

Even The Shallows Dry Up

The GMC Hearing Monday June 22nd and Tuesday June 23rd.

And it was another of those explanations that sounded good, but not if you were there. Not if you had the evidence of your gut to back you up.

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At mid morning on Tuesday June 23rd, Mr Miller finished his closing speech on behalf of Professor Walker-Smith. It was a bravura performance.

Having dealt with the *Lancet* Children singularly throughout the previous week, on Monday Mr Miller turned his attention to Professor Walker-Smith's involvement in the *Lancet* paper. Generally speaking the prosecution case in relation to the *Lancet* paper - not the individual children cited in it - is that this paper was entirely organised by Dr Wakefield in defence of his supposed view that MMR created autism. The paper was promoted at a 'press briefing' when Dr Wakefield uttered the words that ended his career in England when he suggested that parents might want to use single vaccines until the adverse reactions associated with MMR had been researched at the Royal Free.

In terms of content, the prosecution claimed that the paper was actually a very badly carried out research trial with missing controls. According to Miss Smith the paper was the result of research project 172/96. This view was completely wrong, untrue and a misrepresentation, the *Lancet* paper had always been a case review study that examined the symptoms presented in 12 sequentially referred children and tied to diagnose a specific illness. The defence had said from the very beginning of the GMC trial that the paper not only did not set out to prove anything about MMR but that each child cited in it had already been treated clinically and the case review was, as case reviews are, an overview of the twelve cases and an attempt to describe a novel illness. Clearly in writing up the paper, especially because the cases were self-referred, the authors had to mention the fact that a number of parents had told Dr Wakefield that the onset of first gastrointestinal problems that were followed by ASD like developments had coincided with their child having received the MMR vaccination.

Mr Miller had an easy case to argue on the *Lancet* paper because Professor Walker-Smith, though being one of the paper's authors, had a completely different

and much more conservative view of how results of work at the Royal Free should be publicised and reported. Walker-Smith's difficulties with Dr Wakefield went back to the publication of an article in *Pulse* which had reported a number of things that Dr Wakefield had apparently not discussed with his colleagues. What was not made transparent during this trial was that Dr Wakefield had been fighting his corner with the Department of Health for some time before the *Lancet* paper was published and that he had originally written to David Salisbury, the head of vaccination and immunisation, asking for a meeting which for six years had been refused. While Professor Walker-Smith simply continued his clinical work when he arrived at the Royal Free, Dr Wakefield was already deeply embedded in less tangible battles over government vaccine policy.

These minor differences in approach between Dr Wakefield and Professor Walker-Smith did little to enhance the prosecution case and could easily be admitted to. In fact, as I have said many times in my reports, the fact that the prosecution have tied Walker-Smith and Dr Wakefield so closely together has definitely damaged the prosecution case against Dr Wakefield.

So much more conservative were Professor Walker-Smith's views about science and medicine that he refused to even attend the 'press briefing' saying that he didn't think that this was the way to conduct either clinical practice or the announcements of research results. Unfortunately the most vital information about the press briefing that it was organised by Professor Zuckerman, the academic head of the Royal Free Medical school, and not by Dr Wakefield, did not seem to come across clearly at any point in the hearing.

Mr Miller explained at some length that the authors of the *Lancet* paper made it clear that the paper did not prove or attempt to prove a link between MMR and autism. What the paper did suggest and what the post paper investigation of another 40 cases showed was that there was a link between IBD and behavioural problems. The *Lancet* paper, in fact, made a direct refutation that the cases cited in it proved a relationship between MMR and behavioural difficulties. The GMC and its prosecution, however, proved as obdurate and determined to re-enforce untruths upon the defendants as had the media over the last five years or so.

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At around 10.10 on Monday morning there was a minor incident in the hearing room, which made me laugh almost out-loud. During the closing speeches, members of the panel have had their full boxes of files on the desk between them. The legal assessor sits next to a lay member and just after ten, one whole box of files was dislodged from the table and fell to the floor. Like everyone else in the room, writing or reading, or listening to Mr Miller I didn't see exactly what happened. The legal assessor, however, sits not far from the public gallery and when he stood he was facing me. Being a writer, descriptions spring immediately to mind when you observe such an incident. The Legal Assessor shot out of his chair and for a few second his gaze was transfixed by the files on the floor. There was a look of utter shock and bemusement on his face as if he was an elderly gent in a care home who had suddenly woken to find that he had dropped a burning cigarette on the floor and flames were licking

round his feet. I couldn't discern what was on his mind for he sat down again almost immediately while GMC staff busied themselves with picking up the files.

That afternoon had another incident when at the end of the day the hearing rose early because one of the panel members had toothache. I saw one of the counsel outside the hearing room later, congratulating himself on having diagnosed slight changes in the expression of the tooth aching panel member, 'You get to know them so well', he said almost gleefully. Mr Miller, always the soul of politeness and discretion, apologised before beginning the end of his closing speech the next morning. He hoped, he said that it was not the quality of his presentation that had brought on the toothache. It is untoward incidents such as these which while being trivial in relation to the substance of the hearing add the colour of reality TV to this impossible long, stifling, opaque and sometimes surreal trial.

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Having covered the *Lancet* paper as it affected Professor Walker-Smith, Mr Miller then moved on to deal with his last topic, that of transfer factor, what it was, whether its administration had ethical committee approval, whether it was safe and who had actually given it to the parents of Child 10. The prosecution was in a bit of a fix with this last matter because the father of the child who had received transfer factor was a knowledgeable microbiologist, so in order to make substantial headway the prosecution would have to rope him into the conspiracy. In fact the prosecution failed to call either of the parents to answer any of these questions and chose instead to blame the whole matter on Wakefield and Walker-Smith.

On the morning of Tuesday June 23rd, I found myself wishing that I had a better grasp of semantics. Had I had this, Mr Miller's closing speech would undoubtedly have been even more rewarding. Barristers clearly find it difficult to be brazen and 'out front' with language and tend to practise circumlocution at a very high level. There can, however, be little room for broad misunderstanding in Mr Miller's continual use of many phrases. He had a field day with such language because the case against Professor Walker-Smith was as far away as was possible from any fair reality.

According to Mr Miller, one prosecution accusation was 'verging on the absurd' and there was something 'deeply unsatisfactory' about some of the charges. One of the prosecution accusations was, Mr Miller's thought, a 'bizarre suggestion'. The prosecution had got 'nowhere near proving' that professor Walker-Smith was dishonest as some of the charges stated and many charges were 'extremely difficult to understand' or even 'impossible to understand', in fact in support of the charge that Walker-Smith was dishonest there was 'no evidence at all'.

While I am sure that Mr Miller does understand the political underpinning to this case, I have a great deal of admiration for his robust, even radical use of legal language in trying to tell the panel that the prosecution case against Walker-Smith was without value. It was 'baffling in the extreme', and the defence could not understand how certain accusations 'could possibly be relevant', and were 'surprising

to say the least'. The prosecution pursued a position that 'was completely untenable' and 'impossible to understand'. Mr Miller twice referred to the prosecution as 'patronising' and once as 'highly cynical'.

There was a London barrister of my generation who caused a considerable stir in the nineteen seventies by refusing to abide by the niceties of the bar. On a number of occasions he shouted at judges and spoke about the prosecution in the most intemperate style. On one occasion he even threw his wig on the bench before him while jumping up and down making some declamation. Obviously I used to admire him; anyone who has the strength and capacity to break through the stifling rules of legal convention deserves admiration. Whether or not his clients and cases benefited from his behaviour is another matter.

If one was to ask for a more polite, refined and civilised version of my legal hero, one need look no further than Mr Miller in full flight in defence of Professor Walker-Smith. Mr Miller produced a summation of his 'case against the prosecution' at the end of his closing speech, which he called with marvellous understatement, a 'few closing remarks'; this summation was brilliant. It combined all the existential questions that one is bound to ask about this case while heaping clouds of confusion on the heads of the complainants and prosecutors by asking the simple question, 'Who are they?' and 'What are they doing?'. Of all the genuinely spoken, wasted or useless words heard in the hearing room over 144 days, this vital summary of the case in defence of Professor Walker-Smith was the best short philosophical treatise, the best literature and the best legal text we have heard. In relation to Walker-Smith's case it was principally so acute because it asked the most fundamental question, 'Why?'.

Quite a lot of Mr Miller's summation at the end his closing speech was rhetorical; this is inevitable because few of the questions have clear or proven answers. Here are just a few of Mr Miller's unanswered questions and statements put to the Panel in relation to Professor Walker-Smith:

- Has this 144-day hearing, this monumental investment, been necessary or reasonable?
- What is Professor Walker-Smith's great wickedness?
- What has Professor Walker-Smith done!!!
- No one else besides the GMC complained!
- There is layer upon layer of supposed conspiracies in the prosecution case.
- According to the prosecution all the doctors, the parents, and everyone else were involved in a conspiracy while they knew that there was nothing wrong with the children.
- These stories grow entirely from the prosecution team and however many versions there are, they ask you (the Panel) to believe only the worst view.
- About colonoscopy: Professor Booth was obsessed with saying it should not be used, but he never said why it shouldn't be used. In Professor Walker-Smith's experience it was utterly safe.
- Some tests like lumber puncture were elevated to something deeply sinister.
- The prosecution have suggested that Walker-Smith lied and lied, but what did he have to gain from lying. It would have been wholly out of character.

One was left, after this well written and cleverly presented summation, with the same questions resting heavily on ones mind: why had the pharmaceutical companies, the GMC and the government gone to such extreme lengths? It's a question to which there is only one answer: to cover up the initial one and a half thousand cases of vaccine damage and frighten off parents from reporting further cases.

Mr Miller's finally words to the Panel rang with truth: 'This has been a manufactured case with nothing at its heart, you should reject it for what it is'. I suppose my legal hero might have added to this prosaic sentence just slightly, so that he could shout with emphasise. 'This has been a manufactured case with no evidence and only venom and deceit at its heart, you should reject it for what it is'.

These days it is common when blame is allotted following failed court cases, to blame lawyers. Sometimes this of course is correct while on other occasions it shows the same failing that we are all sometimes prey too, a failure to accept our own weaknesses, while on other occasions it is simply the case that the prosecutors were too powerful and as well rode on the crest of public opinion.

Whatever the outcome of this monumental charade and however much damage the case has done to Professor Walker-Smith and his family in his well earned retirement, at least he will know that he had the best defence and it is unlikely that any lawyer could have done better than Mr Miller.