

Lots of Law but Little Justice:

The Acquittal of Professor
John Walker-Smith and the case of Dr Andrew Wakefield

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The panel's overall conclusion that Professor Walker-Smith was guilty of serious professional misconduct was flawed, in two respects: inadequate and superficial reasoning and, in a number of instances, a wrong conclusion. The end result is that the finding of serious professional misconduct and the sanction of erasure are both quashed.
Judgment of Mr Justice Mitting¹

There is now no respectable body of opinion which supports his (Wakefield's) hypothesis, that MMR vaccine and autism/enterocolitis are causally linked.
Judgment of Mr Justice Mitting

This essay places the acquittal at Appeal of Professor John Walker-Smith in the context of the conspiracy against the three doctors, Dr Andrew Wakefield, Dr Simon Murch and Professor Walker-Smith, who were tried in a General Medical Council (GMC) Fitness to Practice Hearing in London between 2007 and 2010. The hearing was the longest in GMC history and one of the longest quasi judicial hearings ever to take place in Britain.

The essay asks two questions specifically, 'Can justice ever be served in this case if Dr Andrew Wakefield, the principle victim of the conspiracy is denied an independent appeal?' and 'In the event of a professional tribunal such as the GMC acting with malice and intimacy of corruption, who might bring such powerful wrongdoers to justice?'

¹ In the high court of Justice Queen's Bench Division: Before: Mr Justice Mitting Between: Professor John Walker-Smith, the Appellant, and the General Medical Council, for the respondent, Mr Stephen Miller QC and Ms Andrea Lindsay-Strugo (instructed by Eastwoods solicitors). For the Appellant Miss Joanna Glynn QC and Mr Christopher Mellor (instructed by Field Fisher Waterhouse) for the Respondent. Hearing dates: 13th, 14th, 15th, 16th & 17th February 2012.

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The essay utilizes my experience in observing every day bar one or two of the GMC hearing over three years and my involvement in the campaign for the parents of vaccine damaged children and Dr Andrew Wakefield between 2005 and 2010. The second half of the essay, which examples two acts of chicanery by the GMC prosecution, relies upon material that I wrote at the end of the hearing on the announcement of the final verdicts.²

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Off the specifically 'legal' track, the beginnings of the Wakefield affair, it's social, cultural, and indeed medical context, goes back to the introduction of the first three brands of MMR in 1988.

By 1992 two of these brands, containing the Urabe mumps viral strain had been found to have serious adverse effects on children and were withdrawn, in the UK some time after being withdrawn in Canada³ and at roughly the same time as being withdrawn in Japan. The British government was forced following this withdrawal to fall back on one MMR vaccine, manufactured in the US and containing the apparently safer Jeryl Lynn mumps viral strain.

In 1993, Dr Andrew Wakefield who had been head hunted to lead research at the new Royal Free Hospital (RFH) experimental gastrointestinal unit, had begun to be approached by parents whose children had suddenly developed inflammatory bowel disease (IBD).⁴ Concerned about these cases, Wakefield both wrote to and telephoned Professor David Salisbury, then head of vaccination and immunization at the Department of Health, asking for a meeting to discuss them. It would be six

² Essays that I wrote during the 'Wakefield campaign' and the hearing, can still be obtained from <http://www.slingshotpublications.com> and a full report by me of every day of the hearing can be found on <http://www.cryshame.com>.

³ The Urabe strain mumps vaccine was withdrawn in Canada even before it was introduced in Britain but regulatory bodies in the Department of Health discussed and dismissed the information of deaths and adverse reactions that the Canadian government had acted upon.

⁴ Hear the Silence, written by Tim Prager, screened UK, Monday, 15 December 9pm, Channel Five.

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years before Wakefield got this meeting.

The conspiracy against Dr Wakefield ‘the whistle-blower’, took over a decade for the pharmaceutical companies, the government and the General Medical Council to structure. It began quietly with Brian Deer, a consumer affairs journalist who free-lanced for the Sunday Times, writing a long article demeaning expert witnesses who had appeared previously on behalf of claimants whose children had been damaged twenty years earlier by the Whooping Cough vaccine.⁵

In 1998, Andrew Wakefield was the lead author in a ‘case review’ paper published in the *Lancet*. This paper described the presenting symptoms of 12 children who had attended the RFH. The paper had 12 authors, all of whom had played some part in reviewing the children’s cases from a diagnostic perspective. What the doctors wanted to know was what trigger had led to the sudden onset of IBD in the children, without this information it was not possible to treat them.

The paper itself included a sentence, necessary for record purposes, which said that a number of parents had suggested their children’s illness had occurred after their MMR vaccination; other than this the paper said nothing about MMR, nor did it speculate about the cause of regressive autism present in some of the children. This paper was written to aid ongoing clinical work and was not ‘research’ as it is broadly defined.⁶

As Wakefield entered his conflict with David Salisbury, a civil claims lawyer, Richard Barr was separately assembling what would become over 1,000 parents to pursue a legal case on behalf of their vaccine damaged children against three vaccine manufacturers of MMR. Barr asked Wakefield to be an expert witness for

⁵ Brian Deer, *The Vanishing Victims*, *The Sunday Times Magazine*, November 1 1998. Deer’s article gives a distorted picture of Dr John Wilson, an expert witness in the parents’ case against whooping cough vaccine. In October, 1973, Dr John Wilson, paediatric neurologist, announced work very similar to Dr Wakefield’s almost 30 years later. Deer traduces him as an egoist and untrustworthy researcher and physician.

⁶ In Walker-Smith’s appeal Justice Mitting goes into some detail on this matter, deciding quite rightly in my opinion, that diagnostically based research did not constitute research in the broader sense.

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the cohort of claimants whose children suffered from IBD.

Although the GMC was later to make out that the *Lancet* 'case review paper' was actually a part of Wakefield's research in support of his role as an expert witness, the results intended to damage the case of the three defendant pharmaceutical companies, the parent claimants were actually divided into groups claiming for a variety of adverse reactions, the majority of which had nothing to do with IBD or autism spectrum disorders.^{7,8}

On the publication of the *Lancet* case review paper, a press briefing was organised by the University linked to the Royal Free Hospital (RFH) and the Dean Medical School, Professor Ary Zuckerman encouraged Wakefield to tell the press that the triple MMR vaccine could be unsafe, while single vaccines had proved over time to have relatively few side effects.⁹

As the conflict developed between Wakefield, the pharmaceutical cartels, the government and medical scientists, the idea that it had always been recognised that there were serious dangers in *combined* vaccines, faded. Although Wakefield was accused of being responsible for a rise in measles cases, when he spoke in favour of single vaccines, on the evidence, he could only realistically be accused of raising issues about *combined* vaccines which had already failed massively in the case of the Urabe containing combinations. Wakefield promoted the single measles vaccines, even though in the long run he did have concerns about it.

⁷ Although it has been more recently claimed that Wakefield hogged the limelight with his IBD cases, it seems almost certain that had other groups found their experts these would have been attacked as Wakefield was.

⁸ By concentrating on this section of claimants, those whose children had IBD and regressive autism, by choosing to proceed with a 'difficult' to prove aetiology, which was to be sabotaged so massively, when legal aid was withdrawn from the case, it transpired that parents whose children had been affected by other adverse reactions to the MMR vaccine were denied their day in court.

⁹ While the corporate pharmaceutical lobby groups were consistent in their labelling of Wakefield and his parent supporters as 'antivaxers', this couldn't have been further from the truth, not only had the Wakefield children received their childhood vaccinations, as, obviously, had the parents who were now complaining of adverse reactions, but Wakefield himself promoted the single vaccines for mumps, measles and rubella. Ary Zuckerman, the head of department, was to get very heated at the GMC hearing when he was called as a prosecution witness and denied, despite written proof that he had ever agreed with Wakefield.

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What few parents knew at the time, however, was that the governments of Britain and the US were committed to a programme of developing combined vaccines which they claimed could challenge hundreds of human illnesses in one shot. Despite frequent warnings over the previous thirty years about the adverse effects of mixing vaccine strains, the UK government in partnership with the pharmaceutical companies had invested millions in their programme of combined vaccines.

In the last months of 2003, almost ten years into the legal claims by parents, legal aid – a necessary funding for civil action claimants whose lawyers in Britain lack the confidence or independence to represent in ‘no win no fee’ cases – was withdrawn by the government department that paid it.^{10,11,12} In February 2004, the Appeal against this decision was turned down by a judge whose brother was on the Board of Glaxo Smith Kline.¹³

Immediately following the failed Appeal, and now able to avoid *sub judice* Brian Deer, working free lance, was briefed by a Sunday Times staffer, coincidentally the son of a doctor who had been intimately involved in the licensing of MMR,¹⁴ to write a long and apparently detailed attack on Dr Wakefield which

¹⁰ Throughout the Wakefield affair, the giving of Legal Aid to the Royal Free hospital so that Wakefield’s research could be finished, was decried by those with corporate interests. However, this had proved to be one of the functions of Legal Aid since the second world war. An expert witness would be given funding to examine the scene of a crime or the scenes of many crimes in order to tell the court that the defendant was not guilty or on a much simpler level an expert witness in a vehicular accident suspect to have been caused by a fault in car production would be funded to research and prove this (or not) before giving evidence.

¹¹ Some Skeptic commentators, especially the pharmaceutical representative Dick Taverne, who set up the bogus charity Sense About Science, wrote on different occasions that it was madness to give people public money to bring cases against pharmaceutical companies.

¹² This is a gathering trend in the UK, where the law supports corporate interests. There are no Vioxx cases in the UK because the government withdrew Legal Aid from them.

¹³ John Stone, *Silenced Witnesses*. Brian Deer defended the judge and his brother writing that John Stone was very cruel accusing the judge of conflict of interest.

¹⁴ Such generational conflicts of interest run through this case. Both Ben Goldacre and Evan Harris’s father were involved in regulating vaccines in the 1970s. ‘Bad Science’ journalist Ben Goldacre is the son of Oxford professor of public health Michael J Goldacre. John Stone, *Age of Autism* at August 04, 2010. ‘Evan Harris is the son of paediatrician Prof Frank Harris who sat on the Committee on Safety of Medicines and the Adverse Reactions to

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covered pages of the broadsheet.¹⁵ While the pharmaceutical companies had managed to get the parents claim withdrawn from court, they still had to get rid of Wakefield whose personal theories were given more credence not less by the unsupportable withdrawal of Legal Aid.

Just prior to his Sunday Times 'expose', Deer had used the offices of the *Lancet* and involved Richard Horton, its editor^{16,17} and Evan Harris, a Liberal member of parliament whose father had also been involved in the licensing of vaccines,¹⁸ to harangue and brow-beat, Wakefield, Murch and Walker-Smith into answering questions and writing 'confessions' which having been twisted by Deer were later used by the GMC as part of their prosecution. Deer told the doctors that his article was ready for imminent publication and unless they gave him a complete account of their involvement, i.e. 'made statements' he could not ensure that their side of the story would be told. Needless to say Deer never reported 'their side of the story'.

The major content of the Sunday Times article¹⁹ was biased, incorrect, mistaken and in some places simple fantasy. Harbinger to a whole series of unverified 'stories' about Dr Wakefield, this morally moribund attack was carried out with the help of the Association of British Pharmaceutical Companies' (ABPI) own private investigators firm, Medico Legal Investigations – a firm at that time run by one ex-military police officer and an ex-Scotland Yard officer – and the

Vaccine Committee in the early 1990s when Pluserix MMR vaccine had to be withdrawn.' John Stone, cited on Whale at: http://www.whale.to/vaccine/behind_ben_goldacre.html.

Also on Evan Harris's father see this authors essay, *Science is the New Politics*.

¹⁵ Revealed: MMR research scandal, Brian Deer, The Sunday Times, February 22 2004.

¹⁶ Richard Horton, MMR Science and Fiction: exploring the vaccine crisis. Granta Books 2004, London.

¹⁷ Unbeknown to any of the players, at this time, Horton was deeply implicated in the conspiracy against Wakefield.

His on line manager at the *Lancet* during this period, a manager of the *Lancet*'s publishing company, was also a board member of GlaxoSmithKline.

¹⁸ This author's essay, *Science is the new politics*.

¹⁹ Brian Deer, Revealed: MMR research scandal, The Sunday Times, February 22 2004.

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staff of James Murdoch's Sunday Times.²⁰

Following Deer's 'expose' his completely unverified non peer reviewed investigative material was handed to the General Medical Council headed at the time by Finlay Scott,²¹ and with the help of Richard Horton, editor of the Lancet, the GMC began drawing up charge sheets against the three doctors.

The three doctors had played varying roles in the diagnostic 'research' carried out to find the cause of the sudden onset of Inflammatory Bowel Disease (IBD) in children brought originally to Dr Wakefield at the Royal Free Hospital. All three doctors had extensive experience of IBD, Wakefield as an award winning researcher into Crohn's disease, Walker-Smith as a world renowned clinical expert in childhood gastrointestinal illness and doctor Simon Murch, amongst other things, as an expert colonoscopist. All the parents involved thought of these three doctors as principled, empathetic and caring. The least commented on of the three was Dr Wakefield, because he was not directly involved in clinical work, just in talking to parents, accepting cases and passing them on to Walker-Smith for clinical evaluation.

The charges and sub charges, although in the region of 80 in the case of Dr Wakefield, grew almost solely out of the 1998 case review paper which cited 12 children who presented at the RFH roughly between 1993 and 1997 – the charges rarely went beyond Deer's corrupted and fantastic information.

²⁰ In the last year of the GMC Fitness to Practice Hearing, James Murdoch, champion of sleaze and head of News International, which published the Sunday Times, accepted a non-executive place on the Board of Glaxo Smith Kline. Murdoch's calumnies have recently been exposed in the evolving news about the News of the World and Sun newspapers involvement in phone hacking and allegedly corrupt financial relationships with Scotland Yard officers.

²¹ Scott was later to receive the CBE in the 2009 New Year's Honours. See the Circus on Euston Road. http://www.whale.to/vaccine/circus_on_euston_road.html and The Circus on Euston Road on Cry Shame: http://www.cryshame.co.uk//index.php?option=com_content&task=view&id=106&Itemid=185.

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From 2004 to 2007, the GMC built and laid out the charges, although unlike all other legal processes, none of the doctors appeared before lawyers to be deposed or answer questions; a primary safeguard in some legal systems.

When the Fitness to Practice Hearing, referred to in this essay as a trial, began in 2007 it was calendared by the prosecution to last three months. However, in a deliberate attempt to obscure the evidence, confuse the public and the Panel (the jury), the GMC dragged out the trial for three years before bringing in decisions which found each of the three defendants guilty on the great majority of charges against them. Throughout that three years no members of the media took a real interest in the hearing, only Brian Deer attended on most days, other disinterested parties only arrived when they were advised by the GMC.

At the end of the trial, it was decided that Dr Simon Murch, not having been found guilty of dishonesty, should simply be admonished. The decision as to whether to erase Professor Walker-Smith from the register was left until after his appeal. Dr Andrew Wakefield, found guilty of dishonesty was 'struck of the medical register' or in contemporary parlance his name was 'erased' from this register.

Professor Walker-Smith was granted an appeal, while Dr Andrew Wakefield was denied one as advising counsel did not have confidence in the requisite 52% chance of him succeeding, this meant that his medical insurance company would not fund an appeal.

The message and the meaning of the charges against the three doctors remained hidden even at the close of the hearing, only becoming clear, like maggots striking out for the darkness, intermittently during the hearing and later when Brian

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Deer wrote a number of non peer reviewed articles in the BMJ in 2011.^{22, 23, 24}

The central but camouflaged message running through the heart of the conspiracy was that there were no adverse reactions to childhood vaccination in the UK, most specifically MMR did not create Inflammatory Bowel Disease or regressive autism in any child, or any other illness, ever, anywhere in the world. Dr Andrew Wakefield had become the subject of a classic government conspiracy, to validate a billion pound government and pharmaceutical company confidence trick pushing scantily tested, dangerous and partially unnecessary vaccines on the public;²⁵ a confidence trick worthy of the German Reich in the case of Van der Lubbe's and the Reichstag fire.

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The law is the most perfect instrument for protecting the powerful who conspire against those with little power because it is always specific to the circumstances of the 'crime', usually excluding all 'environmental' and historical information about how and why a conspiracy might have occurred. The exemption of 'environmental' and historical evidence is as much to do with protecting power as it is to do with the shaping of good legal science.

On Wednesday 7th March 2012, Mr Justice Mitting quashed all the findings of

²² **Online introduction to the series:** 5 January 2011

Pitldown medicine - the missing link between MMR and autism BMJ editorial: 5 January 2011

Wakefield's article linking MMR vaccine with autism was fraudulent Story 1: 5 January 2011

How the case against the MMR vaccine was fixed Web extra (tables for story 1): 5 January 2011

MMR & autism - fixing a link Story 2: 11 January 2011

How the vaccine crisis was meant to make money Chronology: 11 January 2011

BMJ: Timeline Story 3: 19 January 2011 **The Lancet's two days to bury bad news Editor's comment:** 19 January

2011 **Institutional and editorial misconduct in the MMR scare Response to emails:** 7 February 2011 **The BMJ**

editor replies to Wakefield supporters. Brian Deer's BMJ Series Not Peer Reviewed. Jake Crosby, Age of Autism: <http://www.ageofautism.com/jake-crosby/>.

²³ Dr. Andrew Wakefield sues BMJ, journalist Brian Deer for defamation.

http://www.naturalnews.com/034629_Andrew_Wakefield_BMJ_Brian_De... 12 Jan 2012.

²⁴ See also by this author, Merck's Medical Media Empire. Posted by Age of Autism at February 10, 2011.

²⁵ The mumps portion of the MMR 'triple' vaccine had not been advised by the Department of Health prior to the advent of MMR, while the Rubella portion of the vaccine had been used reservedly in women who were considering or had become pregnant and who were also in contact with other children.

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the three year GMC Fitness to Practice Hearing against Professor Walker-Smith. Walker-Smith's name was sanctified in the UK Register of Medical Practitioners. Mitting had strong words to voice about the GMC and its funky off-the cuff legal processes, and warmhearted exculpatory words to usher Walker-Smith back into a

hopefully happy retirement.

It is noticeable, however, that Mr Justice Mitting in his judgment had only a few grey words for Dr Andrew Wakefield, words which seem to take the GMC case against him for granted and might well have prejudiced any future appeal on his behalf. Some of these allusions seemed to be based on nothing other than Justice Mitting's personal opinions or easily received views.

As a researcher, he (Dr Wakefield) was, throughout, principally interested in testing his hypotheses.²⁶

Although Mitting discusses, at length, very eruditely, the difference between clinical diagnostic research and hypothesis proving large scale research, this sentence inadvertently plays into the hands of the GMC case against Dr Wakefield, inferring as it does that Wakefield was principally concerned with research in the broader sense and not with the clinical and diagnostically based tests with real patients that were overseen by Professor Walker-Smith.

Dr. Wakefield played an unusual role for a researcher in the referral of many of the Lancet children to the clinical team for investigation.²⁷

In saying this, Mitting seems to have fallen for the biased prosecution view that Dr Wakefield engineered the selective attendance of the twelve children later chosen for the *Lancet* 'case review paper'. Far from being *unusual*,

²⁶ Mitting's judgment.

²⁷ *ibid.*

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Wakefield's role in progressing the cases was quite clear and common place. Having heard about him in the media, or finding that he had been chosen as an expert witness, many parents asked to be referred to him personally. Unable to be involved by contract in clinical work, Wakefield passed the cases, which he felt were similar and therefore useful for 'clinical diagnostic

examination' on to professor Walker-Smith. When a decision was made to bring the most suitable of these children in for clinical appraisal, it was often Dr Wakefield who spoke to the parents because he had the closest relationship with them; it has to be remembered that despite the contractual agreement that Dr Wakefield could not work clinically with patients, he was still a patient-centered physician.²⁸

At a press conference, which Professor Walker-Smith did not attend, convened to accompany publication, Dr. Wakefield stated publicly the view which he had previously expressed privately to Professor Walker-Smith that he could no longer support the giving of MMR vaccine.²⁹

This summation slightly changes what Dr Wakefield actually said at the press briefing – when asked by a reporter, what he might tell parents due to take their children to be vaccinated with the triple vaccine, Wakefield speculated that it might be better to return to the use of the single vaccines until research into MMR was concluded. Two things have to be remembered, first that the mumps component of MMR had not been advised previously as a single vaccine by the DH and the mumps vaccine was only taken up by a small minority of parents. Second, that as soon as Wakefield said this, the

²⁸ The GMC prosecution presented this contractual restriction on Dr Wakefield as if he was a prisoner in the labs of the Royal Free, because he had infringed some rule. The truth was that despite making him head of the experimental gastroenterological unit, both Wakefield and the hospital agreed that he was too young to become a consultant, the normal title of a Dr heading up such a prestigious unit, so he was given the head of research position, while keeping the title of Dr and being nominally in charge of the department.

²⁹ *ibid.*

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government scrambled to withdraw the single vaccines, which up until then had been freely available from the market in the UK, giving parents a choice regardless of Wakefield's views.

Dr. Wakefield's statement and subsequent publicity had a predictable adverse effect upon the take up of MMR vaccine of great concern to those responsible for public

*health.*³⁰

This is a hop, skip and a jump away, even with legal robes on, from a clear analysis (even proposed by Ben Goldacre³¹) that the media was actually responsible, and anyway, single vaccines were safer and just as effective as the MMR triple vaccine. The statement turns Dr Wakefield into an 'anti-vaxer' as the drug company lobbyists have labeled him.

When it formulated the charges against Professor Walker-Smith, the GMC did not know that permission had been granted to Dr. Wakefield for the use of Transfer Factor (TF) for child 10 on 'a named patient basis'.³²

Oh well that's all right then! Clearly this issue was important in Professor Walker-Smith's case. Why didn't the GMC know? However, the matter of TF was much more important to the case against Dr Wakefield. More important to the case as a whole, was the utterly wrong and untruthful idea promoted first by Deer and then by the GMC that Dr Wakefield had personally gained a patent for TF as a prophylactic vaccine which would compete in the medical market place with MMR. It could only have strengthened Professor Walker-Smith's case had Mitting mentioned this.

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

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*There is now no respectable body of opinion which supports his (Wakefield's) hypothesis, that MMR vaccine and autism/enterocolitis are causally linked.*³³

This is a statement without any evidence, which repeated by a high court judge actually damages Dr Wakefield's case. It would have been more correct if Mitting had made it clear that professor Walker-Smith himself felt that this hypothesis had *not yet been proven*. In fact, following his observation and

testing of many children who attended the Royal Free Hospital, Professor Walker-Smith, even with his experience, was concerned and puzzled by the sudden onset and speedy development of IBD in these children and was quite happy to describe it as a *novel* condition the pathways of which he was unfamiliar with. Walker-Smith also attended meetings at the DoH, to put the collective view of the Unit.

What is odd about Mitting's judgment, is the fact that he strayed from the facts of Walker-Smith's case to make occasional negative references to Wakefield's case. On the one issue promoted by the GMC central to the whole conspiracy – that Walker-Smith did not have ethics committee approval to carry out colonoscopies and other tests, an issue that damned all three defendants – Mitting spoke in his judgment as if the lie damaged only Walker-Smith and made no reference to the damage that it had done to Murch and Wakefield, even by association.

Clearly Mitting could not deal with the circumstances of Wakefield's case in a hearing which heard the facts of Walker-Smith's case; but it is important to bear in mind the fact that three doctors were charged with colluding in an agreed course of action over a period of time. Apparently what was allowed the prosecution, the idea that the defendants acted in concert, has been denied the defence.

³³ *ibid.*

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As a consequence of avoiding any analysis of the conspiracy of which Dr Wakefield was the central victim, Mitting was left only to obscure the general background of the case, suggesting for example that the Panel in Walker-Smith's case had been superficial in their consideration and on occasions arrived at the wrong conclusion – had this not applied to Wakefield too, or in his case had the Panel been intellectually focused, clear headed and unquestionably fair? Should not this general failing, if such it was, have been noted as affecting all the defendants? While suggesting that the Panel had not thought Walker-Smith's case through or properly examined the evidence, to the point of recommending that GMC Fitness to Practice Hearing should be restructured, Mitting surely should have made reference to the wrong done to all three defendants.

In any more thorough analysis of the case and the role of the Panel, it would have been incumbent upon any adjudicator to assess, for instance, the role of Surinder Kumar, the GMC chosen chair of the Panel (the jury) in relation to all defendants, for it was he who guided the Panel members to their conclusions. At the beginning of the hearing, Kumar held shares in Glaxo Smith Kline,³⁴ the major UK vaccine manufacturer.

While Walker-Smith's fabricated lack of ethical committee approval for clinical work on the children was noted by Mitting as one of the most serious breaches in logic and evidence, the manufactured failure of Dr Wakefield to include in the twelve authored paper, any statement of conflict of interest, one of the central instruments damning the paper from the prosecution perspective, went completely unmentioned by Mitting or Walker-Smith's counsel despite the fact that Walker-Smith was the second author; this was on the grounds that Walker-Smith had not received the draft – yet another unquestioned nail in Wakefield's coffin

Beyond Mitting's judgment, none of the legal teams or the two acquitted defendants have made even meager supportive mention of Wakefield or the

³⁴ Within months of the hearing ending, Kumar was on the stump campaigning for compulsory vaccination at the British Medical Association conference. In clear testimony to large numbers of doctors in Britain Kumar lost the vote on his proposal.

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collective circumstances of the defendants. Neither Murch nor Walker-Smith have offered a hand to Wakefield. And while Professor Walker-Smith has been critical of my use of the term, 'cut throat defence', in the first draft of this essay,^{35,36} I saw little sign throughout the three years of the hearing that the defendants stood together or the counsel of the other defendants gave any support to Wakefield's case. This was more or less inevitable after the defence counsel and the defendants apparently

went down the road of the GMC concocted 'ethics' focus of the trial.³⁷ The best disguise for the most general conspiracy, in law, is a detailed accusation, full of provable material statements, even if such statements have little to do with the issues at hand. The large hearing room at the GMC was stacked to capacity with thousands of specific documents, few of which got near to the point of the hearing.

In some respects the seeming abrasive conflict between Wakefield and the other two defendants, is not that surprising as the three doctors subjected to the marathon trial, had long since distanced themselves from each other.³⁸ This was to be expected and might even have been counted on by the dark forces behind the conspiracy. The three defendants classically misread their situation, seeing themselves still as ethical, professional medical men and not as defendants in a trial, pitted against a force which was trying to destroy them.

In retrospect it is clear that the three defendants were quite different men whose different concerns stretched much further than their apparent differences over 'research' or 'ethics'. While each doctor had proved themselves caring

³⁵ This is where one defendant argues his innocence at the cost of another defendant.

³⁶ Email communication from John Walker Smith, April 3rd 2012: 'In particular there was absolutely no cut throat defence. All three defence teams worked in harmony I observed many meetings between the defence barristers during the Hearing'.

³⁷ For the first few weeks of the hearing, I was often approached by GMC staff, who tried to impress upon me the fact that, this was the most common of hearings — just like many others where doctors had breached ethical research rules.

³⁸ In campaigning terms, there was considerable room for learning amongst the three defendants, recognition of their common position and a united campaign based in parents and citizens would have given them a massive advantage over the GMC.

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professionals with considerable regard for their patients, Professor Walker-Smith was a devout Christian and a renowned child gastroenterologist only a step away from retirement. He was a doctor of the old school, retiring and opposed to any debate or speculative public displays. Dr Murch was a slightly more radical version of Professor Walker-Smith, an attractive, charming, shy and quite private professional in the middle of a glittering career.

Dr Andrew Wakefield was cut from quite different cloth to either of the other defendants. It has to be born in mind in relation to the time line of the GMC

hearing, Wakefield had been a decade locked in battle with the government, before the GMC charges were even mooted. Wakefield more than the other two defendants had researched MMR and had written about its safety and perhaps because he had often been first approached he clearly felt a great moral responsibility to the parents.

Like many 'outspoken' Wakefield is full of contradictions, he has a massive moral driving force which he tends to pursue wherever it leads. He appears to come to quick conclusions. Although he thought long and hard about appearing as an expert witness in the parents claim against three pharmaceutical corporations and even though this course of action was clearly frowned upon in the RFH because they were corporately funded, he didn't avoid what he considered this *obligation*, both on behalf of the parents and by way of getting funding, in an area where no one else was offering.

Someone who doesn't suffer fools gladly, Wakefield is a man ensconced in his professional world, a man who cannot quite grasp the power of community or collectivity, a man intent on confronting authority, who having no experience of campaigning politics, frequently changes horses. However despite his professional status, Wakefield has been throughout the whole affair brave enough to continue an

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angry defence of his position, with what must have appeared to have an irritating, even some might say, neurotic consistency; like a fly bothering a horse's eye.

For Wakefield there was no turning back, while the other two defendants who presented the front that they had been dragged into the arena by dint of Wakefield's private purpose the legal process always held out the hope of redemption. Wakefield's life, however, conformed to the classic pattern described by Ibsen's character Dr Stockman in *An Enemy of the People*.³⁹ Whatever happened to him, whatever he did he was inevitably and intuitively driven deeper into the

confrontation.

Personally I see this kind of resistance to power as analogous with falling off a cliff, for a person of principle there is no turning back, once the descent has begun like a character in a Road Runner cartoon it continues even to a crash landing and complete self destruction. None of the above character traits that I have used to describe Dr Wakefield, even if they make him a more phosphorescent target for propaganda campaigns, should damn him in the eyes of the law.

The law is meant to deal with conflicting specifics, in the context of a moral code, and in the case of the accusations against Wakefield these were and still are legion; from the completely untruthful allegation by Brian Deer that Wakefield developed and patented a vaccine to compete with MMR through to marvelously ribald Catch-22 charges levelled by the GMC that Wakefield brought the medical profession into disrepute when he made humorous allusion at a conference, to paying for blood samples from children at a children's party.⁴⁰ The GMC never addressed the question of whether it was *possible* 'to bring the medical profession into disrepute', had they, they might have broached such questions as the 30,000

³⁹ See this author's essay: *Uncomfortable Science and Enemies of the People*.

⁴⁰ This charge has to be seen in the context of the number of deaths caused by the pharmaceutical industry with the prescription of various drugs.

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deaths precipitated by the prescription of Vioxx — How disreputable a joke is that!

* * *

I first got involved in legal cases after playing a part in the campaign to free George Davis, an armed robber, in the 1970s.⁴¹ From then on, I spent time, while also writing, investigating cases that depended upon identification evidence⁴² and then cases which depended upon contested verbal admission.⁴³ Further down the line, my involvement in the law was with civil rights cases, cases of people being fitted

up, assaulted and the relatives of those killed in custody by the police — mainly black people, mainly in Hackney.⁴⁴ Over time I was involved with some of the best solicitors and counsel in London and had considerable experience working as a Mackenzie friend throughout the 1970s and 1980s. During the miners' strike in the 1980s I worked with Yorkshire NUM on cases of pickets and other arrested workers.⁴⁵

From 1990 onwards, when the area of my writing changed from policing and imprisonment to dirty tricks and corruption in the field of health and pharmaceuticals, I worked on a number of cases involving alternative medical practitioners, producers and promoters, for instance of supplements.

Perhaps you will understand that working in these areas you come quickly to appreciate *worst* legal practice. I thought that I had seen it all when I helped my late friend Jim Wright⁴⁶ fight his case in Swansea,⁴⁷ against a handful of charges brought

⁴¹ Was finally acquitted in May 2011 by the high Court, after a 40-year wait.

⁴² JAIL: Justice Against the Identification Laws.

⁴³ CRAG: Criminal Research and Action Group.

⁴⁴ HCDA: Hackney Community Defence Association.

⁴⁵ See: Jim Coulter, Susan Miller, Martin Walker, *State of Siege*, Canary Press. London, 1984.

⁴⁶ My obituary to Jim is still up on my presently disused web site for which Jim was web master, <http://www.slingshotpublications.com>

⁴⁷ Martin J Walker: *The Fate of a Good Man. The Investigation, Prosecution and Trial of Jim Wright by the MHRA*. Slingshot Publications. 2007. http://www.whale.to/b/walker_b.html

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be the MHRA, the UK drugs regulatory agency owned by the pharmaceutical industry.

All this, however – the Robbery Squad and the MHRA – was as if eating Lotus fruit compared with sitting through the legal sewage served up by the UK General Medical Council (GMC). My original intention of attending the hearing was to write about Dr Wakefield and his case, but as time went by, I found that the hearing was addictive – something like the games in children’s comics where you have to spot the differences in two similar pictures. It was also clear that the parents, rarely able to spend much time at the hearing, needed a reporter.

The evidence could be spectacularly boring, especially the parts that were evidently fabricated and then constantly repeated. To anyone who knew anything at all about courtroom procedure, the hearing was a master class in the framing of innocent defendants. Whatever else by way of trouble the GMC caused me over the three years that the hearing ran, I am still immensely grateful for the opportunity I was granted to see professionals at work and witness at first hand this theatre of the absurd, this Cirque du Soleil of acrobatic law, this Brechtian extravaganza.

The hearing so frequently bordered on the absurd that I found I began to stray from measured and relatively objective accounts of the proceedings into the land of satire. Instead of the evidence I became mesmerized by the countless occurrences of procedural misconduct. By the end of the hearing I was convinced that the only way the GMC could be reformed was by its being shut down, preferably after its buildings were raised to the ground overseen by a priest trained in conducting exorcisms.

Further than this though I was infinitely puzzled by the nature and values of the legal figures who participated. While having witnessed slippery defence counsel

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in criminal cases parrot the story of the accused and seeing prosecutors articulate ideological veneer of 'law and order' to cover the breaches in evidence, I was completely unprepared to see prosecutors pursuing and winning a case with no other evidence than that concocted by a third rate consumer affairs journalist. It was like watching an unskilled poker player, win hand after hand without holding any cards. Perfectly fitting to the modern world it was almost virtual; a non material reality.

Hardly any of the evidence or the arguments the prosecution put to the Panel throughout the whole three years of the hearing was believable, within the context of the case; and some of it, even to the legally untrained ear, was blatantly fabricated. While over and above all, the duration of the hearing was evidently

engineered to frighten other doctors who dissented over vaccination and allow the government to pile drive ahead with its vaccination programme.

When the hearing ended with the expected verdict that found Dr Andrew Wakefield guilty of every single charge, I wrote an account of what I felt were some of the most important matters involved in the hearing.⁴⁸ I have repeated here two of the innumerable issues in which the prosecution collapsed 'due process', the first addresses the issue of Dr Kuma's conflicts of interest while the second addresses Horton's pantomime as he gave evidence about Dr Wakefield's supposed lack of conflict of interest statement in the *Lancet* paper. In fact the prosecution collapsed due process innumerable times, much as if they were an outlaw gang meeting out justice on a law man who had got in their way – with the noose already hanging from the tree. These pieces I think are worth repeating in the slip-stream of Professor Walker-Smith's acquittal.

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⁴⁸ Originally put up on the Cry Shame site in three parts as *Counterfeit Law*.

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Dr Surinder Kumar

At the end of August 2008, I wrote an essay,⁴⁹ *In the Interests of Conflict*. In it I tried to bring the issues of conflict of interest from the heart of the GMC hearing and lay it at the feet of the Panel Chairman Dr Surinder Kumar. I consider conflict of interest to be very important, because it is the hidden mechanism by which corporate science manipulates reality; the secret armoury of funding and public relations that hides in the warrens beneath an apparently level playing field.

The whole battle against Dr Wakefield and the parents has been shot through with conflict of interest, some of which might be refuted, some of which might be made to appear of no consequence and some of which could be dismissed as coincidental. I believe, however, that my essay about the Panel Chairman, like some of John Stone's investigative work, raised irrefutable issues that should have brought the GMC hearing to a juddering halt, that it didn't was to me, clear evidence of corruption in the GMC.

Since 1988, there have been two ways in which cases arrive at a Fitness to Practice hearings at the GMC. There is the official route, by which a complaint made by a patient or relative can be filtered by readers and preliminary hearings, to arrive in front of a panel, and there is the unofficial route by which cases sponsored and promoted by the Association of British Pharmaceutical Industries (ABPI) arrive. This second path, made available by the GMC to Big Pharma, gives control to the industry over cases involving doctors who might be carrying out research for the industry which results in unethical behaviour, or damage to trial subjects or patients, or finally those cases of doctors who might have embarked upon research

⁴⁹ All my essays over the period of the Wakefield case were published in *Medical Veritas*, Volume 6, Issue 1, April 2009.

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or treatments which threatens the competitiveness of pharmaceutical products.

Such cases are researched, investigated and then legally formulated in conjunction with GMC lawyers by a private detective agency solely funded by the pharmaceutical industry named Medico-Legal Investigations (MLI). While cases prepared internally by the GMC have resulted in mixed findings over the last two decades, cases prepared by the pharmaceutical industry usually result in guilty verdicts.

The finger prints of the ABPI are all over the Wakefield case. Would a consumer affairs reporter of the stature of Deer, have the wit and strategic intelligence to turn a patent for Transfer Factor a suggested treatment for MMR adverse reactions, into ownership of a multi-million pounds competing vaccine for that of Mumps, Measles and Rubella? Are we expected to imagine that there was no one at the GMC, no one on the prosecution team, who know what Transfer Factor was? To have Wakefield personally gain the patent for this experimental treatment, was a propaganda master stroke – for the first and only occasion in the whole of Deer's assault the question of Wakefield's venal character is raised and he is posited as being in commercial competition with GSK and other multi-billion pound pharmaceutical companies; the bigger the lie, the harder they fall.

GMC Fitness to Practice Hearings are constructed to all intents and purposes like criminal or civil jury trials. To some extent this sets them aside from the usual extra-legal tribunals, such as those that deal with issues like unfair dismissal. It is, however, the way in which the hearings differ from a proper trial that must concern us; these differences are startling. The first and perhaps most seminal difference is that while the judiciary in Britain is separated from the political executive, the GMC acting as the prosecuting authority pays for the employment of all parties, other than the defence, including the jury (Panel), in any hearing.

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In the proper court, not only are the jurors chosen from the population at random, but in many systems, the counsel for either side are allowed peremptory challenges, to ascertain any kind of bias in the jurors that might apply specifically in relation to the case being heard. In Britain, this right to peremptory challenge has been completely eroded over the last decades, ending with the 1988 Criminal Justice Act. However, in an important case, involving for instance a police officer charged with causing a death, the judge will usually warn the jury of conflict of interest and ask anyone who has been a police officer or who had a relative who was a police officer or anyone who worked in a civilian capacity within a police station to declare this. Having concluded these tests, the jury themselves chose their foreman or woman in camera and this person helps the other jurors negotiate their verdicts and offers them to the court.

There is no elected foreperson of the jury in GMC hearings, because the GMC chooses and imposed a foreperson of the jury; a Panel Chair. Again, while details of the Chair's 'interests' are noted on the GMC's web site, and Panel members might take the advantage of making a declaration at any time during the hearing, there is plenty of wriggle room for those who wish to hide serious and pertinent conflicts of interest.

In the Wakefield, Murch, Walker-Smith hearing, the GMC first chose a Professor Dennis McDevitt as Panel Chairman, however, campaigners forced the GMC to make McDevitt stand down⁵⁰ when they made public the fact that in 1988, he had been a member of the very JCVI committee that had agreed the safety of Pluserix MMR, manufactured by Smith Kline & French (now GlaxoSmithKline), which was later withdrawn on safety grounds. McDevitt had received research

⁵⁰ A writer for ChildHealthSafety wrote on Age of Autism (January 18, 2011) that 'McDevitt was only stood down after Jamie Doward of the Observer, Martyn Halle, freelance journalist for the Sunday Express, Andy Wilks of the Mail on Sunday, Jenny Hope of the Daily Mail and Heather Mills of Private Eye challenged the GMC over the matter. ["MMR Conflict of Interest Zone" Private Eye - June 2007].'

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funding from both Glaxo and Smith Kline French before both companies joined to become GlaxoSmithKline, the MMR vaccine manufacturers. Even the GMC was unable to get away with such a high level of duplicity and conflict of interest when it was made public.

One of the questions that preoccupied me during the first months of the GMC Fitness to Practice Hearing was this: if the GMC had gone to these lengths to shoo-in the first clearly biased Chair of the Panel, having been found out, were they likely to just give up and enter a second 'clean' candidate for Panel Chair? I had serious doubts, so I began research to see if Dr Surinder Kumar had any vested interests.

It should be understood that the Panel Chair in GMC hearings is the most influential member of the jury, the person most in need of neutral and independent thinking, a person, like all other jury members, who has to be free from any taint of bias or preconception about the guilt or innocence of the defendants. It goes without saying that the GMC, the prosecuting agency in this case, was duty bound to summon all its resources in testing all panel members in this hearing in great detail in order to discover and make public any possible conflicts of interests.

Anyone who took the trouble to go to the GMC web site and look at the declarations of possible panel members, could have ascertained that Dr Kumar was connected to the following organisations:

Principal General Practitioner. President, British International Doctors Association (formerly ODA). Interests: Medical Defense matters & Medico-politics. Member: General Practitioner's Committee (BMA), UK National Screening Committee (Dept of Health). Fellow: Royal College of GPs (FRCGP). Fellow BMA. Member Independent Review Panels of MHRA (Medicine & Health Care

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Regulatory Agency). Member of Clinical Executive Committee (CEC) of Halton & St Helens PCT. Member of Medical Protection Society.

This list of Kumar's organisations on the GMC web site, was giving nothing away. The list was woefully inadequate as one of Conflict of Interests and, in fact, disclosed nothing specifically that might lead defence counsel to embark upon more detailed enquiries about Dr Kumar. During my research, I uncovered the fact that during the beginning of the Hearing and for all I know during the remainder of the hearing – for Kumar never disputed the information in my essay – Kumar had a share holding in GlaxoSmithKline, the company responsible for manufacturing and distributing vaccines.

Since the late 1990s, Dr Kumar had been involved in two British medicines regulatory bodies, the Medicines Control Agency (MCA) and its main committee, the Committee on the Safety of Medicines (CSM). The MCA became the Medicines and Health Care Regulatory Agency (MHRA) and in 2005 the CSM became the Commission on Human Medicines. Dr Kumar was definitely on the CSM in 1998 and this is the committee membership that he alluded to at the beginning of the hearing.⁵¹ Members of this committee discussed the safety of vaccines.

Following the restructuring of the MCA after it became the Medicine and Health products Regulatory Agency (MHRA), Dr Kumar sat on two of this body's most influential committees. The Independent Review Panel for Advertising (IRPA) and the Independent Review Panel for Borderline Products (IRPBP).⁵² The

⁵¹ 1998 Summary of the Meeting of the Committee on Safety of Medicines held on 11th February 1998.

⁵² The Medicines (Advertising and Monitoring of Advertising) Amendment Regulations 1999, SI No. 267, came into force on 5 April 1999 and completed the implementation of Directive 92/28/EEC. Regulation 13 and the Schedule contain a procedure for a review of the Health Minister's preliminary decision on whether an advertisement complies with the Medicines (Advertising) Regulations 1994, as amended ("the Regulations"). The Health Ministers proposed that the review would be undertaken by an Independent Review Panel.

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advertising of pharmaceutical products and the definition of what is a medicine are two of the hottest topics presently involving pharmaceutical companies in Britain and the first group is certainly relevant in relation to the promotion of MMR.

Both the IRPA and the IRPBP have a policy of members declaring personal and non-personal interests. During 2003, 2004 and 2005, and through 2006 into 2007, when the GMC hearing began, the MHRA records show that Dr Kumar held shares in GSK, the vaccine producers.⁵³

* * *

I can remember that morning clearly. We had returned to the hearing after one of those interminable delays and I was staying not far across the Euston Road in the Indian Student YMCA. I had a cheap down to earth room without anything resembling breakfast, and was not in any sense looking forward to yet another day in the hearing. Over the last break I had managed to finish the essay about the conflict of interests inherent in the hearing and particularly those of the Panel Chairman. I suppose that I was slightly apprehensive; on a previous occasion I had released an essay during a break, only to return to find Brian Deer raging against me like a little Caesar outside the GMC building.

I went into the building, feeling as always somehow dwarfed by the architecture of post-modern humiliation, chatted to the funereally dressed young woman behind the polished granite desk, picked up my name tab on a red lanyard, stepped with experienced precision through the automatically opening glass half door turnstile to the lift. The lift was a place of concern, for by this point you had

⁵³ 2005, Independent Review Panel for Advertising: Declaration of members current personal and non-personal interests.
<http://www.mhra.gov.uk/Committees/Medicinesadvisorybodies/IndependentReviewPanelforAdvertising/AnnualReport/index.htm>

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passed through the *cordon sanitaire* of the GMC foyer and could well come face to face with one of the prosecution team, or a panel member.

The third floor that morning seemed eerily quiet and it was from that point onwards that I began to suspect the worst. Sitting in the outer lounge I glanced through the Daily Telegraph and got a cardboard cup of green tea from the machine. I eventually slipped through the glass doors into the carpeted corridor and then into the four rows of chairs that constituted the public gallery. I sat down, got out my pen and notebook, placed my coat over the back of the chair and sat quietly waiting.

Usually when the defence lawyers and the defendants came in, they glanced in my direction, after all I had attended as many days of the hearing as they had and I was considered a familiar face. On that day, there was a long wait before anyone

came into the hearing room and the lawyers particularly, although sometimes smiling slightly, kept their heads down. As the last members of the panel entered the room, the Legal Assessor, a vain looking, neat piggy faced man, was still in animated conversation with Dr Wakefield's counsel. It was then that I knew that something was about to happen and that that something might involve me; after all I was the only outsider there.

Everyone took their seats and the little man with the pink face pulled at his cuffs, looked into the still air in front of him and then launched into me. Apparently a judge in real life, the Legal Assessor described my latest essay as an 'unhelpful intervention', he was determined not to mention my name, not a new experience for me, adding, 'if this person thought that he was helping anyone he was mistaken'. Of course, in saying this, he entirely missed the point, I had no interest in 'helping anyone', just in speaking up for the parents and their vaccine damaged children and, the more abstract cause of 'justice'.

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The assessor, however, employed by the GMC, was more pragmatically concerned than I was. One of his objections to my essay was:

If anybody thought that they were helping anyone, they were not because it has involved lawyers having to read and consider it, it will have involved unnecessary expense, unnecessary work and possibly even unnecessary concern.

Inevitably my mind rolled back over the junk journalism that Deer had produced during the hearing, including a long article that newly accused Dr Wakefield of fixing the results of his research. One of my worst crimes, it appeared, was that I had made the intervention with my essay 'at *this* point in the hearing', that is, after a year of the prosecution's prevaricating, repetitious time wasting.

'The best that can be said is that this was considerably unhelpful and entirely inappropriate at this stage in these proceedings.'

This implied that, had I made my observation about Dr Kumar's conflict of interest at the beginning of the hearing, it would have been considered in a more sympathetic light.

The Assessor made the point that Dr Kumar had declared his conflicts of interests at the beginning of the hearing. Of course, neither the legal assessor or anyone else involved, could have read from the transcript Dr Kumar's exact words when, during the hearing, he explained that he held shares in GSK, the vaccine manufacturer – it never happened.

The Assessor went on to accuse me of a criminal act for which unfortunately his tribunal was unable to prosecute me.

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Unfortunately, this is not a court of law and does not have the benefit of contempt law, otherwise I might give firmer advice to the Panel as on how to deal with such interventions. The Panel members who were shown this of course were concerned about the propriety of their position. It is an entirely unhelpful intervention.

To my concern, the three or four defence Counsel did nothing except wryly smile as they stared down at their note books, no one came to my defence and for the rest of the day I caught Kumar leaning forward slightly and glancing side-stares at me – still the only person in the public gallery – as if he were reminding himself of my features. I wondered what he was thinking and was amazed at the seeming emboldened effrontery in his glances, I kept expecting him to sidle up to me at a break and say, 'I know where you live'.

As I was writing for CryShame, the parents' organisation at this time, the Chair of CryShame, Allison Edwards, following this cover-up by the Panel chairman and the Legal Assessor, wrote to the GMC to question their conflict of interest policy. After an exchange of correspondence, the GMC admitted that they didn't actually have such a policy.

Brian Deer, clearly primed by someone to reply to my relatively academic finding of Dr Kumar's GSK shares, responded with a vitriolic personal attack on his web site:⁵⁴

Some of the latter (Wakefield supporters), in their pain, have now turned nasty: with me as a target for their hatreds. Although almost literally a handful

⁵⁴ Martin Walker: Sad Smearmaster of MMR Fabrication and Hatred: Award-winning investigative reporter **Brian Deer** on a pond life phenomenon around the "vaccine scare" exploitation of autistic children. *Text last revised December 2011*. <http://briandeer.com/mmr/mli-information.htm>

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of people, and some with no link to MMR or autism at all, they've insinuated themselves among affected British families and are causing distress with false allegations. Among these is a claim that my Sunday Times and Channel 4 investigation - which nailed the scare and helped to restore public confidence - was covertly supported by the drug industry. A string of recent outings for this sickening falsehood are authored by a 61-year-old graphic artist called Martin Walker, who apparently lives in Spain, but last year surfaced at the mammoth hearings of the GMC in London. He claims to be a "health activist", and, although generally of little consequence, is a relentless peddler of smear and denigration, with a track record of latching onto the vulnerable. These he beguiles - like he's their new best friend - and then, if past form is a predictor for the future, attempts to sell them self-published books.

Believing that one should never stay silent in the face of an attack, I wrote my own answering essay to Deer, when LOL⁵⁵ would probably have been adequate.

What astounds me now more than anything has nothing to do with any sense of personal hurt, but the sustainability of the gross lies told by Deer and his criminal contemporaries in the government and the corporations. Since the verdict against Dr Wakefield, Professor Murch and Professor Walker-Smith, Deer has affected the most odious and duplicitous persona, hailing himself as the promoter of the parents' cause and expressing empathy with them after their *painful victimisation* by Dr Wakefield, before finally tuned the dial to accuse individual parents of Munchausen like syndromes.

⁵⁵ LOL = Laughed Out Loud.

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* * *

Richard Horton

Richard Horton's second engagement with Wakefield's paper, came almost six years after the paper's publication and was triggered by Brian Deer who, in February 2004, out of the blue, called up all the actors in the drama a few days before he was about to publish his 'exposé' involving the Lancet paper in the Sunday Times. The patchy details that Deer gave about this imminent publication were enough to bring Wakefield hot foot from Texas, where he was exiled, to London.

Wakefield made this trip without any of his documents referring to the period of the *Lancet* paper. In fact, both Professor Simon Murch and Professor Walker-Smith, also called to an urgent meeting with Deer, were also thrown back on their memory of six to eight years before.

Wakefield flew into England at dawn on Tuesday 17th February and in the few hours he had left before any meetings began, he gathered what information he could lay his hands on. From this point onward, Deer and Horton appeared to play the traditional urban masque of 'good cop, bad cop', as they extracted statements from the three doctors.

Horton had also made arrangements with Deer for Deer to brief him and the *Lancet* staff at the offices of the *Lancet* that morning. While Wakefield was answering questions and defending himself against Deer's accusations with representatives of the Sunday Times, including Paul Nuki, Deer was at the *Lancet*.

Nuki, was a Sunday Times journalist from 1993 until 2007, and the person originally thought to have given Deer the job of finding something on Wakefield.⁵⁶ He is the son of Professor George Nuki, who was coincidentally a member of the

⁵⁶ See John Stone on AOA. March 03, 2010. Brian Deer Hired to "Find Something Big" on MMR.

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Committee for the Safety of Medicines for a period in the late 1980s, when the CSM was considering the safety of the Pluserix MMR vaccine, one of the Urabe strain MMR vaccines taken off the market after causing serious adverse reactions.⁵⁷

Having also pressurized Murch and Walker-Smith to meet with Deer at the *Lancet* offices, in the afternoon, Deer was there with Evan Harris - later described by Horton as a 'shadowy presence' - and gave, Horton says, a five-hour presentation on Wakefield's corruption. Horton later described Deer's story telling as 'gripping' and his allegations 'devastating'. Horton's objectives in acting as an administrative secretary for Deer have never been explained. As the editor of the *Lancet*, a fairly conservative medical journal, why did Horton give Deer the audience he did? After all Deer was a relative unknown 'medical' reporter without any connections with above board health or medical organisations. If Deer wanted to raise issues about a single paper authored by thirteen highly respected medics, why didn't Horton simply point him in the direction of the *Lancet* letter pages?

Horton was clearly much more deeply involved than appears at first sight. In fact it was Horton who launched the pre-publicity for Deer and the Sunday Times and he seems to have known the game plan from 'early doors'. Apparently gob-smacked by the revelations of Wakefield's unethical adventures at the Royal Free, Horton immediately set himself up as a medical Poirot.

The day after Deer's filibuster at the *Lancet* offices, Horton went to the Royal Free Hospital to conduct interviews and later that day, a vehement Deer and a smooth Horton, pressed Murch, Walker-Smith and Wakefield, into the writing of self-incriminating statements that appeared to support Deer's story about the origins of the 1998 *Lancet* paper. Information from these statements were then added to Deer's *Sunday Times* article and later surfaced at the GMC, put to the

⁵⁷ The story of the Urabe strain mumps virus is a complicated story. MMR containing Urabe strain had been found to create serious adverse reactions in Canada, and withdrawn from the market even before its introduction in Britain. See *The Urabe Farrago* by this author.
<http://www.wesupportandywakefield.com/documents/The%20Urabe%20Farrago.pdf>

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defendants as 'confessions'.

Despite clearly wanting to damage Wakefield, Horton's public account of his sleuthing at the RFH, suggested that he had found Deer's case to have been damaged by these enquiries. In fact, according to Horton, it was beginning to look as if some of Deer's accusations were ill-founded.

However, with Deer's article ready to appear in the *Sunday Times*, Horton stepped out onto the boards to give a very public evening and early morning media show.⁵⁸ On Friday February 20th Horton went on national television and accused Dr Wakefield of hiding a serious conflict of interest from him and the *Lancet*. To believe this, Horton would have also had to believe that the paper he published was not a case review paper but the result of a full-blown research study; this he didn't believe. Horton evidently saw nothing wrong with scuppering Wakefield's work on television before any 'evidence' had been verified, either in the *Sunday Times* or, more importantly, within the scientific or academic community. In *MMR: Science and Fiction*, published in October 2004, Horton's approach can be seen as much deeper and subtler than Deer's'.

Horton repeats what he said on the BBC television news:

If we knew then what we know now we certainly would not have published the part of the paper that related to MMR, although I do believe there was and remains validity to the connection between bowel disease and autism'.

The only problem with this statement is that no part of the paper was about MMR. The paper simply reported that in eight out of the twelve children, parents or GPs had noted a coincidence of the vaccination and the onset of the child's illness,

⁵⁸ Later Deer was to threaten Horton with a civil action on the grounds that he broke their agreement to keep confidential the information in Deer's *Sunday Times* story until after its publication.

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suggesting that this coincidence should be the subject of further research.

Horton's retrospective and unevidenced remarks were to get stronger 'in other interviews'⁵⁹

There were fatal conflicts of interest in this paper ... in my judgment it would have been rejected ... I called Wakefield's work on the link between the MMR vaccination and autism, "fatally flawed." '60

In the book, Horton goes on to reflect on the Media coverage the following day, feigning surprise at its 'aggressive' nature:

'Medical journal raps MMR report doctor' said the Daily Express. '*Lancet* in attack on MMR doc', proclaimed the Daily Mirror. 'MMR doctor criticised,' announced *The Times*. '*Lancet* MMR report invalid, says editor,' reported the *Daily Mail*.⁶¹

And:

'A whirlwind of innuendo ensued, which caught all of us in its wake. Evan Harris, the MP who had mysteriously joined Brian Deer at the *Lancet*'s offices, called for an independent inquiry into Wakefield's research. Put on the back foot by the sudden escalation in media interest and by Harris's call for a public inquiry, Britain's Health Secretary, John Reid, urged the General Medical Council to investigate Wakefield, 'as a matter of urgency'. Even Prime Minister Tony Blair jumped into the debate, saying, 'There is no evidence to support this link between MMR and autism.'⁶²

⁵⁹ *ibid.* MMR: Science and Fiction.

⁶⁰ *ibid.* MMR: Science and Fiction.

⁶¹ *ibid.* MMR: Science and Fiction.

⁶² *ibid.* MMR: Science and Fiction.

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The following morning, Horton appeared on the Today radio news programme. When questioned by John Humphreys about MMR, he declared that the vaccine was 'absolutely safe.'

On Sunday the 22nd February, Deer's 'exposé' ran in the Sunday Times. The article opened the floodgates for all the vaccine establishment riffraff, evidently rehearsed and waiting in the wings, to speak their one line parts.

Professor Liam Donaldson, the chief medical officer, took the opportunity to have his Bram Stoker moment, 'Now a darker side of this work has shown through, with the ethical conduct of the research'. On the Independent Television news, Prime Minister Tony Blair was evidently reading off the wrong page when answering a question about Wakefield's work, he inadvertently read part of his apology to the British people over the weapons of mass destruction debacle; 'I hope now that people see the situation is somewhat different from what they were led to believe.'

On Monday 23rd, all the newspapers were full of Horton's story, less so of Deer's, because he worked for another newspaper, and because no one could be certain that his information wouldn't invite libel actions. As the hyenas circled Wakefield's prostrate body, developing what was to become the case for the GMC prosecution, Evan Harris MP, who had never made any declaration of interests, vested or otherwise, came to be more frequently mentioned. Harris was a member of the House of Commons Science and Technology Select Committee, a group that since 1997 had aggressively lobbied on behalf of corporate science against environmental dangers and alternative medicine.

Despite his apparent polite empathy with Wakefield and despite his approach being far subtler than Deer's or Harris's, Horton was in fact quite venomous. Generally speaking his tone in *MMR: Science and Fiction*, is that of an emotionally challenged recidivist who, caught for the umpteenth time reaching his

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hand into a gentleman's coat pocket, says with bare faced confidence: 'Really gov I ain't done nofink wrong, this gent 'ere left his wallet hanging from his pocket, inviting me to relieve 'im of it.'

Even in the introductory pages of *MMR: Science and Fiction*, Horton takes great delight in putting the boot in:

The Vaccine Guide by Randall Neustaedter looks innocuous enough. It is a book with a sober academic cover that can be found in most bookstores. I bought my copy in June 2004, at a cafe close to University College London. But as soon as the reader turns the cover they will enter a world of striking half truths, gross errors of omission and astonishing manipulation of fact. On the first page, you will read this: 'The vaccination campaign has traded infectious diseases of childhood for chronic autoimmune diseases that afflict both children and adults.' One of those gratefully acknowledged by Neustaedter is

a doctor called Andrew Wakefield.⁶³

As my eight year old son, too young to read between the lines, might say belligerently: 'And ...?'. To an astute adult, however, the 'and' is clear, '*And* Dr Andrew Wakefield is a willing party to these "striking half truths, gross errors of omission and astonishing manipulation of fact".' Interesting as well how Horton manages to distance himself from Dr Wakefield, referring to the man whose papers he has edited, sent to peer review and then published, and in the company of whom he has practiced medicine at the same hospital, as 'a doctor called Andrew Wakefield.' If Horton was ignorant of the part he was playing in a Big Pharma conspiracy then I'm a nun.

As he rolls on describing the Tsunami of media criticism that descended on

⁶³ *ibid.* *MMR: Science and Fiction*.

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Wakefield, he almost fails to mention Brian Deer's Sunday Times article.⁶⁴ The only part of the article Horton quotes is a little snippet about himself: 'Medical insiders now wonder if he [Horton] can survive the scandal that has damaged the *Lancet*'. Horton quotes this, obviously distancing himself yet again from Deer, but also adds a softer quote, 'Meanwhile, he [Deer] was described as "one of Britain's top investigative journalists."'

Horton's solution to the crisis that enveloped him personally in 2004, was to call for a 'partial retraction' of the *Lancet* paper. The part Horton suggested needed retracting was the interpretation that might be thought by readers to claim that MMR was responsible for autism. Although Horton managed to convince some 10 of the authors that this 'partial retraction' was a valuable contribution to the scientific debate, Dr Wakefield, consultant Peter Harvey and Dr John Linnell refused to lend their name to this retraction and wrote to the *Lancet* explaining why there was no conflict of interest and why, in the absence of a causal interpretation attributable to MMR in the *Lancet* paper, there was nothing to withdraw.

Horton's 'fiddling while Rome burned' did not placate Harris and other members of the Commons Science and Technology Committee who said that there was no such thing as a *partial* retraction. When Horton accompanied his Elsevier boss, Crispin Davis, who was within weeks to be made a GSK board member, to a meeting of the UK parliament Science and Technology Committee on 1st March 2004, Harris and other members of the Committee were vituperative, scolding Horton for being a wimp, a man without the strategic intelligence to straightway 'retract the whole paper'.

* * *

Horton next chance to pursue the cause of the vaccine companies came when he was called by the GMC prosecution to give evidence against Dr Wakefield. On the

⁶⁴ Brian Deer, MMR Research Scandal, The Sunday Times, Sunday February 22nd 2004.

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day he assumed the hot seat just vacated by a hysterical Professor Zuckerman, Horton, who refrained from repeating President Chávez's words 'I can still smell burning' when following President Bush to the podium at the UN, stuck to his basic public view that while there was nothing wrong with the science of Wakefield's paper, there was everything wrong with his approach to conflict of interest. Horton performed throughout his evidence like Blondin on a high wire above Niagara while Miss Smith, the prosecutor, stretched herself out below him; an infinitely flexible and safe Olive Oyl.

Attending the GMC hearing and writing it up for the parents, I have to admit to having misjudged Horton. Like a very capable actor, he managed to present a likeable liberal self to the hearing that I now think was actually light years away from his real character. He slithered through his evidence for the prosecution as if he was best friends with everyone in the room and would go miles out of his way to help any number of old ladies across the traffic choked roads of Spaghetti Junction.

Tall and fit looking, wearing a casual but well cut charcoal black suit, he exuded the cool of well educated Brits. Of course, it probably helped that Miss Smith treated him like a long lost son, every question noticeably caressing his ego.

According to Horton his enquiry into Deer's allegations left him sure that at least one of Deer's most serious accusations was completely fictitious. From that point onwards it appeared that Horton gave impeccable evidence for the defence. In fact, he rose to a level of praise for Dr Wakefield the like of which any observer had heard only from parents. If the prosecution was expecting him to say that the paper was poor science, they must have been surprised when he said the absolute opposite. *The Lancet* paper was an excellent example of a 'case series review'. Such a case review was a standard and entirely reputable way of reporting on a possible new syndrome. He likened it to how the first cases of HIV/AIDS were reported in the early 80s and how the variant CJD issue broke more recently. He said unequivocally that the science still stood and that he 'wished, wished, wished' that

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the clock could be turned back and the paper considered in the light it was first presented without everything that followed.

However, when it came to the tall story of Wakefield deliberately hiding his conflict of interest, Horton suddenly turned on him. Throughout this part of his evidence Horton tried desperately to shore up the idea that Wakefield had kept secrets from him and the *Lancet*. In response to a question by Miss Smith as he was being led through his evidence, Horton said:

'To my knowledge in February 1998 and during the peer review process going back into 1997, I was completely unaware of any potential litigation surrounding the MMR vaccine. I was not aware of the involvement of a firm of solicitors - Dawbarns ... I was not aware of any other relationship between Dr Wakefield and Dawbarns and Richard Barr. When I read those statements I saw this as something that was triggered by the paper ...'⁶⁵

'To my knowledge in February 1998 and during the peer review process going back into 1997, I was completely unaware of any potential litigation surrounding the MMR vaccine.'⁶⁶

'I was not aware of the involvement of a firm of solicitors Dawbarns.'⁶⁷

'I was not aware of any other relationship between Dr Wakefield and Dawbarns and Richard Barr.'⁶⁸

Horton told the Panel that he understood Wakefield's agreement with the legal aid board to carry out a study on a small number of children happened after the publication of the *Lancet* paper. Although this statement is a 'cover-up' which plays

⁶⁵ See Horton's evidence, Day 17 GMC hearing.

⁶⁶ *ibid* GMC Hearing

⁶⁷ *ibid* GMC Hearing

⁶⁸ *ibid* GMC Hearing

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a significant part in Horton's story that he had no knowledge of Wakefield's involvement in Legal Aid Board funding of research for Dawbarns, prior to publication of the *Lancet* paper, it actually reflects the truth. It is directly contrary to the prosecution case that the *Lancet* paper was the report of an illicit study carried out with Legal Aid Board funding that attempted to prove that MMR caused autism.

Horton, in fact, dug a very deep hole, jumped in it and then proceeded to bury himself; he could only do this. If the case review paper was in fact a case review paper and its science was sound, then not only did the majority of the fraudulent prosecution case collapse but Horton must as well be arguing for the defence that the Legal Aid Board funded research which had not yet been carried out and there was therefore no conflict of interest. This was in fact the case and had this line of Horton's been pursued by counsel for the defence it would have done

the prosecution immense damage. However, no one probed Horton's self-serving inconsistency, nor did the defence seek to seriously undermine his assertions that he had no knowledge of Wakefield's involvement with either Dawbarns, Richard Barr or the Legal Aid Board, prior to the publication of the *Lancet* paper.

Defence council did spend a considerable time cross-examining Horton about the lack of declaration of 'conflict of interest' issue. At the end of a long session, the worst that Horton appeared willing to sensibly adduce was that Dr Wakefield was genuinely surprised that there was the need for him to reveal funding from the Legal Aid Board.

Horton seemed happy to say that Dr Wakefield had been honest by his own lights and he had not declared any conflict of interest because he genuinely believed - and believes still - that there was no conflict to be declared. While Horton personally disagreed with Dr Wakefield's interpretation of this, as did Professor

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Simon Murch and Professor Walker-Smith, he acknowledged clearly that it could be seen as a matter of opinion and not a reflection on Dr Wakefield's honesty. But then, Horton knew that if Wakefield was found 'guilty' of hiding a conflict of interest, he would be adjudged dishonest. For such a polite boy from the academic 'hood', Horton remained as solid as it appeared possible, on the matter of conflict of interest.

* * *

During the life of the GMC hearing, after Horton had given his evidence, on February 29th 2008, Carmel Wakefield, unpacking overflowing filing cabinets transported from London to Texas where the Wakefields had settled, found a series of documents which told the full story of Horton's knowledge of Wakefield's role in the civil action and his involvement with the Legal Aid Board a year before the publication of the *Lancet* paper.

At the time Wakefield submitted the final draft of his paper to the *Lancet*, Richard Horton and Richard Barr, the lawyer from Dawbarns, the company handling the parents civil action, were embroiled in an argument. In March, the *Lancet* had received a letter from a Dr B.D. Edwards; the letter brought to Horton's attention the fact that text and tables from various *Lancet* papers were being reproduced in a Dawbarns Fact Sheet, sent to parents.⁶⁹ Sarah Quick of the *Lancet* noted Edwards' letter in a memo to Horton marked "urgent" on 19th March 1997.

B.D. Edwards was actually a member of the Medicines Control Agency (MCA) (later to become the MHRA), the agency responsible for the licensing and safety of drugs in the UK. Clearly the copyright of *Lancet* published material did not come within the remit of the MCA and Edwards had written his letter on personal

⁶⁹ This fact sheet was an edition dated 16th July 1997.

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notepaper.⁷⁰ We should perhaps understand that with a major civil action in the pipeline, pharmaceutical interests would already be operating a harassment and intelligence gathering strategy against the lawyers and defendants involved.

Barr wrote to Horton explaining Dawbarns' position in a faxed transmission of 3rd April 1997. In the coversheet of this fax Barr wrote that the 'Fact Sheet and other originals' had been sent by post. As far as Horton's knowledge about the civil action, Wakefield's involvement in it, and the granting to Dawbarns of Legal Aid for the action, Barr's letter contained much information. The letter makes it clear that Barr was involved in litigation related to possible damage to children following MMR and MR vaccinations. Barr refers to exchanges he had had with Wakefield and the latter's permission for Barr to quote, in the Fact Sheet, from papers authored by him. Barr refers to pressure from the MCA and the Department of Health to him from quoting from the *Lancet* in the Fact Sheet.

Oddly, Horton responded to Barr in April 1997 denying him permission to use material from the *Lancet* in the Fact Sheet. Oddly, because this was a clear act of obstruction by Horton; in this slight matter he was evidently siding with the pharmaceutical company defendants in the case that Barr was building. On 16th April 1997 Barr responded by seeking an appeal to the *Lancet's* Ombudsman. Horton replied saying that he would be happy to refer the matter to the *Lancet's* Ombudsman.

Although Barr wrote to Horton on 29th April 1997 asking to be put in touch with the Ombudsman, Horton didn't answer until 12th June 1997. Barr subsequently corresponded with the *Lancet's* Ombudsman Professor Sherwood. Sherwood arbitrated in favour of *Lancet* tables being removed from the Fact Sheet but short quotes from the *Lancet* remaining.

⁷⁰ Original letter from Dr Rouse to *Lancet* of 9th March 1998.

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This correspondence on these dates prove that from March 1997 Horton was aware of the civil action being organised by Barr at Dawbarns, and that Dr Wakefield was involved. But of greater relevance than these things was the fact that Horton had then the case-review paper written by Wakefield and twelve other clinicians at the RFH and he must have known without any shadow of a doubt that this paper was not the result of a 'study' and that no legal aid funding, or any other kind of funding, except the personal time and the NHS salary and facilities of Dr Wakefield at the RFH had been needed to correlate the clinical presentation of the twelve children.

Very quickly after publication of the *Lancet* paper, the *Lancet* received a letter from a Dr Rouse.⁷¹ The general tone of this was reminiscent yet again of a

pharmaceutical company strategy to destabilise Wakefield's paper. The original letter to the *Lancet* from Rouse was entitled: 'Vaccine adverse events: litigation bias might exist.' In the letter Rouse provides direct quotes from what is described as a 48 page: 'Vaccine Fact Sheet' prepared by Dawbarns solicitors. Dr Rouse repeats from the fact sheet the information that Dawbarns are working with Dr Andrew Wakefield of the Royal Free Hospital who is investigating 'Inflammatory Bowel Disease', and that a sheet is available from Dawbarns offices, written by Dr Wakefield if anyone needs information about persistent stomach problems (including pains, constipation or diarrhoea) following vaccination.

Dr Wakefield replied to this letter in the *Lancet* of May 2nd 1998. Rouse's use of the novel term 'litigation bias' again drew attention to Wakefield's work in light of the way it was being viewed by the pharmaceutical companies. In fact, the use of this term was the subtle beginning of what was to develop into the 'conflict of

⁷¹ Original letter from Dr Rouse to *Lancet* of 9th March 1998.

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interest' strand of the prosecution case. More importantly Rouse's letter and Wakefield's response to it makes it crystal clear that immediately after publication of the *Lancet* paper, the issue of conflict of interest was aired in the *Lancet*.

* * *

In the white plastic world of the GMC Fitness to Practice Hearing room, word got around, and from the 29th of February 2008, it was clear to everyone involved that at the end of the defence case, Horton would be recalled and roasted over hot coals; seemingly he had been exceedingly economical with the truth. The new evidence once aired would destroy a major support for the prosecution case. In fact, it was unlikely that the prosecution would survive in the matter of conflict of interest, because Horton was their major witness on the matter. When the issue of Horton's recall was mooted, I felt we were finally about to see some deft legal footwork that would end or at least diminish the whole charade. I wrote the following in my report:

Suddenly on Friday 14th November 2008, when everything was almost all over and people were wondering where they had left their macs and umbrellas, one of the hearings small subterranean volcanoes erupted. I almost missed its beginning when it went from criticism to what passes at the GMC for a full-blown row in about 90 seconds.

I was first conscious of the fact that Miss Smith the senior prosecutor was in her usual *sotto voce* style - as if she didn't really want anyone else to know what she was saying - talking about Dr Horton being recalled to give rebuttal evidence.

Now Miss Smith was on her feet explaining in very sensitive and sympathetic terms why getting Dr Horton to Euston Road this century was a logistic feat similar to the one that faced Hannibal in 203BC during the second Punic War.

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In order to impress the Panel and assume the moral high ground, Miss Smith detailed Dr Horton's itinerary in the days after the hearing that was to resume on January 12th 2009. Horton's diary included what Miss Smith seemed to think was a clincher. On one day, pride redolent in her voice, Dr Horton was in 'Palestine', 'launching a session in relation to health on the West Bank'. This was very laudable and it made me suddenly aware that the whole prosecution team must have always been constant supporters of the cause of the Palestinian people. I also wondered whether Dr Horton's visit to the West Bank had anything to do with his relationship with Mr Blair, who was then Middle East Envoy.

Anyway, it was quite apparent from Miss Smith's litany of Dr Horton's important political and humanitarian work, that fitting in to give evidence at the GMC hearing was not only small potatoes but simply impossible. Miss

Smith attacked the problem as if all the parameters of it were settled and taken for granted; it was, undoubtedly the hearing that had to fit in with Dr Horton and not Dr Horton who could fit in with the hearing.

Miss Smith even had the length of Dr Horton's evidence decided and in one particular defence of him, she said something like: 'Well, Dr Horton's evidence will take about 50 minutes, he should be able to fit that in ...' To be honest, it might have seemed to the casual observer that Miss Smith wasn't trying very hard to get Dr Horton to the hearing. This idea was supported by a seemingly quite angry Kieran Coonan, Dr Wakefield's counsel who spluttered that it was obviously impossible for the defence to come to any conclusions about how long Horton's evidence would take because all they had so far produced - after having sight of the new evidence that utterly contradicted his first statement - was an unsigned statement i.e. a rough draft of what Horton might say but without the authority of his signature. 'We have', Mr Coonan said, 'been

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waiting since day 69 (it was then day 108) for a signed statement'. It occurred to me later that the last thing Horton would want to do was place a new signed statement in the public domain, especially when it became apparent that in the new statement, Horton was claiming total amnesia for everything, including the LAB funding, research at the RFH, the parents court case and Wakefield's role as an expert witness, prior to the publication of the 1998 paper.

Mr Coonan's evident dissatisfaction was as nothing compared with that of the Legal Assessor, who when asked to contribute to a solution about the timing of Horton's appearance said quite dryly, 'I haven't even seen the unsigned statement, so it is hard for me to make any decisions'. On this, Miss Smith did one of her little turns that so endeared her to us, a little aside that carries with it great natural humour and drollery. Holding up the two pages of the statement for the Legal Assessor, sitting twenty feet away, to 'see' she said, 'This is Dr Horton's statement', before returning it to her table.

Alas the whole firework display spluttered out when it was decided that behind the scenes talks would resolve the matter of recalling Dr Horton. These talks must have concluded in either an agreement or a stale-mate because Horton never appeared to be cross examined on his new amended statement and the hoi polloi were never any the wiser about this important conflict of evidence.

Following the verdict of the GMC Fitness to Practice Panel in January 2010, Richard Horton claimed that the *Lancet* paper was completely compromised and rescinded it from the *Lancet's* historical record.⁷²

* * *

With the end of the GMC hearing, it might have appeared to everyone that the

⁷² Another Wakefield authored papers from a journal also owned by Elsevier, Neurotoxicology was also rescinded.

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whole matter was over and settled, with the constant supportive reports of pharmaceutical lobby groups, the argument was clear now, Dr Andrew Wakefield had *got his science wrong*, vaccination was not the cause of autism, or anything else detrimental to the human condition, and he had been punished accordingly – he could no longer be a doctor, his name was erased from the Medical Register and his papers of doubtful scientific value were extracted like bad teeth from the medical literature.

It appeared as well to everyone that the substantial issue, one of ethics and scientific method, had been dealt with. But just when you thought it was safe to go back in the water, Brian Deer began writing articles in the *BMJ*,⁷³ which raised a most serious issue.

Part of the GMC case against Wakefield was that some of those children who were referred by GPs to the Royal Free Hospital and later included in the *Lancet* case review study, had according to their GP's shown no signs of IBD, although some of them had been autistic. In the hearing, Wakefield's counsel argued the common sense argument that most General Practitioners were not specialists in gastrointestinal illnesses, nor did they have access to the specialised tests necessary to diagnose such things as IBD. Consequently they had reported only what parents had told them of symptoms such as loose stools (which might in fact have covered a number of symptoms, from occasionally loose stools to explosive diarrhoea accompanied by terrible stomach pains). It was necessary for the GMC to break down the argument from the first point of reporting that the 12 children cited in the *Lancet* paper had nothing unduly wrong with them which might be associated with a vaccine. The GMC's further case was that Wakefield himself had dragged these parents and their children into 'his' research, rather than them having arrived at the

⁷³ Referenced above fn. 22.

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Royal Free of their own volition.

As with all the arguments that besmirched Wakefield during the hearing, this specific argument was lost in the plethora of smears that floated round in the GMC sewer and that of the corporate media. It was, however, vital to the pharmaceutical companies that Wakefield was destroyed beyond any possibility of resurrection. To this end and clearly under instruction from someone, Brian Deer began to develop extended the argument that Wakefield had manufactured the evidence that the 12 children cited in the *Lancet* paper were ill. He had been able to do this, Deer posited by simply manufacturing evidence and writing it up in the *Lancet* paper, the draft of which had not been aired amongst his co-authors.

This argument reinforced two strands of the attack on Wakefield. Firstly it compounded the argument that Wakefield was not just unethical but like other exposed medical fraudsters he was a dishonest and even criminal fraudster, out for money or glory. But it was a second argument that was essential to the

pharmaceutical producers of vaccines, that no adverse effects could ever be associated with any vaccination, at any time, in any place, anywhere in the world as Richard Horton had once remarked MMR was 'completely safe.' Deer was now articulating this argument in spades, the children in the *Lancet* paper had been referred to the RFH as a consequence of over neurotic parents who could not come to terms with their children being autistic, and the slippery approach of a fraudulent researcher with an undiagnosed obsession with making money and bringing down pharmaceutical companies.

With these articles by Deer in the *BMJ*, a journal with commercial links to Merck and GlaxoSmithKline,⁷⁴ the manufacturers and distributors of MMR, the pharmaceutical companies finished what they had started in the early 1990s,

⁷⁴ Referenced above fn 22.

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completely wiping out the academic and medical presence of Dr Wakefield.

A couple of months after the end of the GMC hearing, still pursued by Deer and his paymasters, Dr Wakefield was denied the chance of an Appeal in the UK on his counsel's advice that he didn't stand the requisite 52% chance of success. He was cast off the legal bridge into the cold waters of isolation completely and left without any legal comeback against the power which had destroyed his professional life.⁷⁵

While everyone in the Wakefield camp applauded and were overjoyed at the decision to acquit Walker-Smith, no-one commented on the fact that in a fair judicial world this decision would inevitably have led to a new hard and independent examination of both the case against Dr Andrew Wakefield and those responsible for the conspiracy against all three men. In fact, if Judge Mitting's cause was justice he could have called Wakefield before him and then instituted a wide ranging

enquiry into the GMC.

However, the fundamental message sent out by Professor Walker-Smith's acquittal was not that all three defendants could be innocent of dishonesty, but that Murch and Walker-Smith had been duped by the Moriarty-like Wakefield and dragged into a disciplinary hearing. And in the specific case of Walker-Smith, the GMC had developed their case with reprehensible laxity and even ignorance while pursuing the case against Wakefield with clear headed and honest analytical understanding.

Looking at the media in the days after the Appeal judgment, it was clear that Walker-Smith's acquittal had done nothing at all to educate the media to the

⁷⁵ Wakefield is at the moment pursuing a case for defamation against Brian Deer and Fiona Godlee and editor of the BMJ, in the US. This case involves writing by Deer in the BMJ (2011) which accused Wakefield of having manipulated the clinical picture of the children in the case review study. These articles were the culmination of Deer's developing rant, sponsored by the pharmaceutical companies, that MMR can cause no adverse reaction in children.

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undercurrents in the case; but then probably nothing could. Today's corporate journalist lives in a secluded world of received opinions and safe stories, most of them would be better employed writing the *bon mots* in greeting cards.

The media showed clearly that they didn't want the ruling on Walker-Smith to run as far as Wakefield and Brian Deer being a journalist of sorts was never mentioned for obvious reasons. In their reports of the judgment – which they didn't seem to have read and refused to put into context – most journalists simply echoed the same confused untruths in relation to Wakefield and even Walker-Smith that they had lived with for the past 15 years. If journalists had refused to attend the GMC hearing and not followed the story throughout the decade of the 2000s, what hope was there that they would start now.

An eminent doctor was celebrating a dramatic victory today after the High Court ruled that a decision to strike him off over the MMR controversy was unlawful.⁷⁶

Much as we would have liked it to be, the GMC Fitness to Practice hearing was not about 'the MMR controversy', it was about 'research ethics'. And if Walker-Smith was acquitted because he had been proved right in the 'MMR controversy', why was Wakefield not being acquitted.

Professor John Walker-Smith had been found guilty of professional misconduct following accusations of taking part, without ethical approval, in controversial research that caused a global scare by suggesting a link between the MMR vaccine, bowel disease and autism.

There was no 'controversial research', there was only clinical examinations to

⁷⁶ I am not naming either of the journalists cited here, because mentioning their names and titling their articles, encourages them to think that they should be taken seriously.

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consider a diagnosis for children who suffered the sudden advent of IBD. The paper involved in the GMC hearing was not a 'research paper' but a 'case review paper'. Had this journalist read Mitting's ruling, he could have kept abreast of the carefully argued differentiation between 'research' for clinical and diagnostic purposes that helps the individual and more all encompassing research which answers questions of benefit to the broader community.

In May 2010, Prof Walker-Smith lost his licence to practise along with Dr Andrew Wakefield who was at the centre of the MMR research.

This is a classic piece of misreporting. Dr Wakefield might well have been at the centre of 'the MMR research', but that had nothing to do with the GMC fitness to practice hearing. Wakefield, a gastroenterologist, was at that time, concerned with the sudden onset of IBD in children brought to the Royal Free Hospital.

In another article, yet another lazy journalist, languishes in received opinions:

A High Court judge quashed the finding of professional misconduct against Professor Walker-Smith, who had carried out some of the tests for the controversial paper that suggested a link between the MMR vaccine and autism.

Professor Walker-Smith didn't carry out the tests made controversial by the media and the GMC, these were conducted by Dr Simon Murch. No sanction was taken against Dr Simon Murch (now Professor) at the end of the hearing, despite the fact that *he had* carried out the colonoscopies in question.

Professor Walker-Smith was found guilty of organising these 'dangerous' procedures, despite the fact that an early injury to his arm meant that he had always been unable to carry them out. As for Dr Wakefield, who was also found guilty of organising these most dangerous procedures even though his contract with the Royal Free Hospital specifically forbade him being involved in clinical work of any kind. If we add to this the fact that research into these 'dangerous procedures' had

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been previously sanctioned by Professor David Salisbury, the head of vaccination and immunization in the DoH at the time of the Wakefield affair, in a number of academic papers co-authored by Walker-Smith, the picture on specifics becomes unbelievably blurred.

The *Lancet* paper wasn't actually controversial at the time of publication and it certainly didn't suggest a link between MMR vaccine and autism.

The Wakefield paper prompted a nationwide scare over the safety of the jab after the study of 12 children was published in the medical journal The *Lancet*.

This of course is highly debatable. Did Wakefield promote a nationwide scare? One wonders how many scared lay people read the *Lancet*? What Wakefield said at the press briefing held by the Hospital and its university was that parents might consider continuing with single vaccines rather than adopt the triple vaccine.

The problem is that few journalists actually think anymore, especially in complex cases they simply adopt received opinions, opinions which increasingly coincide with their own and those of the newspapers corporate funders.

* * *

It is difficult to reconcile one's views of the GMC hearing with the later determination by Judge Mitting in the Walker-Smith judgment, mainly because in classic legal fashion the judgment concludes that the GMC was a train that had left the tracks and unfortunately ploughed through built up areas without reason, cause or logic. As all jurists do, Judge Mitting had to posit a reason for the train derailment. Why had the Panel in the Fitness to Practice Hearing clearly come to the wrong conclusions; 'they had' he said, 'failed to think things through'. I'm sorry judge, but it doesn't need a training in law to come to that conclusion.

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The Panel, Mitting hinted, wasn't very bright. It is however the function of any judicial practice to ensure that the laity are *guided* in their trek through the maize. Was this jury guided? Of course it was, it was led up the garden path by the foreman of the jury to believe only the prosecution evidence. Is it surprising that Panel members didn't think things through?

It should be incumbent on all judges to make public in some detail the complex factors involved in conspiracies. As it is the GMC, in the Wakefield case at least, a *criminal organisation* can simply mutter about reforming their processes and carrying on doing Big Pharma's dirty washing.

In fact given that this conspiracy was, as all good conspiracies are, played out on the hoof, the GMC did a grand job. When they began framing Dr Andrew Wakefield in 2004 they had a number of problems, foremost amongst them was how it was possible to destroy Wakefield while leaving out the array of medical professionals who worked with him at the Royal Free.⁷⁷

The final choice was to prosecute three doctors. Obviously different parts of the script suited different defendants and at the end of the day the panel were manoeuvred round to letting Simon Murch off, while John Walker-Smith was apparently thrown to the wolves, which were not in evidence, and Dr Andrew Wakefield the central character in the drama was simply burnt; as if at the stake.

Now we have to wonder where the acquittal of Professor Walker Smith leaves Dr Wakefield and we have to consider what other factors come into play if we expect the lucid judgment of Mr Mitting to hold sway in another Appeal.

⁷⁷ Even in relation to the 1998 *Lancet* paper that was to become the focus of the GMC hearing, Brian Deer's libellous articles and Professor Walker-Smith's appeal, there were twelve authors to the paper.

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In a just world, which is not seething and festering with vested commercial interests and scientific egoists, in the light of the acquittal of Professor Walker-Smith and the victimisation of Dr Andrew Wakefield, would now be examined by an independent body.

A police investigation (preferably by officers from a force outside Britain), or a judge-led Commission of Enquiry into the case, its personalities and its connection with the ongoing enquiries into Rupert and James Murdoch's shabby empire, could be carried out. The objective of such an enquiry should be the bringing of criminal charges against those most deeply involved.

A working party of some kind, with parents sitting on it would examine all the cases of suspected adverse reactions to MMR at the time of Wakefield's tenure at the RFH and plans drawn up for special compensation and welfare packages for the families concerned. Charges would be drawn up for further preferably criminal proceedings against those who organised the campaign against him. But don't hold your breath!

Those who support Wakefield and the parents of vaccine damaged children must understand that the 'Wakefield phenomena' is still in a well orchestrated end-game. It seems more than probable that the exculpation of Dr Simon Murch and Professor Walker-Smith was, as it was always meant to be and should be understood not as a sign that Wakefield will now be exonerated or that any of the black hats in this sordid tale will be held publicly responsible for their outrageous crimes.

Anyone with a modicum of common sense knew that when the appeal of Professor John Walker-Smith came before a judge in a court of law, away from the gimcrack, cynical, self aggrandisement of the GMC hearing, there would not be even a rudimentary legal case to be found against him. This was principally because the whole case brought by the GMC had been made up by Brian Deer with the help of Medico-Legal Investigations. The GMC didn't even bother to sculpt Deer's

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pedestrian arguments into anything more sophisticated. Because the GMC supported Deer's absurdities and the way in which they processed the case with a maximum of violence against due process, we have to avoid talking in terms of 'mistakes' or 'confusions'.

Andrew Wakefield was framed and at the moment the frame still holds the picture.

That political and corporate forces in Britain are able to air brush out a whole society of vaccine damaged children and their parents while censoring the academic history of a man who speaks out for them, is quite extraordinary. I spend days now wondering how we might reassert the presence of the parents and their children, making public the crimes of those centrally involved. Were it not for the fact that I know this struggle is for the future of science, justice and the chimera that we call democracy, I would be sorely tempted to move on.

* * *

Knowing as I do now that the battle plan of the pharmaceutical corporations and those that run with them, was to promote the idea that no children suffered from adverse reaction to vaccination, I feel it is important in every circumstance to repeat the parents stories. If one thing stands out in this case, just as much as the anti science views of the pharmaceutical corporations and their minions, it is the cruel heartlessness of the prosecuting actors, whether they be journalists, lawyers or witnesses; a group of people who on the whole had not talked to the parents,

listened to their stories, or observed their children.

I want to do this through three pieces of narrative written by parents for the

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Silenced Witnesses books that I edited and published during the hearing.⁷⁸ I have used the stories of these children because they are similar in the main to the twelve *Lancet* children's cases.

* * *

David⁷⁹

In these early months, David gave good eye contact and interacted with us all. He was a joy to me because we could not have been closer. I was not going to miss one moment of David's first year. I stopped breast-feeding when he was just over 11 months. David was a calm happy baby. He took his first unaided steps at about this time.

At the age of 13 months and 3 weeks on 5th July 1994, I took David to the Doctor's surgery. He was checked over by our GP to see if he was well. His eczema was not considered a problem and the same Health Visitor, who had visited us regularly, administered his MMR, his first and only dose of Merck's MMRII. Job done, we left the surgery.

That following weekend on the 9th July, the family were all present at my parents' house for a garden party. There were many guests and we thought it safer for David to be put in his pram, while I tended the Bar-B-cue. Two things were apparent about David on this day. Firstly, my Aunt saw him struggling to get out of his pram reigns with what she describes as almost manic determination. When he was finally 'released' we saw what we thought was the cause of his upset, DIARRHOEA, in capital letters, bright yellow soft mushy stools.

David's stools were always mushy from that day onwards, with no solid form at all. A short while later the stools were checked for what was described as

⁷⁸ *Silenced Witnesses* first volume and Volume II. Slingshot Publications. London, England, 2008, 2009. Editing and publishing these two books was a very happy circumstance for me. Reading the parents writing about their children was inspiring and I was constantly amazed by their emotional and observational powers.

⁷⁹ Deborah Nash on David, In *The Presence of Strangers*, the first volume of *Silenced Witnesses*.

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'bugs' but nothing was found so it was put down to 'toddler diarrhea'. (It was still given this label when David was 6 years old and the condition continued).

Within a short time, we began to notice the development of strange behaviours that accompanied the diarrhoea. What speech he had gained began to deteriorate. He developed a phobia to his toothbrush and if he caught sight of it he would give a high-pitched scream. In the early days of David's regression, late 1994-1995 I could not believe that my son, who had once done everything so well and so easily suddenly was not able anymore. Babies do not regress for no apparent reason and perhaps that is why it just wasn't covered in the baby books. I later read that it is extremely rare for a young child to lose speech unless they have experienced a serious illness or trauma and David had had nothing, not even a mild temperature in his first year.

In 1995 I had to stop taking him with me to school to collect his sister because he started to 'run away' from me if he was out of his reigns. I had to chase him across the playground through crowds of children and parents on numerous occasions. He also stopped talking to us. The odd words that he did still speak became shorter, Ribena became 'bena'. Instead of telling us what he wanted he would lead us by the hand to whatever he wanted and use my finger to touch the object. He lost the ability to cry and it was replaced by the high-pitched scream.

The diarrhoea continued, approximately 3 times a day. Every time it occurred the bright yellow or pale brown smelly mushy stools would ooze out of his nappy and stain his clothes.

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Josh⁸⁰

⁸⁰ Heather Edwards on Josh in *Suffering in Silence*, Volume II of *Silenced Witnesses*.

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Josh was born on the day he was due, 13th December 1992, after a normal delivery. He weighed 8lb 11oz. The midwives all called him a little bruiser, he was very chunky and looked muscular, he looked gorgeous in his little bodysuit. I decided to breast feed Josh; he took to this and fed very well, on several occasions he put on 1lb a week. After six weeks when my milk did not seem to be satisfying him, I put Josh on the bottle to which he took immediately. Now Josh was sleeping right through the night, we couldn't believe it; at two his brother was still waking up.

Josh developed normally and reached all his milestones as expected, he sat unaided at just over six months, and although he was the slowest to walk at 11 months, I didn't consider that to be late. By 11 months Josh was saying single words such as 'Mamma', 'Dada', 'Ta', 'Gone', 'Juice' and 'Bye'.

Josh had his MMR vaccine at 13 months; on the evening of the vaccination he had a high fever so we gave him Calpol. The following morning he woke with severe diarrhoea, it had leaked all through his baby grow and onto his cot bedding. This was bright yellow and then changed to what I can only describe as being like Oxtail soup. This continued for five days, he then became constipated. Prior to the MMR he had opened his bowel every day, sometimes twice a day.

We began to notice changes in him, my happy contented little boy now seem to always be miserable and upset and would scream and cry for no apparent reason; he no longer liked to be picked up and cuddled. He seemed to not like to be touched, and changing his nappy was a nightmare, anyone would have thought I was hurting him. He became withdrawn.

How could our little boy have changed so quickly within four weeks of having the MMR vaccine? Josh's behaviour was what I can only describe as 'odd', I put this down to his constipation, but soon began to realise that there was more to

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it. He became obsessed with light switches and would climb on chairs and tables to get to them, turning the light on and off. It was the same with door handles and opening and closing doors. He was getting a lot of enjoyment from this repetitive behaviour and clearly had to do it. It was now a real struggle to get any eye contact with him; before he loved posing for the camera, he now ignored any camera that was pointed at him.

It was now six weeks since his MMR vaccine and we had heard no language from him for at least two weeks. The single words he had gained had vanished and he made no attempt to say anymore. At his 18-month assessment concerns with his behaviour, poor interaction, little eye contact and a total loss of speech were noticed. He was still only opening his bowel once a week, I was being told not to worry as all children are different with their toilet habits. Anything I said about MMR was completely ignored; it was as if I hadn't spoken.

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Andrew⁸¹

At eighteen months Andrew received the MMR vaccine and five days afterwards he had what can only be described as a bout of chronic diarrhoea. A few weeks later he was vomiting and had developed a rash on his torso, which the GP suspected was measles; this I found alarming! There followed a vast array of medical complaints, eczema, conjunctivitis and tonsillitis. At this time diarrhoea was part of our

⁸¹ Deborah Heather on her son Andrew, in *Being the Voice of my Child*, Volume II of *Silenced Witnesses*.

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everyday life with up to seven bowel movements a day. A referral was made to a paediatrician who requested tests for thyroid function, a stool test and one for coeliac disease; every test came back normal.

Although the doctors were trying very hard to find the cause of Andrew's bowel condition we were becoming very frustrated. We noticed Andrew was not responding to us when we called his name; unbeknown to us he was showing signs of autism.

Andrew was referred by an audiologist to a consultant paediatrician, who looked over the coming year at Andrew's behaviour. In March of 2000 we were devastated to be told that Andrew was autistic. Our first thought was that the bowel condition came first, autism second, although we did feel that the two things could be connected.

Everyday the nauseating smell of diarrhoea filled our house. I think that over time we began to get used to it. Tests for Andrew followed, one after the other, referrals followed by the problem of getting Andrew into a special educational needs school.