

**LEGAL "IMAGE" STRATEGIES FOR CHIROPRACTIC  
PAST, PRESENT & FUTURE**

In prior articles I have written about the legal issues related to the chiropractic scope of practice. The law is one thing, factual, tactical, arguments presented in the public forum are another. Here, I will trace how trial tactics and the pursuit of academic acceptability have shaped the present limited perspective of chiropractic.

Yesterday's successful trial/survival tactics may be a prescription for failure under changed circumstances. This is a general truth known to all trial lawyers and it is particularly true for chiropractors; especially today when the metaphysical foundations of science itself are being widely challenged and the pathophysiologic model of allopathic medicine (morbific agent - disease starts in the individual cell or genome) is being reconsidered on a broad spectrum. It is also a great mistake to confuse a trial strategy with some kind of ultimate truth.

The evidence presented here will show there has been a tendency to overlook the concept stated in section 16 of the California Chiropractic Act that there shall be no discrimination **"against any particular school of chiropractic, or any other treatment."** This concept, in our rapidly changing world, becomes vital to each practitioner who needs maximum flexibility to work for his/her own survival as well as that of the group. More of this in subsequent articles.

"JAP CHIROPRACTOR ARRESTED TODAY. CHARGED WITH PRACTICING  
WITHOUT A LICENSE. JAP WILL TEST STATE LAW"

This quotation was the headline for a July 22, 1907 issue of the La Crosse, Wisconsin *Tribune* newspaper relative to the charge against a chiropractor, Dr. Morikubo, for practicing medicine and osteopathy without a license. The defense "tactics" utilized in that case still reverberate wherever chiropractors meet to discuss the question "what is chiropractic".

The Morikubo case had great significance to all chiropractors as no state allowed licensure of chiropractors as of 1907. Chiropractors in general, including B.J., rallied behind Dr. Morikubo. The practicing medicine charge was dismissed at the time of trial and the prosecution only proceeded on the practicing osteopathy charge.

B.J. went to Wisconsin the day after Dr. Morikubo's arrest and participated in the strategizing for the trial. However, Tom Morris, the attorney chosen to represent Dr. Morikubo, defined the trial strategy and based it upon the chiropractic profession's first published textbook, *Modernized Chiropractic* (1906). This text had been written by Drs. S.M. Langworthy, Oakley Smith and Minora Paxson.

It was argued in *Modernized Chiropractic* that it is the "philosophy, science and art of a healing system", not its "pathological hypotheses", which differentiates it from all other healing systems. (I strongly disagree and will articulate that disagreement in subsequent articles.) In any event, the philosophy/art proposition became the "tactic" utilized in the defense of Dr. Morikubo. Tom Morris was able to sell the jury on the idea that osteopathy was based upon the primacy of the artery and chiropractic on the "function of the nervous system through the "unseen power" in the brain". In addition, he distinguished the two on the grounds of their different technics; short as opposed to long lever. I have to take my hat off to him. Personally, however, I have a problem with what developed after the trial.

Following the Morikubo trial, Tom Morris became the lieutenant governor of Wisconsin. But in 1914 he ran for governor and lost. Thereafter, he made a career out of representing chiropractors and propagating the importance of a unified chiropractic profession; with him and philosophy as its focal point. Of course, he had competition from B.J. on this front.

Just two months after the Morikubo trial B.J., for the first time, claimed that although his father was the discoverer of chiropractic, he was the one to have

"developed it into a well-defined non-therapeutical **philosophy**, science and art that has no resemblance to any other science." (Emphasis in original)

Tom Morris and B.J. competed for primacy of the Universal Chiropractic Association until the UCA convention of 1925 when Morris broke away from the group and set off a decline in that organization.

However, B.J.'s focus on "philosophy" started another competition. This time between B.J. and a Dr. John Nugent. B.J. on one occasion referred to Dr. Nugent as "the Antichrist of chiropractic". Dr. Nugent won this one and his victory still dominates scope of practice issues.

### "ACCREDITATION" DISCRIMINATION

Dr. Nugent attended West Point, was admitted, but did not attend, Yale Law School and graduated from Palmer Chiropractic School in 1922. He started his war with B.J. in that same year and was expelled from school. He was returned to the school over B.J.'s protest by a vote of the faculty. After leaving school, Dr. Nugent practiced for 5 years and then made a career out of seeking to reform chiropractic based primarily upon 2 factors: 1) the elimination of all for-profit chiropractic schools, and 2) the pursuit of what he conceived to be a scientifically sound (allopathically oriented) curriculum. It is this second objective that concerns us here.

In 1939, at Nugent's urging, the National Chiropractic Association formed a Committee on Educational Standards. This ultimately became what is now the CCE. Nugent headed this "committee" from its inception until the 1960's. He was successful in closing down the for-profit institutions which merged with different non-profit schools

and in instigating a general improvement in the quality of chiropractic education. Clearly these efforts were laudatory. But, there was one ironic and discriminatory outcome of his crusade that was not quite so praiseworthy. I will return to this point after a brief outline review of California chiropractic history.

1. Naturopaths, eclectic and other drugless practitioners cooperated with one another to form a new chiropractic board in 1922;
2. The naturopathic/eclectic (mixers) group worked from 1922 to 1948 to increase the educational requirements for the "chiropractic" degree (it was increased from 2400 in 1922 to 4000 in 1948 - with 600 hours of electives);
3. At all times from 1922 to the early 1950's all the schools which became what is now LACC had a majority of administrators and faculty who held both the DC and ND degrees;
4. At all times between 1922 and the early 1950's, LACC offered both the DC and ND degrees (As did other chiropractic schools, including National College of Chiropractic which offered both the ND degree and the degree of Doctor of Drugless Therapeutics.);
5. In the 1952 Oosterveen case, the California Court of Appeals ruled that chiropractors who were also qualified as naturopaths had a broader scope of practice than those with only the DC degree.

Nonetheless, all chiropractic schools dropped all natural healing courses and degrees from their curriculums in the early 1950's. Why? Back to Dr. Nugent.

In 1954, at the instigation of Dr. Nugent, the NCA Committee issued an edict that no chiropractic school offering naturopathic courses would be approved by the committee. All schools then dropped such courses as herbs, glandulars, phytotherapy, etc. and stopped offering the additional degrees such as ND and/or DDT. This is especially ironic following so closely upon the heels of the 1948 increase in required education (with electives) and the Oosterveen case. Of course, it also resulted in the schools filling up their curricula with just more allopathic type courses.

The next major event in the legal battle over chiropractic I wish to address here was that before the New Zealand Commission of Inquiry about Chiropractic in 1979.

#### NEW ZEALAND COMMISSION

David Chapman-Smith, a Canadian attorney, (and founder, I believe, of the World Federation of Chiropractors-WFC) represented the New Zealand chiropractors and basically had only one of two "tactics" available to him due to the changes that had occurred in chiropractic education following the edict from Dr. Nugent. They were

1. Attempt to rely on the 1907 approach of claiming chiropractic is a "non-therapeutical philosophy, science and art that has no resemblance to any other science"; or
2. Claim chiropractors are musculoskeletal specialists.

He choose the second path and I, personally, would have done the same in that place and at that time. But not now, and especially not in California. (See Conclusions.) He was successful in his efforts and it should also be noted that this same approach was also the foundation for the theory of chiropractic followed in the Wilke case.

It is essential to note that the approach taken in the New Zealand matter was, in effect, the direct antithesis of that taken by Tom Morris in Morikubo. How can such a thing occur in the law and each argument succeed? Simply stated, the law is an on-going conversation which we have with ourselves about how we wish to be governed. Judges (Commissioners) are part of that conversation and take the "signs of the times" with them to their role. That is, the potential for the success of a particular argument or "tactic" depends, in part, upon the general conversation going on in society.

### CONCLUSIONS

Richard Tarnas in his book, *The Passion of the Western Mind*, details the discussion we have been having for at least 2500 years in the western world about metaphysics; what is Real and how do we know? That conversation has been bogged down in materialistic, reductionistic presuppositions for at least 200 years but has recently come back to life.

Metaphysics and the questions of the origin of life, the concept of death and the possibility of the existence of a "life force" are back in the public debate. This means the courts will be more receptive to a broader concept of the healing arts and those of us who disagree with the materialistic presupposition should assert our right to a different philosophical position than that of mainstream medicine. Of course, the right of other chiropractors to defend the materialist position must also be respected and preserved. More, however, is needed. Philosophy only dictates the scope of the permissible questions, it does not provide the answers. The answers must be based upon evidence.

Evidence is available. At least as to the importance of "host resistance" and the integrity of the ENERGY/INFORMATION delivery systems of the body (whatever the evidence shows them to be) and also as to the efficacy of natural therapeutic agents (including homeopathic preparations thereof). These concepts have been refined over the past 30 plus years by European practitioners of FUNCTIONAL MEDICINE. In subsequent articles I will demonstrate the similarity between FUNCTIONAL MEDICINE and the founding concepts of chiropractic; primarily those of D.D. himself, but also those of such persons as Sheldon Riley, J.F. Alan Howard, the founder of National College of Chiropractic, and Linnie Cale of LACC whose ideas included the

concept of the meridian system and the use of natural therapeutic agents for maintaining and restoring the integrity and function of the body's resistance capacity.

I intend to argue in subsequent articles, in the courts (as to scope of practice - NOT IN P.I. CASES) and other public forums that musculoskeletal specialty care is a minimum threshold that all chiropractors meet, but that "chiropractic" (functional/natural medicine) is a much broader and comprehensive healing art. Further, that these two conceptual frames of reference are not mutually exclusive. Bear in mind that the California Chiropractic Act, for example, grants each of us the civil right to argue against all those who attempt to monopolize the marketplace of ideas and the healing arts. I will be talking about these issues at upcoming Parker Seminars and hope some of you will attend.