

## Expert Commentary Series

# Andrew Wakefield Has Never Been “Exonerated”: Why Justice Mitting’s Decision in the Professor John Walker-Smith Case Does Not Apply to Wakefield

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**Note. For those interested in investigating the complete story, including documentation, see the following (all accessed on June 28, 2016):**

Brian Deer: “Wakefield & MMR: how a worldwide health scare was launched from London” at: <http://briandeer.com/mmr/wakefield-archive.htm> )

Brian Deer: the Lancet scandal at: <http://briandeer.com/mmr-lancet.htm>

Brian Deer: the Wakefield factor at: <http://briandeer.com/wakefield-deer.htm>

Brian Deer: Solved - the riddle of MMR at: <http://briandeer.com/solved/solved.htm>

Brian Deer: Secret of the MMR scare at: <http://briandeer.com/solved/bmj-secrets-series.htm>

Brian Deer: [Summary of Investigation] Exposed: Andrew Wakefield and the MMR-autism fraud at: <http://briandeer.com/mmr/lancet-summary.htm>

Unfortunately, many people will read what antivaccinationists write about Brian Deer and what he wrote without taking the time and effort to actually investigate for themselves.

**For those interested, through the UK Freedom of Information Act, the complete transcript of the UK General Medical’s Fitness to Practice Panel’s three year hearing has been made available on the Internet in two versions, one in day order and one grouped by type and name of witness, allowing one to carry out specific searches (Accessed June 28, 2016) at:**

**General Medical Council: Transcripts: Grouped at:**  
<http://sheldon101blog.blogspot.com/p/grouped-wakefield-transcripts.html>

**General Medical Council: Transcripts: Day Order at:**  
<http://sheldon101blog.blogspot.com/p/day-order-wakefield-transcripts.html>  
<https://drive.google.com/file/d/0B9Ek8hRNlhrbNTk4MWI5YjktMDU3MS00MWU1LWFjZjQtZjA3MzI0ZDM0NTBl/view?hl=en&pref=2&pli=1>

## Introduction

On March 7, 2012, Mr. Justice Mitting of the UK's High Court of Justice published the Court's decision in the Professor John Walker-Smith case appealing the General Medical Council's revocation of his medical license (Mitting, 2012). It did not take long for anti-vaccination websites to post articles referring to the Court's decision, emphasizing that Walker-Smith and, by implication, Wakefield, had been exonerated.

This paper will show that Justice Mitting's decision in no way exonerated Wakefield, that even with regard to John Walker-Smith, the decision was based on a procedural error, not factual innocence. In addition, despite what antivaccinationists have written, Justice Mitting's decision also made clear that he considered the research showing no relationship between the MMR vaccine and autism to be established science.

## Background

Andrew Wakefield is a prominent figure among those who fear that vaccines cause more harm than good. When the UK's General Medical Council (GMC) revoked his license, his supporters saw a political move to silence his criticism of vaccine safety and his claims that vaccines, the MMR in particular, played a causal role in the rise of autism and other childhood disabilities. The GMC's hearings and action, along with articles by investigative journalist Brian Deer, presented Wakefield with the opportunity to become a martyr.

On February 28, 1998, Wakefield published an article in the *Lancet* describing 12 children "with a history of a pervasive developmental disorder with loss of acquired skills and intestinal symptoms. . . . Onset of behavioral symptoms was associated by the parents with measles, mumps, and rubella vaccination in eight of the 12 children" (Wakefield, 1998). The paper itself did not claim that the MMR vaccine caused the symptoms, but the inclusion of the parent's attributions raised such a possibility. Previous and subsequent statements and articles by Wakefield indicated he believed a causal link was highly probable (20/20 Interview, 1998; Pulse, 1997; The Royal Free Hospital School of Medicine Press Release, 1998; Wakefield, 2000; Wakefield, 2002). Vaccination rates plummeted in the UK from 92% in 1996/97 to 80% in 2003/2004 (Public Health England, 2014ab), and outbreaks of vaccine-preventable diseases followed (Deer, 2006; Jansen, 2003; Ramsay, 2013).

On February 22, 2004, the first report in a series by investigative journalist Brian Deer was published in *The London Sunday Times*, revealing numerous acts of dishonest and unethical medical practices by Wakefield related to the published article (Deer, 2004). Mr. Deer's articles led 10 of the 13 co-authors to publicly retract the part of *the Lancet* article associating the MMR vaccine with autism (Murch, 2004). Wakefield's original article was retracted by *the Lancet* in February 2010 (The Editors of The Lancet, 2010).

Wakefield, as well as co-authors on the 1998 *Lancet* article, Professors Simon Murch and John Walker-Smith, were investigated by a UK General Medical Council Fitness to Practise Panel (the Panel) in hearings that lasted over 2 ½ years (July 2007 – May 2010) (General Medical Council,

2010a). On January 28, 2010, the Panel found that Dr. Wakefield's behavior involved "serious professional misconduct." On May 24, 2010, the Panel reported:

On behalf of Dr. Wakefield, no evidence has been adduced and no arguments or pleas in mitigation have been addressed to the Panel . . . . In fact Mr. Coonan [Dr. Wakefield's lawyer] specifically submitted: ".....we call no evidence and we make no substantive submissions on behalf of Dr. Wakefield at this stage." "... I am instructed to make no further observations in this case (General Medical Council, 2010b)."

Accordingly, the Panel has determined that Dr. Wakefield's name should be erased from the medical register. The effect of the foregoing direction is that, unless Dr. Wakefield exercises his right of appeal, his name will be erased from the Medical Register (ibid).

Professor John Walker-Smith's medical license was also revoked by the GMC (General Medical Council, 2014c). The GMC did not find sufficient grounds for revoking Professor Simon Murch's medical license (General Medical Council, 2014d).

Both Wakefield and Walker-Smith appealed the decision to England and Wales High Court (Administrative Court); but Wakefield subsequently abandoned his appeal, claiming lack of funds. Martin Walker gives a different version:

"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, this meant that his medical insurance company would not fund an appeal." (Walker, 2012, p.49)

Though I usually prefer not to speculate, I believe it possible that Wakefield instituted the appeal to position himself as a martyr fighting the good fight and withdrew before the decision could be reached. Wakefield acted in similar ways in other cases, specifically his lawsuit against Channel 4 and Brian Deer a few years earlier, so this possibility does seem to have validity (Dyer, 2007; Press Gazette, 2007).

### **Justice Mitting's Decision and Antivaccinationist's Reactions**

On March 7, 2012, Mr. Justice Mitting of the UK's High Court of Justice published the Court's decision in the Professor John Walker-Smith case appealing the General Medical Council's revocation of his medical license (Mitting, 2012). It did not take long for anti-vaccination websites to post articles referring to the Court's decision, emphasizing that Walker-Smith and, by implication, Wakefield, had been exonerated. One example found on the *Age of Autism* website reads:

These allegations, which were originally made against Prof Walker-Smith (as well as Dr. Andrew Wakefield and Prof Simon Murch) by journalist Brian Deer and Liberal-Democrat politician Evan Harris in the Sunday Times in 2004, have now been shown to be completely unfounded.

This judgment not only vindicates Prof Walker-Smith but also families seeking treatment for autistic children, and now adults, with clinical issues - particularly gut related - who have been denied appropriate investigation and treatment for more than a decade in British hospitals as a consequence of the witch-hunt against Prof Walker-Smith and colleagues, conducted by both the GMC and parts of the media.

We note that the charges against Prof Walker-Smith - which have now been proven false - were integral to the case brought against Andrew Wakefield. We believe that many people in the medical profession and in journalism have known that these charges were flawed and unsustainable in a proper court of law for a long time, but the defense of the vaccine programme has taken precedence over truth and justice (Age of Autism, 2012)

Another example by Jenny McCarthy reads:

Judge John Mitting's conclusion, from an appeal by the highly respected pediatric gastroenterologist Prof. John Walker-Smith, stated:

*"...both on general issues and the Lancet paper and in relation to individual children, the panel's overall conclusion that Professor Walker-Smith was guilty of serious professional misconduct was flawed...The panel's determination cannot stand. I therefore quash it."*

Now what? If the foundation of the proof that the MMR does not trigger autism is crumbling, what in the world are parents supposed to believe? If Professor Walker-Smith is not guilty on all charges, will Dr. Wakefield be next? (McCarthy, 2012)

And in an article by John Stone entitled "Prof Walker-Smith Cleared and the Beginning of the End for Allegations Against Andrew Wakefield". Stone writes:

The exoneration of John Walker-Smith – a great and good man - is the best news our community has had for years. For years Prof Walker-Smith, himself, has stayed well clear of the MMR controversy but the truth is that he was drawn with Prof Simon Murch into politically motivated allegations against Andrew Wakefield by journalist Brian Deer and Liberal-Democrat politician Evan Harris under the auspices of the Sunday Times. . . . Deer, himself, recollected in the British Medical Journal being approached by Sunday Times section editor Paul Nuki to find something "big" on MMR. . . Meanwhile, the BBC in an act of doublethink of which only it could be capable has pronounced the 1998 Lancet paper still "discredited" on the day that along with Prof John Walker-Smith it has been completely exonerated. (Stone, 2012)

In another article, entitled "The Lies About Andrew Wakefield", Stone writes:

'If the vaccine program is so good, why the dirty tactics? Why the straw man? Vaccine safety and effectiveness is a messy business: making Wakefield the scapegoat won't work much longer.'

Before yesterday morning I had not heard of 'Upworthy' which according to Wiki is a "website for viral content" founded by Eli Pariser (Chairman of AVAAZ, pictured) and Peter Koechley (former managing editor of 'The Onion'), for which Kim Kellerher of 'Wired' is also a board member. A presentation "curated" by Adam Mordecai and funded by the Bill and Melinda Gates Foundation states:

"After years of controversy and making parents mistrust vaccines, along with collecting \$674,000 from lawyers who would benefit from suing vaccine makers, it was discovered he had made the whole thing up. The Lancet publicly apologized and reported that further investigation led to the discovery that he had fabricated everything."

What, of course, this does not tell you is that the senior author and clinician in the paper, Prof John Walker-Smith, who also compiled eleven of the twelve case histories appealed to the English High Court over the GMC findings and was completely exonerated nearly three years ago – Walker-Smith, unlike Wakefield, was funded to appeal. All that ‘Upworthy’ are doing is playing the same trick as CNN and Wiki – which I reported on last year - and peddling disproven stories without mentioning that they have been disproven. (Stone, 2016)

A careful reading of the actual decision does not “exonerate” John Walker-Smith and it clearly doesn’t exonerate Andrew Wakefield nor support the claim that vaccines cause autism nor that Wakefield’s 1998 article should not have been retracted. And Stone’s claim that “for years Prof Walker-Smith, himself, has stayed well clear of the MMR controversy” ignores a press release by him and Dr. Murch disagreeing with Wakefield and his being one of the 10 of 13 co-authors who publicly retracted the part of *the Lancet* article associating the MMR vaccine with autism. (Murch, 2004)

### **Justice Mitting’s Ruling:**

When the person undertaking the activity has two purposes or when different people participating in the same series of activities have different purposes, it may be very difficult to say into which category the activities fall. This difficulty is particularly likely to arise in activities undertaken by an academic clinician and/or in a teaching hospital with a research department. These difficulties arose in this case: ***Dr. Wakefield’s purpose was undoubtedly research*** [my emphasis]; Professor Walker-Smith’s may have lain anywhere on the spectrum. It was for the panel to determine where it did; but first, it had to determine what his intention in fact was.

#### **Professor Walker-Smith’s intention**

The panel made no express finding on this issue and cannot have appreciated the need to do so. ***There was a good deal of evidence, to which I refer in greater detail below, that Professor Walker-Smith and his team were undertaking what any reasonable body of medical practitioners would categorize as research*** [my emphasis] – but also that he intended and genuinely believed that what he was doing was solely or primarily for the clinical benefit of the children. When such an issue arises, a panel will almost always have to determine the honesty or otherwise of the practitioner. (Mitting, 2012, p.9)

Justice Mitting’s ruling found that the British General Medical Council, in not making a finding of honesty, goes to the facts of the case. Quite simply, a legal decision needs to state - for the accused and others - why he is at fault. By not addressing this the GMC did not explain why it was finding against Walker-Smith. This made the decision appear arbitrary. In fact, according to Brian Deer:

The Court of Appeals had . . . recently handed down a judgment that said that the old GMC approach of single line findings in disciplinary cases was no longer acceptable, and that, in complex cases, panels needed to set out their reasoning in detail. That change occurred during the interval between the findings of fact stage, and the sanctions stage.” (Deer, 2014)

Deer’s comment goes on to state:

But the other thing exposed was the shocking anomaly of section 35A of the medical act of 1983. This allows the GMC to requisition documents from any party - but not the doctors facing charges. Thus, unlike in civil or criminal trials, the defendant does not have to supply a statement of case, or give any response at all to the allegations. Thus Walker-Smith and Wakefield gave no response to the charges until after the prosecution had closed its case. His lawyers were literally circulating documents, cold, during the hearing. It's a disgraceful loophole, which in this case caused huge time and cost overruns and - ultimately - allowed Walker-Smith the chance to appeal. It's a fundamental principle of a fair trial that neither side can ambush the other. But not when doctors are involved. (ibid)

In other words, the GMC should have known of the Court of Appeals ruling of the necessity to document their reasoning in detail; but, at the same time, section 35A’s not allowing the requisition of documents from doctors gave Walker-Smith the chance to appeal.

One could consider this a procedural error, that is, the GMC did not discuss nor justify why their decision gave greater weight to the evidence that Walker-Smith’s intentions were based on research rather than the best clinical interests of his patients. However, the judgment also made clear that “Dr. Wakefield’s purpose was undoubtedly *research*. . . ***There is no challenge to the panel's finding that Dr. Wakefield's purpose was research.***” [my emphasis] Keep in mind that part of the evidence against Wakefield was that he was carrying out research on children prior to receiving approval to do so (General Medical Council, 2010ab; Mitting, 2012).

Note that some antivaccinationists argue that Wakefield’s motives included wanting to help the children. I do not dispute this; but Wakefield’s position at the Royal Free was as a researcher. People often have multiple motives for their actions; however, not of equal weight. Justice Mitting’s ruling found, given the evidence (see below), that Wakefield’s main purpose was research: “As a researcher, he was, throughout, *principally* [my emphasis] interested in testing his hypotheses.” This is a typical logical flaw demonstrated by most, if not all, antivaccinationists, that is, to see things in black and white. For them, if Wakefield’s motives included wanting to help the children, then his other actions are irrelevant.

As for the link between the MMR vaccine and autism, in response to a letter from Wakefield on February 20, 1997 in which Wakefield discussed his acting as a consultant in pending legal actions on behalf of autistic children, Mitting includes that Walker-Smith responded: “My position as with measles, MMR and Crohn’s disease is that the link with MMR is so far unproven. ***It is clear that the legal involvement by nearly all the parents will have an effect on the study as they have a vested interest.*** [my emphasis] I myself simply will not appear in court on this issue.” (Mitting, 2012, p.5)

The judgment further states:

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. The joint view of Professor Walker-Smith and Dr. Murch, stated in a letter to Dr. Wakefield on 21st January 1998, was that it was inappropriate to emphasize the role of MMR vaccine in publicity about the paper and that they supported government policy concerning MMR until more firm evidence was available for them to see for themselves. They published a press release to coincide with publication stating their support for “present public health policy concerning MMR”. 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. *There is now no respectable body of opinion which supports his hypothesis, that MMR vaccine and autism/enterocolitis are causally linked* [my emphasis] (Mitting, 2012, p.6)

Finally, John Walker-Smith, along with nine of the original 13 authors of Wakefield’s 1998 article, published a 2004 retraction that stated:

We wish to make it clear that in this paper no causal link was established between MMR vaccine and autism as the data were insufficient. However, the possibility of such a link was raised and consequent events have had major implications for public health. In view of this, we consider now is the appropriate time that we should together formally retract the interpretation placed upon these findings in the paper (Murch, 2004, p.750).

I think it quite clear that the High Court’s judgment found no credibility to the hypothesis that “MMR vaccine and autism/enterocolitis [were] causally linked,” nor that the legal technicality that allowed Walker-Smith to regain his medical license in any way applied to Wakefield. In addition, Walker-Smith has separated himself from the claims of a link between the MMR vaccine and autism/enterocolitis.

## **Was John-Walker Smith Exonerated?**

Clearly Wakefield was NOT by implication exonerated by Justice Mitting’s findings regarding John Walker-Smith. The next question is whether Walker-Smith was actually exonerated?

I think many confuse exoneration with factually innocent:

Once a person has been adjudged guilty, the all purpose monolith of pretrial or preplea innocence bifurcates into distinct areas: (1) legal innocence, which can mean that the defendant did not receive a fair trial due to a coerced confession, withholding of exculpatory evidence, ineffective assistance of counsel, prosecutorial misconduct, faulty forensics, or other constitutional and procedural infirmities; and (2) factual or actual

innocence indicating that the wrong person had been convicted and someone else was culpable or no crime occurred. (Strutin, 2011)

According to the Merriam-Webster online dictionary to exonerate means:

- 1: to relieve of a responsibility, obligation, or hardship
- 2: to clear from accusation or blame (Merriam-Webster, 2016)

Justice Mitting's decision rested with a procedural error, not clearly discussing why they gave greater weight to Walker-Smith's actions that could be considered research. However, as Justice Mitting writes: "Professor Walker-Smith . . . had retired from practice in October 2000." So, Walker-Smith had been retired for a decade. There was NO risk that he would resume practice. The only "hardship" he was relieved of was the stigma of having lost his medical license after a stellar career prior to coming to the Royal Free and associating with Wakefield. Though exoneration can mean "factual innocence", it is clear that this did NOT apply to Walker-Smith.

One of the reasons for the withdrawal of the 1998 Lancet paper was Wakefield's failure to notify the journal of a potential conflict of interest, his consulting with the Dawbarn law firm, who was representing parents who believed their children were hurt by the MMR vaccine and his involvement in the application for funds from the British Legal Aid Board to conduct research to prove the link between the MMR vaccine and autism. (Note that whether the funds from the British Legal Aid Board were used or not for the 1998 paper is irrelevant as his application for the funds and his work with the Dawbarn law firm clearly indicated a potential conflict of interest which he did not reveal) Of the 12 children in his study, 11 were either from families involved in the lawsuit or members of JABS, an antivaccinationist organization collaborating with the Dawbarn law firm (which Walker-Smith clearly understood biased the study (see above)). Mitting writes: "As a researcher, he was, throughout, *principally* [my emphasis] interested in testing his hypotheses. Dr. Wakefield played an unusual role for a researcher in the referral of many of the Lancet children to the clinical team for investigation." Justice Mitting also noted that Walker-Smith allowed his name on the paper, despite having not seen the final draft. The Lancet paper was withdrawn after the GMC ruling; but there is NO evidence in Justice Mitting's ruling that would question the withdrawal.

Finally, "both [Walker-Smith and Wakefield] initially appealed, but Dr. Wakefield has subsequently abandoned his appeal." As discussed in the beginning of this paper, Wakefield had several opportunities to provide evidence on his behalf during the General Medical Council Fitness to Practise Panel hearings (see above) which he declined to do and then he abandoned his appeal to the High Court.

Obviously, the stories and headlines from anti-vaccine groups do not reflect the actual judgment of the High Court. In another paper, I refuted every single one of Wakefield's claims about vaccine safety (Harrison, 2013). Apparently, Wakefield is not alone among those opposing vaccinations in his approach to the "facts."

### **Wakefield's Conflict of Interest: Biased Use of Children.**

Brian Deer's articles go into detail of the flaws in Wakefield's paper. For those interested, I suggest reading his papers and evidence. However, I'll briefly discuss one example, the biased use of children.



Eleven of the 12 children were from families who believed the MMR vaccine was responsible for their children's autism (Deer, 2004;2007;2010;2011). Wakefield was involved in the recruitment of several of these children, so they definitely were not a sample of routine consecutive referrals to the clinic (General Medical Council, 2010a; Deer, 2011). Of those where Wakefield does not seem to have been involved in their recruitment, the families sought enrollment because they had heard about Wakefield, either through the Dawbarn law firm or JABS. The Dawbarn Law firm sent out newsletters and an MMR fact sheet (Dawbarn, 1996; 1997ab). The newsletters specifically stated:

Dr. Andrew Wakefield . . . He has deeply depressing views about the effects of vaccines on the [illegible] children. He is also anxious to arrange tests to be carried out on any children vaccinated with the MR or MMR vaccine who are showing symptoms of possible Crohn's disease. (Dawbarn, 1996)

*This newsletter should be read in conjunction with the MMR/MR factsheet (Dawbarn, 1997b) which accompanies the newsletter. The factsheet gives a detailed summary of the state of our investigations to date . . . The newsletter is intended for those involved in claims for compensation. . . The studies of Dr. Wakefield and his team (see below) could well prove (at least so far as inflammatory bowel disease is concerned), that it is the vaccine which is causing the injury. . . The pilot study (being coordinated by Dr. Andrew Wakefield of the Royal Free Hospital) has already started and a number of children have already been tested. Preliminary indications are that there is a strong link between the vaccine and inflammatory bowel disease. . . . We are in direct touch with several support groups and we share information with them. . . have attended and given addresses at public meetings organized by JABS. (Dawbarn,1997a)*

Besides Brian Deer's articles, additional sources confirm Deer's access to the children's case records. In a lawsuit by Andrew Wakefield against Channel 4 and Brian Deer, Mr. Justice Eady writes:

5. There was a further hearing before me on 1 November 2006 concerning the Defendants' right to inspect documents disclosed by the Claimant containing prima facie confidential information relating to various children who had, some years ago, been the subject of the Claimant's research. It became necessary for me to consider the rights of the patients concerned, some of whom are still minors and some of whom are adults (albeit not necessarily in a position to give meaningful consent themselves), under Article 8 of the European Convention on Human Rights and Fundamental Freedoms. I ruled that it was necessary and proportionate for the Defendants to inspect the documents, but put in place a regime to protect confidentiality which the parties have carefully developed in practical terms. I referred on that occasion to certain paragraphs in the Claimant's amended reply, because they illustrated particularly how central the relevant medical records appeared to be to the plea of justification. (England and Wales High Court (Queen's Bench Division) Decisions, 2006)

The actual transcripts of the GMC hearings included testimony of the Mother of Child 12 and the GPs for the Lancet article's children's (General Medical Council: Transcripts: Grouped).

In a commentary by the poster to the online Grouped Transcripts, it states:

## Parents of The Children

### **The Big Lie**

According to the Big Lie repeated over and over again by many supporters of Wakefield to explain the results of the GMC hearing --- the parents were *not allowed* to testify.

This Big Lie has been repeated so often and so effectively that the parents believe it. For example, in a testimonial for Professor Walker-Smith, the mother of Child 6 and & 7 stated:

I am saddened that I was not allowed to give evidence on behalf of my boys and was upset to hear the lies about my family from the other side. I felt we did not have a voice and my boys were not protected in this.

### Day 199/28

And from an open letter by the parents read as a testimonial:

We have been following the GMC hearings with distress as we, the parents, have had no opportunity to refute the allegations. For the most part we have been excluded from giving evidence to support these doctors whom we all hold in very high regard.

### Day 199/33

But as the GMC's lawyer's stated in her opening submissions:

The parents in this case, with the exception of the mother of child 12, to whom I am going to be referring later as "Mrs. 12", are not going to be giving evidence, and it is not part of our case that they were anything other than content with the investigations which were carried out on their children. Indeed, as you will be hearing, some of them positively encouraged those investigations to be carried out, but in the last analysis it must never be forgotten that the patient is the child.

### Day 3/3

***Parents wanted to testify but none were called by the doctors, for obvious reasons. All Parents were asked to testify by the GMC.*** [my emphasis] Just as with the children's GPs, the parents could have given very important testimony.

*Mrs. 12, who still supports Wakefield, provided testimony and documents that, by itself, proved most of the GMC case.*

Just to be quite clear, it was the defense lawyers who opted not to call the parents as witnesses. In the end, one parent, the mother of child 12, and the primary care doctors for 11 of the children were called as witnesses.

Mother of Child 12:

Q After you had had that conversation with the other lady at the parent and toddler group, what did you do? Did you contact Dr. Wakefield?

A Yes, I did.

Q Did you do that yourself directly rather than going through your GP?

A Yes.

Q Do you remember how you got hold of his contact details/how you knew where to go?

A I believe that the parent gave me the contact details.

Q I want you to go in the GP records to page 126, so backwards again from where you were. This is a letter dated 19 July 1996 to you from Dr Wakefield. Do you recall receiving that at around that time?

A Yes.

Q If we look at it, it says, "Dear [Mrs. 12],

Thank you for your letter regarding your son. We have recently taken a profound interest in this subject, particularly in view of the link between bowel problems and Asperger's Syndrome. I would greatly appreciate if you would mind calling me at the Royal Free before 3rd August and in addition I would like you to seek a referral from your GP to Professor John Walker-Smith, Professor of Paediatric Gastroenterology at the Royal Free Hospital, for investigation. It will be necessary for me to discuss the nature of the referral with your GP and I would be very grateful if you could let me have his/her name and telephone number. Also could you please let me have your telephone number so that I can speak to you directly on the subject."

Do you recall that there was indeed a telephone conversation between you and Dr Wakefield?

A Yes.

Q What was your understanding of what they were doing?

A They were trying to really put a stop to the MMR vaccine being used and obviously to stop any damage that was being done to children.

GP Childs 6 and 7:

Q You say in your letter: "Dear Dr. Wakefield

Following our discussion over the 'phone the other day [Child 6] is a little boy with autism syndrome who does also suffer from bowel disorder. His mother is interested in entering him into your trial and I would be grateful if you could see her for discussion."

As you have already identified, there had apparently been some discussion over the telephone. Can you help us at all as to who would have initiated that telephone conversation?

A I really do not recall. I suspect I may have done. If she would have given me the number I would have rung to find out more on her behalf; but I do not recall.

And to repeat what Walker-Smith wrote: “My position as with measles, MMR and Crohn’s disease is that the link with MMR is so far unproven. ***It is clear that the legal involvement by nearly all the parents will have an effect on the study as they have a vested interest.*** [my emphasis] I myself simply will not appear in court on this issue.” (Mitting, 2012, p.5)

It is obvious that the parents, either directly involved in the lawsuit or the antivaccinationist organization JABS were aware of Wakefield’s research and that Wakefield was involved in their recruitment. So asking the parents their opinion on what they believed caused their child’s autism was a foregone conclusion. In addition, Deer uncovered that several of the families had given a longer time interval between receipt of the MMR than reported in the article which would have brought into question the association of the vaccine and their subsequent diagnosis (Deer, 2011a).

As an analogy, my hometown’s professional football team is threatening to leave if a new stadium is not built. Imagine a public polling firm presenting findings that a survey of residents found 80% in support of a new stadium funded by tax monies. Upon finding out the survey only asked season ticket holders, what credibility would one give to the survey?

For another excellent discussion of Justice Mitting’s finding and the antivaccinationists misuse of it, see Professor Dorit Rubinstein Reiss’s article, “Refuting One of the Tropes that Andrew Wakefield Was Wronged” (Reiss, 2014).

## **Pathology Studies**

John Stone writes: “What, of course, this does not tell you is that the senior author and clinician in the paper, Prof John Walker-Smith, who also compiled eleven of the twelve case histories appealed to the English High Court over the GMC findings and was completely exonerated nearly three years ago” (totally refuted above), Stone goes on with:

***But this is a flawed account. The findings were confirmed by both histopathologists in the paper subsequent to the hearing. [<http://www.ageofautism.com/2016/03/the-lies-about-andrew-wakefield.html>]***

***When the Deer/BMJ findings came under the scrutiny of Dr. David Lewis in November 2011 they were forced to re-trench (<http://www.ageofautism.com/2016/03/the-lies-about-andrew-wakefield.html>):*** (Stone, 2016)

It would take a separate article, which I may write later, to refute the above; but for now, I will just point out that the pathology studies are irrelevant as they were NOT included in the GMC Determination of Professional Misconduct (GMC, 2010ab) and Justice Mitting writes:

There was an additional finding, at 15j that Professor Walker-Smith failed to record the difference between the histological description provided to Dr. Spratt on 31st December

1996 and the clinical histology report. Professor Walker-Smith accepted that this omission was highly unsatisfactory. *There is no appeal against the finding* [my emphasis], but if, which I doubt, the omission amounted to professional misconduct, it could not have amounted to serious professional misconduct. (Mitting, 2012)

So, neither the GMC nor Justice Mitting's ruling included histological descriptions, so, obviously, Stone's including them is irrelevant. Doesn't Stone understand this?

## Conclusion

When Justice Mitting ruled that John Walker-Smith would get his medical license back, antivaccinationists jumped to the conclusion that the decision, by implication, exonerated Andrew Wakefield. In addition, many claimed that the decision also validated Wakefield's retracted 1998 article. As the above makes quite clear, neither claim is even remotely valid. Not only did Justice Mitting clearly state that the science refuting an association between the MMR and autism was sound; but he made it clear that his decision did not apply to Wakefield. In addition, Justice Mitting's decision was based on a procedural error. He made it clear that Walker-Smith did make some decisions based on research and other decisions based on clinical needs. The procedural error is that the BMC Fitness to Practice Panel did not justify in detail why they chose to emphasize the research component over the clinical.

Exoneration does not mean "factual innocence." While it can mean "factual innocence," it can also mean that some rule of evidence, a procedural error occurred. Exoneration does include returning some privilege or right. In Walker-Smith's case, given that he was already long retired, there was no risk that he would resume practice. All that Justice Mitting's decision did was, to some extent, restore his reputation. Perhaps Justice Mitting, in making his decision, given Walker-Smith's long distinguished career and already long retirement, decided to temper justice with mercy/compassion.

In any case, neither the GMC findings nor Justice Mitting's decision involved the question of the validity of biopsies, histological samples, and so they are irrelevant to the Court's findings.

Andrew Wakefield himself was not, and given the overwhelming evidence against him, NEVER WILL BE EXONERATED.

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