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1. [Brain Science Can Balance the Scales of Justice, Scholars Tell Judges](#)

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[Brain Science Can Balance the Scales of Justice, Scholars Tell Judges](#)

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Byline: Katheryn Hayes Tucker

Body

POINT CLEAR, Alabama-Advances in knowledge of the brain are starting to affect how criminal defendants are-or should be-sentenced and the how to measure damages in civil cases, two law professors who are also neuroscience scholars told federal judges and attorneys here Thursday.

"Our advances in science will affect our society and our law in a variety of ways," said Hank Greely, a Stanford Law School professor who also teaches genetics.

The program on neuroscience and the law was part of the U.S. Court of Appeals for the Eleventh Circuit judicial conference at the Grand Hotel Marriott on Mobile Bay. Those attending included 160 federal judges and 300 practicing attorneys from Georgia, Florida and Alabama.

Judges make a good audience, because they're "smart generalists," said Greely. He said they need to consider the implications of scientists' increasing ability to predict behavior and improve treatment. Neuroscience has even been used to document the level of pain suffered by plaintiffs in civil cases or claimants for Social Security disability payments.

Greely gave examples of cases in which criminal defendants were found to have brain disorders that could be used to explain their behavior. In some cases, using knowledge provided by MRIs that once could only be seen by autopsy, criminal defense lawyers were able to use the information to argue successfully for lighter consequences.

The defendants who fared the best seemed to be those who had brain tumors that could be removed-after which their impulses to offend disappeared, said Greely. He said one man who was cured in that way saw his sentence reduced to probation. He was fine for two years, then reported his impulses had returned. Instead of being sentenced to prison, he was sent for an MRI, which found that the tumor had returned. It was removed again, and he has not reoffended since, Greely said.

Nita Farahany, a professor of law and philosophy at Duke University, told the group that neuroscience applied to criminal law can enhance efforts to "find justice, to find truth. Isn't that what the justice system is supposed to do?"

Brain Science Can Balance the Scales of Justice, Scholars Tell Judges

She said a breakthrough in genetic research in 2001 showed that some individuals, mostly men, have brains with a predisposition to commit violent crimes-but only those also subjected to mistreatment in childhood. It did not take long, she said, for defense attorneys to begin using that science.

"Don't blame the offender. Blame his genes. Blame his childhood maltreatment," she said, describing the defense arguments.

She emphasized that juries and judges still must weigh free will and individual choices. But she said the research sparked a trend of judges' increasingly mentioning defense-introduced neurological evidence in opinions. Recent opinions have held defense counsel ineffective for failing to introduce neuroscience evidence, she added.

In some cases, neuroscience has been used to boost insanity defenses, which are rarely successful, she said. More successful, she added, is the use of neuroscience to declare defendants incompetent to stand trial. One case, she said, was a 68-year-old physician charged with Medicaid fraud for false claims. After neuroscientific evaluation, his defense was able to show he suffered from a form of dementia that causes a severe loss of insight and judgment. He is living out his life in a nursing home instead of a prison, she said.

Neuroscience also is being used by prosecutors against criminal defendants, she added.

Said Farahany: "This is powerful stuff."

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