trimming, or cooking.³⁰ These terms are defined more graphically as follows:

1. Forging — when one records observations that were never made, outright lies about experimental data, reporting experimental procedures never carried out, citation of a non-existent manuscript, plagiarism;
2. Trimming — when data are manipulated so as to make them look better (also called massaging data or fudging), amplification of an experiment, reporting more trials than actually performed, adding or removing the number of animals studied to or from experimental or control groups though using genuine numbers or means; and,
3. Cooking — choosing only data that fits the researcher's hypothesis best, discarding those that do not fit in, which is telling only a part of the truth (in modern parlance — finagling), omitting aberrant values, misreporting factual conditions of the experiment, altering ancillary data, or omission of entire experiments that yielded negative and/or contrary results.³¹

Incredible as it may seem, the question that arises from this reading of the definitions of forging, trimming, and cooking is, "why does an educated per-

28. A. Kohn, *Fraud and Error In Science and Medicine* (1984) (unpublished manuscript).

29. *Id.*

30. *Id.*

31. See Blakeslee, *supra* note 21.

son specializing in the esteemed field of research, succumb to this temptation?" The answer proffered by one authority is that the major motivating forces in a scientist are recognition from fellow scientists, a permanent drive to work, to be creative, not to violate the ethics of science, and if at all possible, to be the first with a new discovery.³²

If all these five motivations were looked upon by scientists equally with a dispassionate eye, then deviations from proper conduct would not occur. However, when an unbalance in these virtuous expectations emerges, then it appears the first one to be discarded is that called ethics. Not to violate the ethics of science is inundated easily when the rising tide of ambitious recognition or the mountainous wave to be first with a new discovery drowns the proper, upright thinking processes.

Cognitive examples of cheating in science are demonstrated by certain flagrant episodes as reported in past literature exhumed by Dr. Kohn. They are litanized in the subsequent patterns:³³

1. About 1964 a Soviet scientist, N.N. Fedyakin, discovered a new form of water with different thermal properties and vapor pressure that was dissimilar to that of ordinary water. It was called polywater, which was found never to have existed in reality.³⁴

2. What was the basis for the highly publicized "Summerlin affair" as was described by the popular press?³⁵

The fraud became public when, in order to demonstrate that a skin graft from a black to a white mouse was possible and successful, the researcher painted the "transplanted" area on the white mouse with a black felt pen, and brought those "painted" mice for demonstration to the director of the research institute who had employed him.

A committee decided that his "irresponsible conduct is incompatible with the discharge of his responsibilities in the scientific community" and recommended that the doctor be offered a medical leave of absence to alleviate his situation.³⁶

3. From 1973-1977, several research scientists published in medical literature their descriptions of various permanent lines of Hodgkin's lymphoma

32. F. JEVONS, *SCIENCE OBSERVED* (1973).

33. See A. Kohn, *supra* note 28. For an additional example of unethical practices see Okie, *NIH Scientist A Suicide Amid Probe of Paper*, Wash. Post, Feb. 14, 1987, at 1, col. 4.

34. *Id.* See also F. JEVONS, *supra* note 32.

35. Goodfield, *Reflections on Science and the Media*, 87 AM. A. ADVANCEMENT SCI. PUBLICATIONS (Nov. 5, 1981).

36. *Id.* See also McBride, *The Sloan-Kettering Affair: Could It Have Happened Anywhere?*, 229 J. A.M.A. 1391 (1974).

cells.³⁷ The availability of such tumor cells in permanent cultures was vital in the study of this class of lymphomas.³⁸ In 1979, some doubt arose as to the identity of the Hodgkin's cell lines because of improper documentation attributed to tampering with the basic research itself.³⁹

Dr. Kohn has unveiled without surquedry many other fingerprints in the falsification trials on the white sands of medicoscientific research. To recount all of them would be an additional diminution in the pedestaled stature of scientists. Medicosurgical research cannot be materially strong if it is spiritually weak. An antagonistic, insidious good or evil confrontation will arise between these two forces which surreptitiously will engender an internal detriment to the proposed project.

To the praiseworthy aims of legal medicine is added another asset as a contributor to the stabilization of scientific research and medical practice through the retrenchment of unethical tendencies. This is envisaged because legal medicine warns research participants that any ethical distortion may instigate legal recriminations. In this special concrete manner, legal medicine has become a potent, subtle, positive force in the reintegration of medical progress. Simultaneously, it advises that ethical violations may lead to social embarrassment. The specialty of legal medicine is rising constantly with consistency to heights of dignity and prestige. To these merits has accrued the accolade that it is becoming the guardian of elevated, traditional medical standards.

III. ETHICS AND THE SCOPE OF MISCONDUCT

Moral philosophy is referred to as ethics. It is equivalent to morality with the unwritten or unspoken applied compatibility with honor and integrity. Included within its definition are those magnifying qualities that integrate into characteristics that defy the human person. It deals with all things according to how they exist in the will. Hence, the credo of ethics is not visible

37. See Long, Clive, Hall, Brown, Stamatou, Weitzman & Carey, *Binding of Soluble Immune Complexes in Serum of Patients with Hodgkin's Disease to Tissue Cultures Derived From the Tumor*, 297 *NEW ENG. J. MED.* 295 (1977) [hereinafter Long & Hall]; Long, Dvorak, Quay, Stamatou & Chi, *Reactions of Immune Complexes with Hodgkin's Disease Tissue Culture: Radioimmune Assay and Immunoferritin Electron Microscopy*, 62 *J. NAT'L CANCER INST.* 787 (1979); Zamecnik & Long, *Growth of Cultured Cells From Patients With Hodgkin's Disease and Transplantation Into Nude Mice*, 74 *PROC. NAT'L ACAD. SCI.* 754 (1977); Long, Zamecnik, Aisenberg & Atkins, *Tissue Culture Studies in Hodgkin's Disease Morphologic, Cytogenetic, Cell Surface, and Enzymatic Properties of Culture Derived From Splenic Tumors*, 145 *J. EXPERIMENTAL MED.* 1484 (1977) [hereinafter Long & Zamecnik]; Long, Aisenberg, Zamecnik & Zamecnik, *A Tumor Antigen in Tissue Cultures Derived From Patients with Hodgkin's Disease*, 70 *PROC. NAT'L ACAD. SCI.* 1540 (1973) [hereinafter Long & Aisenberg].

38. See sources cited *supra* note 37.

39. Long & Hall, *supra* note 37.

to colleagues, friends, relatives, or enemies. The internal acts creating an idea are of our minds. As such they are not able to be known by others, unless manifested to them by us through some visible or audible sign. In daily life, the sign most commonly used is the written or spoken word which is the link between the silent idea and the created communication. Reliance upon the conveyance of ideas to the word may induce a travesty of incompatibility, which gives birth to moral turpitude.

Ethics as an advanced, academic, philosophic pursuit is that study or discipline which concerns itself with judgments of approval or disapproval. These judgments arrive at the rightness or wrongness, goodness or badness, virtue or vice, desirability or wisdom of actions, dispositions, ends, objects, or states of affairs. A sociological analysis and explanation of personal ethical judgments is a mental moving force.

Scientific research has a philosophic precedent in that it has a mediate dependency whose relationship between the subject studied and the predicate pronounced should be stalwart, pristine, truthful, transcendental, and immovable. Ethical medical research is an *a posteriori* synthesis in that its conclusions are determined either by intellectual or physical experimentation. Adherence to an ethical code in research is a universal obligation. Its philosophical extension is applicable metaphysically — meaning that it excludes all exceptions. It does not admit to any exclusion in any order of creation even those of divine origin. An example of this dictum is that a stone is not a living, breathing, biological being. No mechanics of scientific research can justify a contradiction to this concluded physical truism.

Science in its classical interpretation or definition is “knowledge (gained) by causes.” This acquired knowledge is contrasted to “opinion.” The term “cause” is derived from the Greek word *aitia*. It has the Hellenic meaning of anything that is responsible for change, motion, or action.⁴⁰ Thus, scientific research to be correct ethically is the fusion of a dual, instantaneous utilization of the intellect and the will. The intellect brings forth the knowing half of the union and the will concurrently brings into existence the loving of the knowledge as directed to the object studied and loved. Accordingly, the action of the will adds the second part to complete the pattern of ethical conduct.

Love is the giving part of any research project for the benefit of humanity. A knowledge of something does not mean the person loves it. Love is absent unless acted upon by the will. The will must consent to the love of the object studied which in turn is consonant with ethical behavior. To truly love something is not to mar, injure, or destroy it. Ethical courage strikes a pow-

40. See DICTIONARY OF PHILOSOPHY 64 (D. Runes ed. 1983).

erful blow that can be an impregnable fortress for the preservation of medicosurgical literacy and civilized scientific research.

Coping with Misconduct

Since the appearance of the fictitious Dr. Frankenstein, scientists have been importuned for their deviations from the hereditary adherence to expected ethical criteria. Past medicoscientific history retells many incidents of moral remissions among various famous and infamous scientists. The incentive toward moral digression may be self-aggrandizement, acquisition of money, to achieve an academic promotion, secure research grants, to keep pace with competitors, augment the reputation of an institution, to have a professional chair named after the person, to secure an endowed department at a university, or to acquire curule charisma. To these may be listed an innate tendency to cheat or an insidious penchant for dishonesty. Sometimes the cheating proclivity manifests itself during early years as a student. There is no violation of the civil or criminal law to cheat in school. However, it leaves a scar on the human conscience. What is more significant, the scar may cover an infected wound that nurtures the cancer of dishonor.

No member of a scholarly profession should restrain his constructive or destructive criticism of evil events known to exist. To do so is to render a disservice to that profession. Calling attention to evil can induce humiliation and/or anger. Incipient, smoldering anger can be restrained, contained, or camouflaged. Humiliation is more difficult to conceal because it is a giving and a taking like a two-way street. The humiliator is powerless in the presence of one who does not play into his hands. If the recipient of criticism is by choice immune to humiliation, then the critic is impotent. Thus, the recipient of criticism is unresponsive. In this situation the intended criticism is devoid of corrective effectiveness and soon evaporates.

Attempting to correct evil actions in a learned profession may be counterproductive, stimulate animosity, produce enemies, and/or instigate self-induced, painful mental suffering. One or all may be the price the critic may have to pay for attempting to preserve the purity of medicoscientific research. Every human person must learn or should know that in terms of eternity, life is only a trivial incident. Should we not give it the best we can for the short time we have it? Either actively or passively a revitalization of ethical standards in medicine will become compulsory through the unsolicited overseer called "The Law."

CONCLUSIONS

Deviation from the traditional ethical conduct of scientific researchers of

medicosurgical practitioners was and continues to be a moral imperfection. It is contaminated with the decay of immorality that aligns itself with amorality. Under the uninvited surveillance of legal medicine the covert metaphysical curtain of morality is opened to scrutiny. Ethical distortions fulminate into demagogic notoriety that diminishes public estimation of scientific endeavors. Descending, negative, or destructive derogation of science on the part of the populace becomes a deterrent to data exaggeration, experimental laxity, and statistical impropriety. Hence it is that scientific research, in general, and medicosurgical research, in particular, incur an indebtedness to the law as a moral ombudsman for which legalists deserve overt recognition. In essence, this medicolegal overlooking has revitalized the forcefulness of proper ethical conduct in scientific research and medicosurgical pursuits via the invisible *modus operandi* of the law.

Research should not be regarded as the application of modern technology, but instead as the use of scientific methodology in problem solving. The very heart of research is the experiment, for in science, one experiment follows another while in clinical medicine the diagnosis is followed by therapy.⁴¹ Both efforts are the labor of love for the sake of serving humanity. When the celestial ideals indigenous to the learned are entrusted to ignoble experimental scientists or tainted medical doctors, these impalpable sentimental beliefs cease to be morally nutritious. Eventually their work becomes macerated into a diabolic excrement that is an unwanted by-product of respected research. Great people love those things they serve. A medical researcher must love the servitude demanded by medicine. Otherwise the scientific decorum of professionalism will arrive at an ethical impasse.

41. Graham, *The Role of the Clinician in Research*, 79 AM. J. GASTROENTEROLOGY 335, 340 (May 1984). See generally Lappe, *Accountability in Science*, 187 SCIENCE 696 (1975).

