

Keeping Lawyers Out of the Lab

Researchers gripe that suits arising from their findings waste time and hurt their reputations

BY CATHERINE ARNST

ADD ANOTHER SET OF voices to the chorus of complaints about our litigious society. Scientists who would prefer to plug away quietly in their labs say they are dragged into lawsuits the moment their research turns up a hint of the possible cause of a disease. And once that happens, they are besieged by time-consuming subpoenas from both plaintiff and defense attorneys. Their professional reputations come under attack, and any hope of privacy for their pursuit of scientific knowledge is gone.

Dr. Brad A. Racette, a neurologist at Washington University School of Medicine in St. Louis, says his experience is compelling evidence of the burdens of litigation. It started when he published a study in 2001 suggesting that welding fumes might cause Parkinson's disease. Such a link had long been hypothesized because welding rods contain manganese, a metal that in high doses is a known risk factor for Parkinson's. Racette found that 15 professional welders developed symptoms of the disease an average of 15 years earlier than normal for Parkinson's patients. Although far from definitive, it was the strongest suggestion yet of cause and effect.

The study fed into a flood of litigation, with more than 10,000 welders filing suit to date. Racette and Washington University have been served with 10 subpoenas, and he has been

THE STAT

10 Number of subpoenas received by Dr. Brad Racette since he reported a potential link between welding and Parkinson's disease in 2001



deposed three times. "It has taken up an extraordinary amount of time," he says—one researcher in his lab dedicates almost all his time to pulling together data required by court action. Washington University has also spent more than \$200,000 responding to legal motions.

Even Racette's patient data are up for grabs. As a treating physician, he had assumed medical records were protected by the Health Insurance Portability & Accountability Act (HIPAA), designed to shield patient privacy. But a court order trumps HIPAA. Lawyers have a broad right to request detailed medical information if it pertains to a case. "Because

we're doing research, our records contain very specific information about employers and dates and so on that make it possible to identify the individuals in the study," says Racette. "That can really undermine the trust that research participants place in us."

A HEAVY BURDEN?

THE AMERICAN ASSOCIATION for Justice, a trial lawyers' group, is not convinced. "This is one person complaining about going into court twice a year for five years. That hardly seems like a burden," says Chris Mather, head of communications for the group.

Whether or not such demands are a burden depends on who is being asked. J. Steven Picou, a sociology professor at the University of South Alabama, says he spent an entire year responding to subpoenas after he published studies in 1992, funded by the National Science Foundation, on the social and psychological impact of the 1989 Exxon Valdez oil tanker spill in Alaska. Alaska residents had already filed suit against Exxon Corp., and "Exxon wanted every scrap of paper that was at

RACETTE Washington University has spent \$200,000 responding to legal motions

all relevant," he says. "It was very distracting, very distressing." The litigation also stopped Picou's research team from publishing any further studies of the oil spill, for fear of more legal demands. Lawsuits surrounding the Exxon Valdez spill are still in the courts.

Racette refuses to serve as an expert witness for either side of the welding suits, but Washington University has accepted \$230,000 from a trial lawyers' group to cover the costs of screening welders for Parkinson's. John Beisner, a partner with O'Melveny & Myers who represents welding companies, says that makes information gathered on those welders fair game in discovery. "It should not be a surprise that a defendant would ask for the details of information that is used against him." Beisner agrees that such searches should be done in a way that doesn't chill scientific research, but adds that "the courtroom is a place where you search for the truth," and

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scientific studies fall into the purview of that search.

Racette and a colleague, Dr. Joel S. Perlmutter, laid out their side of this conflict in an article in the December issue of *Neurology*, written after Racette attended a conference over the summer on metal toxicity. "I found that many people have these stories," he says. "It absolutely has a chilling effect on research. When investigators see the difficulties faced by other researchers, their natural reaction is to find something else to do."

Racette says scientists are particularly concerned about attacks on their reputations by industry attorneys seeking to discredit research. For proof that such fears aren't groundless, they need only look to Dr. Herbert Needleman, a professor at the University of Pittsburgh. In the 1970s, Needleman was the first scientist to link lead exposure and lowered IQ levels in children. Although his research persuaded the federal government to mandate the removal of lead from gasoline and paint, Needleman was ferociously attacked by the lead and paint industries and had to defend himself against charges of scientific fraud and misconduct. He was ultimately exonerated—after tallying up \$85,000 in legal expenses.

The American Association for the Advancement of Science became aware of the disruption that litigation can cause the scientific process seven or eight years ago, during lawsuits involving tobacco. "Attorneys for those companies were very aggressive in seeking data from scientists," says Mark S. Frankel, director of the Scientific Freedom, Responsibility & Law program at the AAAS. "One doctor left the field, he was so discouraged."

Picou, who has monitored lawsuits involving research ever since his own work came under scrutiny, worries that the legal system also devalues the scientific process. "Issues other than scientific evidence come into play in a lawsuit. It involves how good your attorney is and how good you are on the witness stand. Scientists become trapped in a battle between experts."

Racette calls for federal legislation that would protect research from subpoenas. As a model, he points to Illinois' Medical Studies Act, which prohibits the legally forced disclosure of data obtained in a medical study. "We need to create an environment where scientists are free to explore many different potential causes of disease, without having to worry about being hauled into court." ■