Science and the Au Pair Trial

By Harvey Silverglate

A jury trial is, to paraphrase Churchill's observation about democracy, the worst system for determining truth—except for all the others. Yet even the most ardent supporters of the jury system must admit that sometimes juries can get it very wrong. This is particularly so when juries are asked to decide factual questions depending not so much on common sense as on science.

This shortcoming was demonstrated in bold relief by a jury's second-degree murder conviction of Louise Woodward in the Massachusetts au pair murder trial. A judge yesterday freed Woodward from jail after reducing her conviction to involuntary manslaughter. But great injustices have been committed—and not yet rectified—in a number of obviously erroneous verdicts in "child abuse" cases around the country, including in Massachusetts. Indeed, two of the more spectacularly erroneous jury convictions, of the Amirault family in the infamous Fells Acres Day Care Center prosecutions, came at the hands of some of the same members of the child-abuse cult who testified against Woodward.

Off the Rails

To blame the jury for such verdicts is to ignore the forces that cause the criminal justice system to go off the rails in these cases: ideologically motivated physicians, social scientists and social workers who proceed from trial to trial as a kind of repertory company, presenting their lengthy résumés to juries composed largely of ordinary people, and offering seemingly incontrovertible scientific evidence that a seriously injured child had to have been the victim of abuse, rather than of accident or even illness. They claim hegemony over child-abuse expertise that trumps members of traditional specialties. Likewise, one should examine closely the role of prosecutors, driven by either ambition or the same quasireligious zeal that motivates the child-abuse cult's adherents.

The first hint that there is something odd about the approach of these self-proclaimed "child abuse experts" is that they have so designated themselves. In the Woodward case, pediatric neurosurgeon Ronald Uscinski spoke for the defense when he derided the notion that there is such a medical specialty as "child abuse," mechanics of head trauma, that very designation suggests a predisposition to find abuse even where none exists. It is rather like the experts in witchcraft of bygone eras, who reliably found signs and symptoms of demonic goings-on in even the most natural of phenomena.

One of those prosecution experts was Eli Newberger, a high-profile pediatrician not known for reluctance to claim leadership in the field of child abuse. He set up, and still heads, the Child Protection Team at Children's Hospital, where the infant, Matthew Eappen, was taken. Dr. Newberger testified that he was certain that Matthew's brain injuries were the result of violent shaking and of slamming his skull against a flat hard surface with force equivalent to a second-story fall onto concrete. He maintained his position even in the face of uncontradicted evidence that there was not a mark on the infant's body, that there was no neck or cervical injury, and that a CT scan showed clearly that there was no injury to the soft tissue under the scalp at the site of the skull fracture. Rather than back down, Dr. Newberger simply repeated his mantra that this was a clear case of "shaken baby/impact syndrome."

The central problem in the case arose when the jury was faced with one group of expert witnesses relying on hard data interpreted according to accepted scientific principles, vs. another group of seemingly well-credentialed experts who placed themselves wholly at odds with data that they simply refused to acknowledge. Ludi-

how is a jury of laymen to decide which is junk? Indeed, Judge Hiller Zobel, in his 16-page opinion reducing the verdict, in "the interests of justice," noted that the jury apparently "spurned, as not worthy of belief, professional opinions emanating from a corps of highly-qualified, authoritative experts," but that "such dismissal is unquestionably within the jury's province." A jury can easily do so in error, as Judge Zobel acknowledged in reducing Woodward's sentence to the time she'd already served.

This is an especially vexing problem in a case like Woodward's, in which the determinative question, as both sides and the judge agreed, was whether the child's injuries were incurred only on Woodward's watch, or during an earlier period when several people were caring for the child. If the injury were incurred earlier, a more searching investigation would have to be done in order to determine, if possible, who inflicted the injury, assuming that it was not accidental.

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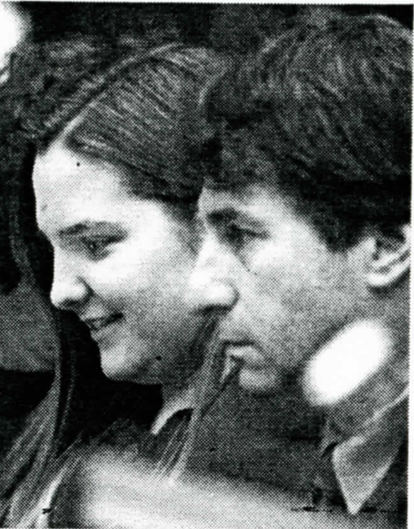

Louise Woodward gets out of jail, but other victims of junk science aren't so lucky.

The abuse experts assured the jury that only the most violent, and recent, shaking and impact could produce the massive bleeding and other injuries Matthew had upon admission to the emergency room. The defense scientists testified that an earlier injury could readily have begun to bleed again spontaneously, without any further force applied, within a day of the infant's admission to the hospital. This defense testimony was made more dramatic by the fact that it was delivered by scientists on whose published work several of the pros-

Is this an argument for abolishing the jury system and substituting a trial by a panel of sophisticated professionals? It is unlikely that the human mind will anytime soon come up with anything more reliable than a jury for determining guilt or innocence. However, when we face a situation where a segment of civil society—here, members of the medical profession—has allowed itself to become co-opted into twisting scientific truth, surely something must be done lest the truth-finding role of juries be made dangerously unreliable.

Courts and legislatures have proved themselves not up to the task of developing a judicial method for reliably sifting out hard science from junk science. Perhaps this is a task that should not be undertaken by instruments of the state. Perhaps the medical and scientific communities should make themselves heard, and fill the breach. We have in this country numerous scientific societies of undoubted integrity. These societies should establish peer-review panels of scientists who have not yet become corrupted by political agendas but who continue to adhere to the scientific method. These panels could review the testimony of so-called experts who are motivated more by ideology than by science, and then proceed to strip such charlatans of their professional licenses.

Egregious Malpractice

After all, professional disciplinary and peer-review panels have the power to strip physicians of their medical licenses for repeated and egregious medical malpractice. Academic and other scientific bodies are charged with reviewing allegations against scientists who engage in scientific fraud in reporting the results of experiments. Why should doctors and scientists be any less vulnerable to discipline when they commit their malpractice in the guise of "expert" testimony in a court of law?

The defense experts in the Woodward case have voiced their willingness to have their work reviewed by their peers in the scientific community. Despite the district attorney's resistance, that is where the issue of scientific truth should be established. It might have no impact at this point on the Woodward case, which will be decided, one way or another, by the normal legal processes of appeal. But truth and history, not to mention the interests of

justice system to go on the rails in these cases: ideologically motivated physicians, social scientists and social workers who proceed from trial to trial as a kind of repertory company, presenting their lengthy résumés to juries composed largely of ordinary people, and offering seemingly incontrovertible scientific evidence that a seriously injured child had to have been the victim of abuse, rather than of accident or even illness. They claim hegemony over child-abuse expertise that trumps members of traditional specialties. Likewise, one should examine closely the role of prosecutors, driven by either ambition or the same quasireligious zeal that motivates the child-abuse cult's adherents.

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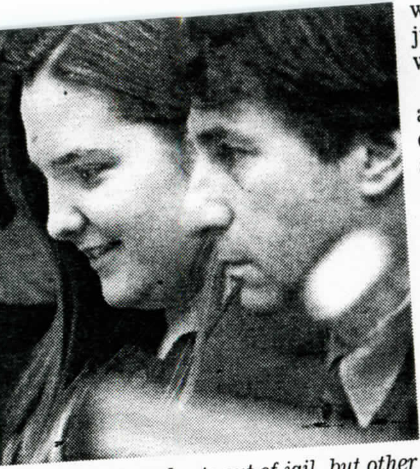
The central problem in the case arose when the jury was faced with one group of expert witnesses relying on hard data interpreted according to accepted scientific principles, vs. another group of seemingly well-credentialed experts who placed themselves wholly at odds with data that they simply refused to acknowledge. Ludicrous though it might seem to a true scientist, to a lay jury the specter of credentialed and seemingly respected experts refusing to change their opinions in the face of hard data might well result in questioning the validity or relevance of the data.

In scientific circles, one can differentiate "junk science" from real science. But



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Mr. Silverglate is a Boston attorney who participated in Louise Woodward's defense.

Stock or Cash? How to Weigh Competing Merger Bids

By Alfred Rappaport And Mark L. Sirower

Yesterday MCI agreed to be acquired

risk, because the acquirer must pay the premium up front and is getting, in effect, an option on synergies that may or may

ing the risks of the postmerger performance. In an all-cash deal, by contrast, the only value at risk for the target com-

tually materialize. In accepting World-Com's offer, MCI's board is betting that most of the synergies are likely to be real-