Trying the Court, Pt. 2: Wakefield *contra omnium*

By David N. Brown

After some signs of slacking, it appears that Andrew Wakefield and co. are trying to get their propaganda machine back in gear, as evidenced by a recent interview with AoA. Among other things, Wakefield stated, "'"In addition, I will now speak publicly to refute the findings that have been made against me. I know my necessary silence on these issues has troubled many parents in both the U.K. and the U.S. But I'm ready now to get back on the front foot and publicly contest the false accusations that have been made against me, my colleagues, and indirectly The Lancet children. It's been long overdue."

This would appear to be a reference to the bizarre complaint publicized at the time of the verdict against him, alleging "false testimony" by key witnesses. I have previously addressed some of these complaints, particularly the false and libelous charges against Michael Rutter. shown that the complaint against one witness, Michael Rutter. (See "Condemning the Innocent to defend the Guilty", "Trying the Court.") But, I had not yet gotten around to debunking all of the complaints, a work I had started and then let fall by the wayside. Here is the complete piece:

The GMC would likely not have convened this hearing were it not for the false testimony, and would have quickly dismissed the misguided and unfounded allegations of Complainant Brian Deer. (p. 2)

This bizarre statement is a good indicator that a) this complaint will never be acted upon by the GMC and b) that it is intended primarily as a publicity stunt for Wakefield's followers. This claim is supported by no evidence, and has been strongly and repeatedly denied by the GMC. The most recent and sternest statement from the GMC succinctly reports, "(T)here was no complainant in this case." Deer, while freely accepting credit for inspiring the GMC investigation, also denies taking any formal action against Wakefield. He has opined, "Wakefield and his publicist made the allegation that I was the complainant for two reasons: (a) to argue that I should not be allowed to continue to investigate him (as a gag); (b) to argue that, since the case was that of a mere journalist, it had no merit. " Meanwhile, variations of the claim have degenerated into "newspeak", as in last year's PCC complaint: "based upon forensic analysis of all the available documentary evidence, one is entitled to believe that Mr. Deer was the original and only substantive complainant to the GMC, whether or not he was the 'Complainant' who instructed the legal prosecution of the case…" As "Sullivan" of LBRB has summarized, "OK, Brian Deer was the complainant whether or not he was the complainant."

What is of most importance is that Wakefield and associates know full well that the GMC has already rejected this allegation. Therefore, they cannot seriously expect it to sway the GMC, unless it is toward dismissing the complaint in its entirety at face value! But, that would not matter if the only purpose of the "complaint" is to maintain the façade that Wakefield can defend himself, and to manufacture the occasion to circulate disinformation.

"*Drs. Horton, Zuckerman, Peg, and Salisbury gave false testimony as part of a wide-ranging campaign to discredit the work of Dr. Andrew Wakefield, Professor Simon Murch, and Professor John Walker-Smith and deter others with respect to an association between autism and inflammatory bowel disease and a potential association between autism and MMR, bowel disease, and regressive autism.*"

This one long-winded statement destroys any remote possibility of the complaint being taken seriously. It is going out on a limb to accuse a witness of outright, knowing deception. It is still more bold and risky to accuse witnesses of collaborating to give false testimony. But to charge them with being part of a "wide-ranging campaign to discredit" the witnesses is to take a flying leap into the realm of conspiracy theories. It is also, for the purposes of appealing the GMC ruling(s), irrelevant. That only goes to further demonstrate that there is no serious hope that the "complaint" will be taken seriously.

"*There is at present no `cure' for autism, yet recent evidence of recovery (and even loss of diagnosis) has given new hope to affected families.*
… The Vaccine Court and the U.S. Government have concluded that vaccines can cause autism… Despite the fact that a trial date had been fixed for April, 2004, legal aid funding was withdrawn in August, 2003…"
(pg. 4, 5, 9, 11)
These are given as representative examples of an extended "background" on pages 4-12, clearly designed mainly to defend the possibility that vaccines caused autism even though the GMC expressly declined to rule or comment on that question. This is further evidence that this is NOT intended as a serious and legitimate effort to reverse the ruling(s) against Wakefield. These already-irrelevant claims show a marked tendency for bizarre denials of reality. Claims of "recovery" are consistently rejected when evaluated independent of those, including Wakefield himself, who perform the "treatments". The US Vaccine Court has concluded only that in TWO cases, a vaccine MIGHT HAVE CONTRIBUTED to the development of symptoms LIKE autism. And as for the claim that a trial was pending in 2004, which strikingly represents the "stab in the back" myth that the Nazis propagated about WWI, the LSC held unequivocally that if plaintiffs in the case did go to trial, they would lose. A statement by Clare Dodgson was surprisingly gentle: "(T)his litigation is very unlikely to prove their suspicions. It would be wrong to raise their hopes unreasonably by proceeding with this litigation"

"*Dr. Horton's claim six years after publication of the Lancet Case Series that it would never have been published had he known of Dr. Wakefield's participation in MMR litigation was false because he was twice informed of Dr. Wakefield's relationship with MMR litigation a year before and two days after publication. Horton, not Dr. Wakefield, decided that the disclosure of a "perceived" conflict (where no actual conflict existed) was simply not necessary as part of the published Case Series.*"

This is clearly intended to dispute one of the GMC's rulings, that Wakefield failed to make a COI disclosure to the Lancet, by disputing Horton's testimony to that effect. The

interesting and ironic thing about this is that if any witness's testimony deserves to be viewed with skepticism, it is Horton's. By the least favorable lights, he bears about as much responsibility as Wakefield himself for the Lancet fiasco, and it would be easy to believe that what he has said (and may genuinely believe) stops well short of the truth. But, rather than plausibly spreading blame around, Wakefield tries altogether too hard to shift ALL blame onto Horton, and to accuse Horton of outright, knowing and purposeful deception. In the process, he makes it that much easier to give Horton the benefit of a doubt.

Wakefield's alleged disclosures are unsurprisingly underwhelming. His main evidence of "disclosure" is a letter from Dawbarns Solicitors to the Lancet, stating in part: "We are working with Dr. Andrew Wakefield of the Royal Free Hospital London. He is investigating this condition." This will suffice as evidence that Horton had *some knowledge* of Wakefield's connections with litigation. But, this was not a disclosure by Wakefield himself, and it stops far short of an open admission that the law firm funded his research. As for whatever disclosures were made after publication, they will obviously be of no real help to Wakefield. (Indeed, it resembles one of my favorite gags from The Simpsons: "The preceding program contained scenes of extreme violence and should not have been viewed by young children.")

It is of further interest that, for all his protests that his conflict of interest was disclosed, Wakefield makes a point of denying that he was obliged to make a disclosure. Ex. "None of the LAB funding was used for the clinical observations reported in the Lancet Case Series; hence no disclosure was required under the then-applicable Lancet guidelines." (19) This gives his protests the feel of plan and contingency plan, which ironically makes his defense much less convincing than if he stuck with the straightforward counterclaim that Horton knew more than he admitted. That brings us to the bizarre contention that somehow Horton permitted Wakefield not to disclose. There is simply no corresponding statement from Horton, documented or alleged, to justify this fantastic self-justification, unless it is Wakefield's above-mentioned "interpretation" of Lancet policy.

"*Horton's de facto "gag" rule censoring publication of science that calls vaccine safety into question obstructs justice by depriving the courts of the evidence they would need to find a vaccine-caused injury and is an unprofessional and misguided attack on the ethics of scientists and lawyers who would work together to seek justice for injured children."*

This further complaint is irrelevant to any aspect of the GMC ruling. The GMC ruled on Wakefield's conduct, not Horton's, and it certainly did not rule on events after the Lancet paper was published. There are also procedural problems. A charge of "de facto" would obviously be very hard to prove to a standard that would satisfy a court. On an even more fundamental level, there is no obvious reason why Horton's conduct as an *editor* would fall under GMC jurisdiction. If there is a valid complaint here, the most appropriate venue would be something like the UK PCC.

Then there is the more fundamental question: *How could Horton, in choosing not to publish research, have prevented said research from being used in court?* Those whose

papers were rejected could always go to another journal, and even if the work went unpublished there is no apparent reason why they could not submit their research directly to a court as "expert testimony". This brings us to an underlying conundrum: Wakefield and the attorneys who hired him had no reason to go through the lengthy and risky process of submitting his work in the form of a scientific paper. Ironically, if he had simply performed the tests for his clients, and submitted the results in the form of a legal document, there would never have been a basis for complaint (other than his being wrong). It would appear that Wakefield abused the publishing process in an attempt to escape the critical reception in court which paid "expert" testimony readily invites. I would further suggest that, ultimately, Wakefield and some of the others involved didn't even do this to improve their chances of winning in court, but rather sought to use the funding provided by the lawsuit to undermine confidence in MMR.

"*Dr. Zuckerman's claim that he was unaware that vaccines would be discussed at a press conference accompanying publication was false because he had specifically instructed Wakefield to urge continued use of the monovalent measles vaccine as a safer alternative to MMR."*
This represents the most convoluted of Wakefield's allegations, and there is in the context of the ruling no obvious reason for it to be brought up. As far as I can determine, none of the charges considered by the GMC against Wakefield involve his conduct at the press conference. It is obviously a stretch to suggest that the GMC was swayed by testimony about an incident it never ruled upon.

The key statement from Zuckerman which is cited by Wakefield is as follows: "It is vital, in your own interest and that of children, that you state clearly your support for monovalent vaccination." (48) Zuckerman, however, is acknowledged as stating, "I could not understand the logic behind recommending that the measles vaccine was to be given separately if this was the vaccine that he thought was causing the damage… I did not know that Dr. Wakefield would recommend the use of monovalent vaccines." (50) It is possible, indeed quite easy, to harmonize the accounts. Zuckerman could have intended his words as a "general" recommendation, without desiring that it be acted upon at the press conference. Wakefield could have misunderstood the same words as a specific instruction about what to say at the conference. This solution would suit the purposes of Wakefield's defense, without calling Zuckerman's honesty or his own into question. Apparently, such constructive solutions do not interest Wakefield.

It is very revealing that discussion of the point under dispute (45-53) is preceded by a passage of approximately equal length (37-45) accusing Zuckerman of "efforts to block vaccine safety research". I have not tried to do anything more than browse this segment of the complaint. I believe I can say that, while much of it appears relevant to the issues considered by the GMC (including repeated references to opinions on the use of LAB funding), the tone conveys a sense of personal hostility toward Zuckerman, which might well be reciprocated. The sensible thing, under the circumstances, would be to approach both with caution.

"Dr. Pegg's claim that the research aspects of Lancet Case Series were unethical was false because his own Ethics Committee had approved the collection of tissue samples well before the first child was ever examined."

This simply ignores the nature of the charges. Nothing in the GMC's ruling can be construed as saying that Wakefield was not authorized to perform this and other tests. What the Council ruled, repeatedly, was that for many of the individual subjects, the tests were not clinically indicated. The only question that might be raised is whether Pegg, at the earliest stages, testified to "facts" and charges not accepted by the GMC. The following can be considered an admission by Wakefield et al to the contrary: "Pegg conceded that children investigated *according to clinical need*… did not need to be covered by an Ethics Committee approval." (59) Therefore, Wakefield's charge against Pegg is groundless.

"*Dr. Salisbury's claim that MMR has an "exemplary" record of safety is unfounded and misleading. He has misused his official position by attempting to discredit and silence Dr. Wakefield and others who have a moral and ethical duty, and a right of free speech, to criticize the safety of MMR.*

At this point, the "complaint" nosedives into absurdity, paranoia and outright hypocrisy. The former is striking as an example of the last: "These statements are a misuse of Salisbury's official position. Wakefield had a moral and ethical duty to bring to the attention of the scientific/medical community and the public, as well as a right to speak freely and without government retribution, his concerns over the safety of MMR." This effectively supposes that Wakefield's right to speak against MMR trumped Salisbury's right to defend it.

This might be forgiven if Wakefield offered a specific example where Salisbury was in error, or arguably so. The closest Wakefield comes is the following: "There are no studies demonstrating the safety of MMR, or of the childhood schedule, by measuring both acute and chronic adverse reactions in vaccinated versus unvaccinated populations, animal or human. Salisbury thus cannot possibly know the extent of chronic vaccine- or MMR-caused disease and has no basis for a claim of an `exemplary' safety record." This, of course, is an obvious and unoriginal variation on the anti-vax "talking point" of the need for "vaccinated vs. unvaccinated" studies. (See "Stupid Like a Fox.") Far from objectively substantiating criticism, Wakefield only offers a concrete demonstration of his intent to use his opinion to prevent others from expressing theirs. In this case, the significance of a "vax-unvax" study is itself *(at best!)* a matter of opinion. What Wakefield seeks to do is use his disagreement with Salisbury on this point to deny the right of Salisbury to make *any other* statement about vaccine safety. This is, to use a line from CS Lewis's The Great Divorce, like making a dog in a manger

"*He has also concealed material information relating to the safety of MMR from the public."*
This is based solely on Salisbury allegedly failing to mention or accurately describe the infamous "Urabe" version of MMR. Unfortunately (for Wakefield), while specific documents are named, virtually nothing is offered in the way of useful evidence. The only effort to substantiate a specific charge is the following: "He also failed to disclose indemnity given to MMR manufacturers and falsely denied that such immunity was given… `As has been stated on innumerable occasions, there was no immunity/indemnity given to MMR manufacturers.'" On this point, Wakefield can be refuted from other "anti-vax" sources. As reported by whale.to, months after the September 2006 email Wakefield cites, Salisbury made the following correction: ""We

have found that North East Thames District Health Authority (that no longer exists) agreed with at least one MMR vaccine manufacturer to indemnify them against outcomes that were consequences of failure by We can find no further evidence of any other indemnification with regard to MMR vaccine made by North East Thames District Health Authority." In other words, the only example offered of a "false" statement is one which Salisbury admitted to be in error.

In summary:

1. The complaint presents as key "evidence" an allegation about Brian Deer that has been denied by the GMC.
2. Only the first claim, against Horton regarding COI disclosure, is well-substantiated and clearly relevant to the GMC verdict.
3. The claims against Pegg and Rutter and the first against Salisbury are provably false.
4. The claim against Zuckerman and the second claims against Horton and Salisbury are not substantiated by the evidence presented.
5. Claims against Salisbury and Zuckerman and the second against Horton are irrelevant to the GMC's findings against Wakefield.

Thus, Wakefield's complaint can be dispensed with, and should be as soon as possible. Then Mr. Wakefield can get back to more important matters, like fighting off lawsuits from the men he has defamed.

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