

# All Over Bar the Shouting.

The GMC hearing Monday 6th July to Thursday July 9th

I haven't thought of, or heard the expression 'all over bar the shouting', since my father used it during my childhood in the North of England fifty odd years ago. It's a strange expression, at first glance almost oxymoronic. What it seems to mean is that the end is here *now* despite the irrelevantly raised voices and kerfuffle that will undoubtedly follow. So this is perhaps the clearest statement of where the General Medical Council (GMC) fitness to practice hearing is now belated. What evidence there was is in and the hearing is over apart from the shouting which will inevitably follow the verdicts on whichever side they fall.

In an odd way, the verdicts are irrelevant, the GMC in league with the government and the pharmaceutical companies have managed quite effectively to drag the defendants through two years of juridical hell that has destroyed their reputation, stifled public discussion about vaccine damage and created a moratorium on research. Nevertheless, were the jury to come back with findings of 'not guilty' on the great majority of the charges it is just possible that the post-hearing 'shouting' could signal the end of the GMC as we know it.

The three closing speeches on behalf of the defendants, came to an end with the finish of Mr Hopkins speech on Wednesday 8th July. Mr Hopkin's presentation made me consider the individual style of all three speeches. Although all three defendants were in the same hearing and subject to the same bogus prosecution, their defences, as presented by counsel, were quite different.

The closing presentation of each counsel echoed not just their own style but their clients requirements. Having listened to the closing speeches, I settled on labels for the counsel, Mr Coonan was *The Pragmatist*, he presented his case on behalf of Dr Wakefield with a bluff almost take-it-or-leave-it pragmatism that reflected Dr Wakefield's knowing acceptance that he had been *well* 'fitted-up' by the State, the Sunday Times and the GMC. Mr Coonan's speech strongly reflected Dr Wakefield's unanswered questions about due process and his honourable desire to square up to, rather than dodge, the prosecution.

The closing speech of Mr Miller remains to my mind the best. That Mr Miller represented the retired and clearly honourable Professor Walker-Smith meant Mr Miller and Ms Lindsay Strugo could run the most morally outraged defence. I think one could happily call Mr Miller, *The Radical* because while presenting Professor Walk-Smith's exceptional position, he kept swinging back like a guerilla fighter to excoriate the prosecution. I liked the speech because it almost satisfied not just ones outrage at what was being done to Professor Walker-Smith but also one's need to hear a clear evidential defence.

I had waited with great expectations for the closing presentation of Mr Hopkins on behalf of Professor Simon Murch simply because one had witnessed his earlier defence presentation and cross examination in all their brilliance. But if I had expected razor sharp criticism of the GMC and the bogus case against Professor

Murch I was to be disappointed. For very good reasons, it occurred to me later, Mr Hopkins took a rather reconciliatory approach to the prosecution. In a sense he let the prosecution off the hook as he argued that it was quite possible to see the evidence against Professor Murch from a different perspective.

I say that Mr Hopkins took this tack 'for good reasons' because when all is said and done, there was no evidence against Professor Murch, basically all he had done during the lead up to the *Lancet* paper, was carry out colonoscopies. He had done his clinical job with the efficiency, care and humanity of one of the most highly regarded colonoscopists in Britain.

At the end of the evidence we had heard three closing speeches which were quite different and in some ways told different stories; they had been written on behalf of three different defendants who found themselves differently attacked by the prosecution.

## Mr Hopkin's Closing Speech

It was quiet clear from the start that Adrian Hopkins' closing speech was going to be reconciliatory, almost one felt as befitted the personality of Professor Murch who has always seemed a quiet and sensitive man who nevertheless managed to be very firm while facing cross-examination. Just as an aside, despite their differences, all three defendants acquitted themselves with real personal strength and transparent honesty under cross examination.

While the other two counsel opened their closing speeches with the almost self-evident matter that there was not enough evidence and what evidence there was had come from the wrong witnesses or was simply quite wrong, Mr Hopkins began by talking about paradigms. When the evidence was looked at from one perspective it presented one picture, one paradigm, when it was viewed from another, it presented another picture.

Mr Hopkins illustrated the theory of two paradigms created from the same evidence with a drawing that when viewed from one perspective was one thing, while turned round represented something else. He followed up this graphic illustration with the historical example of the conflict between the Catholic Church that insisted that the earth was the centre of the universe and those who put forward the dissident view of Galileo Galilei that the earth moved round the sun. Mr Hopkins was talking paradigms big time.

I must admit that from the beginning of Mr Hopkins closing speech my stomach began to fall and it rarely stopped over the next two days. My sense of queasiness was not on behalf of Professor Murch who has been very well served by Mr Hopkins throughout the hearing; I worried for the truth. Both the other barristers had rested their case upon the idea that a singular lack of evidence, the presentation of expert witnesses who were neither expert nor witnesses and the manipulation of the legal process had shaped the prosecution case. Now Mr Hopkins sounded as if he

were saying that the prosecution might have a case but whether it could be proven depended on where you were standing.

Mr Hopkins made it clear from the beginning of his speech that it was the *intention* of the two clinicians Professor Murch and Professor Walker-Smith that was the determining factor. In other words, if Professor Murch was of the opinion that he was carrying out clinical procedures in the best interest of the child's health, then this was how his actions should be perceived. My stomach fell boundlessly during this philosophical entertainment because it seemed to skip over the fact that the prosecution had accused all three defendants of outright dishonesty; of being liars and cheats who had experimented on well children without parental or ethical consent.

Once Mr Hopkins got to see the wood, having stepped through these somewhat disguised philosophical trees, however, he again seemed to be utterly dependable. He made the point forcibly early-on that despite Miss Smith clinging to the threadbare assertion that Professor Murch and the other two defendants were carrying out experiments as part of project 172/96, there were no facts to support this:

- The majority of the *Lancet* children were initially examined before 172/96 was suggested and even after 172/96 was agreed by the ethics committee, none of the *Lancet* children were examined with this project in mind or with the tests indicated in it.
- None of the five doctors investigating the children, hinted at any time that these investigations were carried out as a research project.
- Clinical medicine and research co-exist as good practice and research might at some stage be a by-product of clinical medicine.

One of the most important points that Mr Hopkins made was the fundamental legal point that the other counsel had each made and which is always made by defence counsel in criminal trials; Professor Murch did not have to prove that he *was innocent*, the burden of proof was with the prosecution who had to prove beyond reasonable doubt that he was guilty. Fortunately for all three defendants they were charged before new guidelines on the standard of proof came into being in 2008 when the GMC introduced the lesser standard of proof rule used in civil cases, even where there are charges of dishonesty involved.

Confronted with the detail of Miss Smith's extremely murky case, Mr Hopkins, philosophy aside, was forced to approach some of the same problems mentioned by the previous counsel.

- The doctors on trial worked in a large hospital and they sought advice and help from many colleagues. There were pre-admission discussions about all the clinical tests that were carried out.
- There were many procedural problems, great gaps in the evidence, no nursing documents produced for example, no nursing witnesses.
- The hearing had been impossibly drawn out so that the panel will probably find it very difficult to come to a conclusion.
- The manner and demeanour of the defendants when giving evidence was now lost to time.

In this early list of prosecution misdemeanours, Mr Hopkins again picked out Professor Booth as the most hopeless witness. So often has Professor Booth's entitlement as an expert been questioned that Miss Smith must have been quietly swearing under her breath whenever she heard his name. Later in his closing speech, Mr Hopkins was to say that Professor Booth's was a 'lone voice', expressing an 'extreme opinion'.

At the end of his introduction, Mr Hopkins returned to his idea of a drawing with dual perspectives and for those who had not been fortunate enough to have access to the drawing he told everyone that it was, on the one hand a duck and when rotated a rabbit's head. Mr Hopkins told the panel that each doctor and defendant should be considered separately having different motivations and different intentions.

With his introduction over, Mr Hopkins went on to outline 14 sections in his closing speech. Rather than base his description of the evidence squarely as rebuttal to the prosecution, he introduced each section by going into the medical history of the subject, as it was told through the evidence, in fact he rarely challenged the prosecution evidence except in relation to their misconception that the doctors were doing research, rather consistently re-enforced Professor Murch's defence position.

Where this approach was most effective, was for instance in tracing the international and local history of colonoscopy. His narrative about colonoscopy, the advent and development of tissue sample analysis throughout the closing speech was excellent. The noticeable difference between Mr Hopkins style and that of Mr Miller and Mr Coonan, gave the lay observer much food for thought. In fact so 'conservative', so detailed and so academic was Mr Hopkins approach that I found his closing speech more like an entertaining lecture than the usual legal summary of a defence case.

Mr Hopkins closing speech in all its sections covered subjects such as:

- The links between clinical work and research work.
- The Royal College of Physicians guidelines on research.
- The essential nature of colonoscopy in cases of inflammatory bowel disease.
- The specialised nature and the high standard of teaching and practicing colonoscopy at Barts and then at the Royal Free.
- The absolutely accepted use of colonoscopy in Europe in cases of suspected IBD.
- When ethical committee approval was and was not needed in 'research' aligned to clinical work.
- Professor Walker-Smith's reputation for enormous integrity, this was explained because the children's cases were recommended and passed to Professor Murch by Professor Walker-Smith for colonoscopy.
- The exact nature of the illnesses suffered by the children.
- The exploration of the new syndrome and a multi-disciplinary approach to complex presentations.
- The gathering of lots of information and the search for commonality in the presentation and diagnostic strategy.
- The need for multiple tests most of them not included in 172/96.

- The difficulty in diagnosing immune related problems, especially mitochondrial disorders for which a number of these children were tested as early as 1996.
- An analysis of the presentation and the clinical condition of each of the children cited in the *Lancet* paper.

Although Mr Hopkins presentation was the shortest of the closing speeches, it was by far the most detailed, there were no sweeping statements, no broad brush strokes, only a patently honest and detailed case of a life at the cutting edge of modern medicine.

Mr Hopkins ended his closing speech as he had begun it with a plea to the panel to always consider what Professor Murch perceived himself doing at this time. If Professor Murch considered that he was doing clinical work, then that should be seen as the fact of the matter.

\* \* \*

Again and again throughout Mr Hopkins closing speech I found myself pondering the difference between a quasi legal enquiry like this one and a police enquiry. In a police case there are different grades of evidence, with forensic evidence and on-the-spot eye witness testimony coming at the top of the list. Just beneath are the expert witnesses, these experts, however, give evidence about material forensic matters or sometimes the psychology of the defendant whom they have examined. Beneath these witnesses is a great army of individuals who add little pointillist spots to the picture; in the main these last witnesses give circumstantial or contextual evidence.

In this case, there were neither of the first two categories of evidence, none of the children, who it has been suggested were not ill but the victims of these doctors unethical behaviour, had been injured or compromised by the defendants in any way, so there could be no forensic evidence. Staggeringly, the expert witnesses called by the prosecution had not actually examined the children cited in the *Lancet* paper, an approach that would have been necessary in any other kind of civil case, nor had they spoken to the children's parents. In fact these experts had not even studied full medical case notes, only the broken narrative with which the prosecution had provided them.

The deep dishonesty of this prosecution is the real crime that we have witnessed during this hearing. This dishonesty denied the children any representation and because of this denied the defendants themselves access to evidence of their innocence. The idea that the hearing examined in detail the cases of the children cited in the *Lancet* paper is completely fallacious. If the prosecution had been really concerned to prove that that the children were not ill and they had presented a true bill they would have had no qualms about bringing the parents to the hearing, even bringing friends and relations or hospital staff outraged that these well children were taking up beds for Dr Wakefield's private research to fuel his battle with the drug companies.

The fact is, the children were seriously ill and the prosecution case has been structured in such a way as to keep from the hearing any evidence, except that given by the three defendants, that would have attested to this. The prosecution turned the case from one which would have been forced to review the relationship between MMR and IBD and then regressive behavioural disorders, into one that pretended to look at the moral and ethical standards of these three exceptional doctors.

As we reached the end of the evidence, I was reminded of the Soviet show trials that took place first in the 1920s and 1930s, but continued in some cases throughout the 1950s, of the trials that took place in Nazi Germany after Hitler assumed power and the hearings that took place in the US during the time of The House Un-American Activities Committee. All these spectacles had a number of things in common, they were most often trials by innuendo, by professional testimony that usually lacked real or material evidence.

\* \* \*

Monday July 6th was probably the noisiest and most anarchic day of the hearing throughout its two years. The mood inside the building seemed to echo the odd blustery feel of the weather that outside swung from strong sun to torrential rain. On Monday early in the hearing there was a loud crash as the heavy hanging side of one of the defence tables collapsed. I don't know whether I was the only one into whose mind flew the idea of poltergeist but a quick glance down the room at Miss Smith reassured me that whatever the hierarchy of unearthly powers, poltergeist wouldn't stand a chance.

Latter in the day there was a sudden flurry of noises such as there has not previously been in the hearing. At 3.30, an alarm sounded on Mr Miller's lap-top, a sudden insistent beep. He moved quickly to turn it off and in doing so his returning arm knocked his file box to the floor. The beeps from the defence table came again twenty minutes later, closely followed by Mrs Murch's mobile phone in the public gallery; a veritable cacophony.

Scratch anyone in the hearing who is even vaguely on the defence side and as night follows day, beneath the skin there is terrible anger, about it's cost now estimated between £5m and £10M and it's length. On cost it was mentioned to me that the *average* hourly rate for the lawyers was into the hundreds of pounds, one wonders what the leading counsel have earned over the period. On length, a knowledgeable professional to whom I spoke suggested that the whole hearing could have been finished in a few weeks.

\* \* \*

On Tuesday July 7th. Mr Hopkins had finished his closing speech, with a few new sections and then some summary conclusions. In giving his conclusions, Mr Hopkins

began at the beginning and ended at the end, although he failed to mention vaccination, he said simple things that clearly needed stating.

- There were children in the community with real medical problems.
- These children predominantly with IBD were arriving at the Royal Free Hospital.
- Dr Wakefield formulated a research view of their illness.
- Dr Walker-Smith explored the illness clinically and diagnostically.
- Dr Walker-Smith saw the children as patients and from his experience suggested colonoscopy.
- Dr Murch carried out the colonoscopies.
- At no point in this continuum did Dr Murch consider that he was carrying out research, it was all about diagnosis.

Tuesday lasted from 9.30 until Mr Hopkins finished his closing speech at 15.30, when he said that he would like to 'draw stumps for the day', for US readers, this is a cricketing expression an allusion to pulling up the wickets and closing play for the day. I noticed the day before that Mr Hopkins was seemingly something of a populist as well as a rigorous intellectual, at 16.00 hours he said he would like to 'down tools', an expression which I don't think means exactly what Mr Hopkins wanted to mean. Most usually the expression is used when workers strike rather than finish work. I wondered then, how many there were beside myself that wished the defence had 'downed tools', in protest long ago.

Wednesday's hearing we were told would begin at 13.00, and would consist of the last drops of Mr Murch's case, such as the re-reading of the amended charges against Mr Murch, followed by the Legal assessors statement of advice to the panel. In the event the sitting continued with 'housekeeping' the charges for an hour before the legal assessor made clear that he would give his address at 10.30 on the following morning.

\* \* \*

On Thursday morning, true to bad time keeping practices over two years the session already set back to 10.30 actually began at 11.15. There was a flurry of discussion about the amended charges and it was found that the FINAL edition of the charges, might not be final because there was not the time that morning to check them completely. The Chairman was hopeful of agreeing them there and then, but everyone suspected that they would need considerable scrutiny and so we moved on to the Legal Assessor, with the promise that amended charges would be emailed to the GMC some time in the near future.

The Legal Assessor, with the role of a judge advising a jury on the evidence, listed the points he had to make under twenty odd headings, he was straightforward, clear, comprehensive and very fair to the defence in his advice to the Panel on how they might view and decide upon the evidence. He introduced his advice citing the role of the Panel, if they felt the charges were proven, he said, they would also have to decide whether they were of sufficient gravity to lead to the defendant being struck off.

He warned Panelists that they did not have to consider whether there was any link between MMR and autism. On the burden of proof he made it clear that the rules used in the hearing demanded the same level of proof as needed in a criminal law; the prosecution had to prove their case 'beyond reasonable doubt'. He drew the attention of Panel members to European human rights legislation which made specific mention of the length of trials and legal proceedings. The length of the hearing and the effect of this on the Panels consideration of the evidence, he said, had to be considered.

A good part of the assessors advice was on relatively complex issues of how one defendant's evidence might affect another defendant and such things as how to evaluate the evidence of an expert witness. He explained in detail how panelists were to understand charges of dishonesty and how scrupulously such charges must be proved. He also told the Panel how they might evaluate positive evidence of integrity given on behalf of the defendants.

I found only one thing slightly incongruous in the legal assessors speech and that was his reference to the media, of course it was right that he should warn the panel about being influenced by the misleading, provocative and partisan material about the hearing reported in the media; that they should ignore anything other than the evidence. However, I was a little unsure of his claims that there had been 'much reporting' of this kind. I would dearly like to know which newspapers the legal assessor takes and what television programmes he watches. Of course it could well be a case of 'even a little is too much' and he might have been referring to my own meagre efforts to publicise this lack-lustre event. I was reminded of the fact that he had on a previous occasion accused me of writing misleading, provocative and partisan material while somehow affecting amnesia about Brian Deer's use of the pages of the Sunday Times to accuse Dr Wakefield of 'fixing' research results.

\* \* \*

It might be said that the hearing is now over, almost exactly two years after it began; all over bar the shouting. Although all the evidence has been given and all the arguments explored, the Panel is expected to deliberate for around five months before returning their verdicts on those charges that are still disputed. For some of the Panel members, the end of this, important and singular hearing might herald the beginning of another - if it's December it must be Wakefield! I overheard two panel members asking about another gig in Manchester in the near future. I do hope all the Panel members can keep the evidence of different tribunals clearly in their minds.

If the findings of the Panel fall heavily against any of the defendants when they are declared in November or December, yet another round of the hearing will begin in 2010 when the panel decided whether or not specific defendants should be struck off the medical register. The last question that remains in my mind now is whether the GMC can allow itself to find in favour of the defendants and be shown-up as having organised the biggest and most expensive legal and political blunder in the history of British professional medicine? I personally think not, but then I'm a tad cynical and somewhat conspiratorial in my view of such matters; all we can really do now is cross our fingers and pray.

On a more personal note, the realisation that the majority of the hearing was now over, washed over me as everyone got up to leave the hearing room. I had travelled to this dehumanising glass building in the Euston Road on and off for two years and as I went to the lift I felt an odd kind of emptiness creeping over me. It was as if a TV soap opera that I had been immersed in was suddenly ending and for a moment I felt bereft of a life.

I had been prepared for this emotional disorientation by two incidents earlier that morning. On my way into the hearing, I passed Mr Miller going to the shops tieless and in his shirt sleeves, a state of legal undress I had not previously observed, he looked to all intents and purposes as if he was out for a jog. Then, again early, sitting waiting for the hearing to begin, Andrea Lindsay Strugo Mr Miller's junior entered the third floor carrying a crash helmet and wearing jeans and a punkish T - Shirt. It began to come home to me then, that like the characters in Pirandello's 'Six Characters in Search of an Author', beyond the drama of the hearing rooms, these characters have independent real lives. I suppose that between now and December I will have to begin resurrecting my own.