Caused No. D-1-GN-12-000003

Dr. Andrew J. Wakefield, MB., BS., FRCS, Plaintiff,

v.

The British Medical Journal, a d/b/a of BMJ Publishing Group Ltd., also d/b/a BMJ Group, and BMJ, Brian Deer, Individually, and Dr. Fiona Godlee, Individually, Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

DECLARATION OF BRIAN DEER IN SUPPORT OF DEFENDANTS’ ANTI-SLAPP MOTION TO DISMISS

1. My name is Brian Deer. [Personal information redacted] I make this declaration based on personal knowledge of the facts stated in this declaration, all of which are true and correct. The documents attached to this declaration as exhibits are true and correct copies thereof.

Personal Background

2. I am a graduate of the University of Warwick, England, with a Bachelor of Arts in Philosophy, and I have been a professional journalist ever since. I have worked for the Sunday Times of London in various capacities, staff, contract, and freelance, since 1981, with a strong emphasis on public interest and investigative journalism. Approximately one quarter of my writing has concerned medical and healthcare issues. In addition to the Sunday Times, my work has appeared in the Mail on Sunday, the Guardian, the Observer and numerous other publications. I have also reported for the UK’s Channel 4, a national network. Much of my reporting is also published on my website, briandeer.com.
3. I have won two British Press Awards, which are the highest distinction for a newspaper writer in the United Kingdom, the equivalent of the Pulitzer Prize in the United States. For both awards, I was named “Specialist Journalist of the Year.” The citation for the first award, in 1999, stated that I was “probably the only journalist in Britain that polices the drugs companies.” For the second award, in 2011, the judges described my investigation of the controversy over the Measles, Mumps and Rubella (“MMR”) vaccine – the reporting at issue in this lawsuit – as “a tremendous righting of a wrong.” I have been nominated for a further British Press Award, as News Reporter of the Year, and for a Royal Television Society award for the best domestic current affairs programme. I have made two one-hour television documentaries, and have given invited lectures at various universities.

My First Coverage of the MMR Vaccine Controversy

4. I first heard of Andrew Wakefield in February 1998, when I read in the Guardian newspaper about his MMR vaccine research, which was to be published that weekend in The Lancet, a British medical journal. By that time, a fair amount of my journalism had been in the field of medicine, and I had written several intensively-researched reports on vaccines. Most particularly, I had written about the DTP shot, against diphtheria, tetanus and pertussis, that had caused international controversy in the 1970s and 1980s, and later I also wrote about a candidate HIV vaccine called “AidsVax.”

5. Nearly a decade later, at the time of Wakefield’s Lancet article, I was researching another report on DTP, but in much greater depth. This was an investigation for the Sunday Times Magazine, and I spent about six months on interviews and newsgathering.

6. This material was on my mind as I read the Guardian’s article in which Wakefield and 12 co-authors, at the Royal Free hospital and medical school, north London, were
reported to have found a possible link between the three-in-one MMR vaccine and a new syndrome of brain and bowel damage in children.

7. Perhaps a few months later, I pulled Wakefield’s paper from the British Library and made a photocopy. I did not study it carefully at that time, but I certainly read the “abstract” or “summary” section, which typically appears at the beginning of papers in *The Lancet*. The abstract, which is written by the authors, is set out with great formality: “background,” “methods,” “findings” and “interpretation.” It is the portion freely available online, and is often the only passage that many people actually read.

8. The abstract of *Wakefield’s Lancet article* (Ex. 1) states:

**Summary**

**Background** We investigated a consecutive series of children with chronic enterocolitis and regressive developmental disorder.

**Methods** 12 children (mean age 6 years [range 3-10], 11 boys) were referred to a paediatric gastroenterology unit with a history of normal development followed by loss of acquired skills, including language, together with diarrhoea and abdominal pain. Children underwent gastroenterological, neurological, and developmental assessment and review of developmental records. Ileocolonoscopy and biopsy sampling, magnetic-resonance imaging (MRI), electroencephalography (EEG), and lumbar puncture were done under sedation. Barium follow-through radiography was done where possible. Biochemical, haematological, and immunological profiles were examined.

**Findings** Onset of behavioural symptoms was associated, by the parents, with measles, mumps, and rubella vaccination in eight of the 12 children, with measles infection in one child, and otitis media in another. All 12 children had intestinal abnormalities, ranging from lymphoid nodular hyperplasia to aphthoid ulceration. Histology showed patchy chronic inflammation in the colon in 11 children and reactive ileal lymphoid hyperplasia in seven, but no granulomas. Behavioural disorders included autism (nine), disintegrative psychosis (one), and possible postviral or vaccinal encephalitis (two). There were no focal neurological abnormalities and MRI and EEG tests were normal. Abnormal laboratory results were significantly raised urinary methylmalonic acid compared with age-matched controls (p=0·003), low haemoglobin in four children, and a low serum IgA in four children.

**Interpretation** We identified associated gastrointestinal disease and developmental regression in a group of previously normal children, which was generally associated in time with possible environmental triggers.
9. To me, the first finding jumped off the page. In two thirds of the cases reported, the cited trigger (described elsewhere in the paper as the “apparent precipitating event”) was the MMR vaccine shot.

10. I also looked at the tables in the paper, which tabulated the 12 cases in detail. Table 1 listed the children, anonymised by number, referring to apparent bowel disease, and Table 2 set out various details of the apparent precipitating event of their developmental disorders. The time between the apparent precipitating event and the onset of problems was given. This information corresponded with information in the text indicating that in 8 of the 12 cases, the apparent precipitating event was MMR administration, and with the claim that what was described in Table 2 as the “first behavioural symptom” occurred within just 14 days. Table 1, meanwhile, listed what were described as “histological findings” – meaning findings under a microscope – of “non-specific colitis” in the intestines of 11 of the 12 children.

11. In my mind, this was truly an astonishing finding. That a single London hospital could report a dozen families, described as “consecutive”, with most of them making such a striking association that doctors would present it in The Lancet, was major news. Predictably, it provoked considerable television and newspaper interest.

12. I found it curious that the “results” section of the paper stated that the first signs of autism followed within 14 days. In both the United Kingdom and the United States, the governments had established compensation schemes, largely in response to the controversy over DTP, intended to help “vaccine victims.” In the United Kingdom, a government fund with medical assessors for eligibility was established. In the United States, the same controversy led Congress and President Reagan to establish a special “vaccine court” under the Court of Federal
Claims. And, though otherwise fundamentally different, both schemes required a time-frame, a so-called “temporal link,” for the possibility of causality to be entertained.

13. For the DTP, a time-frame widely-invoked in various articles for brain injuries was 14 days in the UK and within 15 days in the US. Indeed, a 14-day time-frame had been written in to a medical journal article (Ex. 2), which was as central to the public alarm over the DTP vaccine as the Wakefield article was to become over MMR. That paper was universally known to those involved in the issue as the “Kulenkampff paper.” I knew this paper well. With that knowledge – a live issue in my journalism at that time – I recognized that Wakefield’s MMR paper invoked precisely the same window. The patients in Wakefield’s paper were said to have shown problems within a maximum of 14 days of having received the MMR vaccine, with an average time given as 6.3 days.

14. But why, I wondered in 1998, and subsequently, would the posited temporal link be the same for the two vaccines? The suspect component of DTP was a big, dirty, whole-cell formalin-killed pertussis (whooping cough) bacterium. MMR, however, contained three tiny, attenuated live viruses. Why, I wondered, would two vaccine products with such different technologies be proposed to be associated with exactly the same 14-day figure? I knew the history of the first, but I was intrigued by the coincidence. Infectious agents know little of days, weeks or fortnights.

15. At that time, however, I was busy with other projects, including finishing my report on DTP, and I put Wakefield’s *Lancet* paper away. After one lengthy inquiry into vaccines, I was not seeking another. Vaccines are a hugely multi-disciplinary area of medicine, with numerous technical complexities. During my DTP inquiry, I had forced myself to come to
learn the fundamental science and medicine relating to the controversies, rather than merely recycle opinions. I also did not want to become type-cast as a “medical journalist.”

16. So I put the Wakefield paper away and largely forgot about it. That was 1998, and for the next several years, from the sidelines, I watched the story unfold. Wakefield always kept himself at the forefront of the media coverage. For example, he participated in a heavily-reported press conference at the Royal Free Hospital to launch the paper, supported by a press release (Ex. 3) and a video news release. Over the next several months and years, Wakefield could be seen on television and in the newspapers, giving interviews and making statements. He appeared to relish his media persona as the “whistleblower,” the crusading maverick doctor fighting to protect children.

17. As I followed this story, I read coverage by other media of the inability of many larger and better-designed studies to replicate Wakefield’s findings. As a matter of fact, at the time I write this declaration, I am unaware of any scientific paper which repeats and replicates the findings in the *Lancet* article.

18. But I got on with other work. Apart from a few phone calls sometime in 2002, or thereabouts, following-up on a query from the *Sunday Times* newsdesk, I had nothing to do with the MMR controversy until September 2003.

The First *Sunday Times* Reports

19. In September 2003, I was encouraged to think of investigations suitable for the “Focus” section of the *Sunday Times*, which generally contains longer, more in-depth reporting. One of several topics suggested to me was MMR, which was back in the news as a result of an impending TV documentary-drama on Wakefield.
20. A typical Sunday Times “Focus” piece might then have taken up to four days to research and write, but I hoped I might spend perhaps three weeks on MMR.

21. I began my reporting by attending a Sunday afternoon preview screening of the TV docu-drama, and then made a few phone calls to people involved in the controversy.

22. At the time, a major trial of these issues was pending in the High Court, London. My first phone call was to a litigation campaign group called “JABS,” whose organiser told me, in a manner suggesting that she did not really appreciate the import of her words, that its members had taken part in Wakefield’s Lancet research.

23. I had not seen this fact reported anywhere in the vast media coverage of the controversy. As indicated, the Lancet paper reported that the parents of 8 of the 12 children had blamed MMR for the sudden onset of regressive autism. It further explained that the families had attended a paediatric bowel clinic at the Royal Free.

24. But Wakefield and his co-authors had not disclosed in the Lancet paper that the purported “consecutive series of children” who had presented at the hospital included individuals whose families were members of an anti-vaccine litigation campaign group. Evidently, Wakefield’s Lancet paper was not, as it had appeared to all the world, a report of patients turning up routinely and making an alarmingly similar connection between the vaccine and the onset of autism. I believed that this information regarding the patient histories should have been explained in the abstract’s “methods.”

25. My reporting also involved interviewing Rosemary Kessick, the mother of one of the children from Wakefield’s Lancet research. During the interview, she told me a story about the apparent onset of her grievously disabled son’s problems that could not be reconciled with any case in Wakefield’s paper. Specifically, Ms. Kessick told me that her son’s first behavioural
symptoms began up to six months after his MMR shot, and hence well outside the 14 day maximum described in the paper. This did not match any of the case histories in the *Lancet* article.

26. Soon after beginning my inquiries, I also learnt that the government – through its Legal Aid Fund – had paid £55,000 (maybe then $80,000) for Wakefield to perform precisely the research described in *The Lancet* (plus additional tests which I later found were included in a second Wakefield paper, rejected by the *Lancet*). In the first weeks of my inquiries, I interviewed officials of the Legal Services Commission (previously known as the Legal Aid Board). These officials informed me that the *Lancet* paper was essentially an “open” publication of information supplied to them in confidence to advance a multi-party lawsuit against the drug companies that manufactured MMR. At the time of Wakefield’s *Lancet* research, the case had not yet been filed, but these Legal Service Commission officials confirmed that, at the time of the research, the case was actively being prepared with funding provided by their agency to carry out tests on clients.

27. In researching this story, I attempted to interview Wakefield, but he refused. His publicist (Wakefield is the only medical doctor I’ve ever dealt with who employs a personal publicist) gave me a selection of reasons, none of which I found compelling. For example, the publicist said that Wakefield was shortly to travel to the United States and did not have a “slot” for an interview. When I offered a time-frame of some two weeks, and suggested we speak to the telephone, he said that Wakefield did not like to talk to journalists on the telephone whom he did not know. This was some two months after I first asked for an interview.

28. I continued with my inquiries and obtained interviews with other key figures. For example, I interviewed John Walker-Smith, former professor of paediatric gastroenterology at
the Royal Free, and the senior clinical author of the *Lancet* paper. Among other things, he told me that the TV docu-drama had been paid for by an American family involved in the research. I also interviewed the paper’s second author, Simon Murch, a consultant gastroenterologist. He told me that the claim in the paper that the children had “enterocolitis” was wrong.

29. Most importantly, I interviewed an attorney named Richard Barr. He was the principal lawyer behind the multiparty litigation. After a formal interview, we talked on the phone. He squarely told me that he had arranged for the research in the *Lancet* to be paid for from Legal Aid funds:

Q: You know, the public would think, well hang on a minute, this paper that appeared in *The Lancet* did not give any disclosure about the sources of its financing, and if people realized that this was done for the Legal Services Commission, they might interpret the paper quite differently.

A: We weren’t trying to sort of get an independent paper published under the carpet. I remember noting at the time that the funding acknowledgment wasn’t there, but it didn’t seem to be a big deal because it just wasn’t a big deal in those days.

30. This segment of our conversation was so central to the issues that, in 2004, I posted it on my website, [http://briandeer.com/audio/richard-barr.mp3](http://briandeer.com/audio/richard-barr.mp3). To my knowledge, Mr. Barr has never sought to correct this information. In my mind, it was a serious admission from a lawyer, revealing that he paid for Wakefield’s research, with taxpayers’ money, on behalf of litigation clients. In other words, anonymised allegations against MMR had been laundered into a medical journal to create a controversy from which those same people making the allegations hoped to benefit financially.

31. On Saturday 14 February 2004, my MMR article was made ready for publication. However, I had already told my editors during the previous week that, in my judgment, the material was so detailed that we needed to give Wakefield more time to respond. As it was, the allegations had been put to him (I believe) on Wednesday or Thursday, for Sunday publication,
and I felt this was potentially unfair. *Sunday Times’* executives disagreed, observing that allegations were routinely, and fairly, put to subjects for response on a Friday night. However, on Saturday morning, the *Sunday Times* Editor, John Witherow, overruled his executives and ordered the story held till the following week, as I had advised.

32. Witherow also issued two further instructions. Firstly, he expected Wakefield to make himself personally available for interview, rather than be shielded behind a public relations consultant. Wakefield then agreed to be interviewed, but on the condition (which I have never encountered before or since during three decades in national news journalism) that I, the reporter working on the story, was not present. Wakefield was then interviewed, on Wednesday 18 February 2004, by three other journalists, none of whom had sufficiently mastered the factual background necessary to deal with his answers.

33. Witherow also ordered that I speak to the most authoritative source on the matter. I first tried to contact the *BMJ*’s editor, Dr Richard Smith. He was on holiday, so I arranged to meet with Dr Richard Horton, editor of *The Lancet*. Our meeting took place at *The Lancet*’s offices, simultaneously with the other reporters’ Wakefield interview at his publicist’s offices in Mayfair. My presentation to *The Lancet* lasted several hours, and was attended not only by Dr. Horton, but by several of his senior staff, and by a member of parliament, Dr. Evan Harris.

34. To my astonishment, when I finished my presentation, Dr. Horton’s attitude became distinctly uncooperative. He refused even to admit on the record that an investigation was required. Instead, he told me that Wakefield was on his way to *The Lancet*’s offices, and Dr. Horton then asked me to hide in the boardroom when Wakefield entered the building. These events are accurately recounted in the *BMJ* report “*The Lancet*’s Two Days to Bury Bad News,” published in January 2011 as the third in the series “Secrets of the MMR scare.”
35. Dr. Horton did, however, acknowledge that Wakefield had a clear conflict of interest over the funding from Mr. Barr, and the involvement of prospective litigants in the research plainly tainted the finding of a possible link between MMR and autism. But rather than allow the information to appear first in the *Sunday Times*, Horton leaked it. MMR became the UK’s top running story again, attracting front-page reports, lengthy features and television items for several days.

36. On Sunday, 24 February 2004, two reports by me were published in the *Sunday Times*. On Page 1, the article was headlined “Revealed: MMR Research Scandal.” A two-page Focus centre-spread was.headlined: “MMR: The Truth Behind the Crisis.” Elsewhere in the newspaper was an article by Dr. Harris, as well as editorial comments. Copies of my articles are attached as Ex. 4.

**Reaction to The Sunday Times Reports**

37. Even before my stories appeared, Dr Horton stated in an interview with the BBC that, had he known of Wakefield’s conflict of interest, he would not have allowed the MMR paper to be published in *The Lancet*. Against that background, and again before my stories were published, the government’s health secretary made a statement that he believed that the General Medical Council (“GMC”), which licenses all UK doctors, should investigate the matter. Evidently in response to this, Wakefield issued a statement. A copy of Wakefield’s statement is attached as Ex. 5.

38. Among other things, Wakefield denied any conflict of interest, said that the money (then reported as £55,000) was not paid to him personally, claimed that *The Lancet’s* actions jeopardised other research, and that:

> It has been proposed that my role in this matter should be investigated by the General Medical Council (GMC). I not only welcome this, I insist on it and I will be making contact with the GMC personally, in the forthcoming week.
39. On the Monday following my first reports, I was contacted by an official of the GMC who asked if I had anything further to my reporting. In response, I prepared a detailed email setting out a summary of my findings since beginning my inquiries, and sent this to the GMC. A copy of that email is attached as Ex. 6.

40. In addition to the information in my first reports concerning the funding of the research and the involvement of the subject children’s parents in litigation-campaign groups and contemplated litigation, I also informed the GMC about another aspect of my findings. My background research and various Freedom of Information requests had revealed profound ethical problems with Wakefield’s research. Although written about as if he were a physician and authority on autism and vaccines, Wakefield was, in fact, merely a former trainee gut surgeon who had never had legal care of a patient.

41. My inquiries further established that Wakefield had been researching at the Royal Free medical school into the inflammatory bowel disorder, Crohn’s Disease. At an early point, he had speculated that the cause of Crohn’s was measles virus – first in the wild, then later, as he adapted his theory, in MMR. It would advance his theory if he could get tissues from children’s small intestines (where Crohn’s is most characteristically found). But even at a large hospital, the number of children needing such invasive procedures would be small. Moreover, it would be unethical to carry out invasive procedures based solely on a hunch, and no responsible, fully-informed parent would permit it. But in April 1995, Wakefield was approached by Ms Kessick, who told him that her severely handicapped son also had bowel issues, and that she knew of a lot more parents who, like her, were anxious for their children to be helped. In short, Wakefield was presented with a ready supply of children with developmental disorders, whose parents were at their wits’ end and would be grateful if he were to go into their children’s guts and take tissues
for his theory. It appeared to me that this raised severe ethical issues over whether the parents were properly informed, and whether their children – who were both below the age of consent and often mentally incapacitated – were being used as guinea pigs. From what I understood of medical ethics (and found to be correct) approval would be required from an institutional review board, and that no institutional review board observing the Helsinki Declaration on research on human subjects would permit such speculative interventions on children.

*The Lancet’s (First) Retraction*

42. Less than two weeks after my first reports, ten of the *Lancet’s* paper’s authors retracted their claim to have found a temporal link between administration of the MMR vaccine and the development of symptoms. This information was felt sufficiently newsworthy for the Channel 4 network evening news to interrupt its programming to announce the retraction. In my mind, it was an important vindication of my reporting.

43. *The Lancet* contemporaneously published a three-paragraph retraction statement, headed: “Retraction of an interpretation.” It will be recalled that the standard format of a *Lancet* paper’s abstract is “background,” “methods,” “findings,” “interpretation.” Historically, the “interpretation” had previously been known as “conclusions.” I attach the retraction as Ex. 12. The third paragraph of the retraction said (Ex. 12):

> 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, according to precedent.

44. Wakefield was widely reported to have refused to sign the retraction. This surprised me, since the paper had obvious, and very serious, defects. Notably, others closer to the research shared my view that the involvement of legal funding and prospective litigants undermined its credibility. Indeed, I later obtained under the Freedom of Information Act a
memo to Wakefield from John Walker-Smith, the paper’s last author and senior clinician in the research, written a year before the paper was published. I no longer have the memo, which was read to the GMC panel, but I accurately reported its contents in my 15 July 2007 article in the Sunday Times (Ex. 8) as such:

It is clear that the legal involvement by nearly all the parents will have an affect on the study as they have a vested interest. . . .

Never before in my career have I been confronted by litigant parents of research work in progress.

I think this makes our work difficult, especially publication and presentation.

45. Even though I did not yet have this letter at this time of The Lancet’s retraction, I was impressed by the disingenuous quality of Wakefield’s statements and positions. For example, he published a letter (Ex. 9) in the 17 April 2004 edition of The Lancet, titled “MMR – Responding to Retraction,” in which he made what I felt were highly misleading statements. For instance:

Almost six years have passed since AJW disclosed in a letter published in The Lancet that he was undertaking a pilot study on behalf of the Legal Aid Board (later to become the Legal Services Commission), a study that sought to examine the merits of parental claims of an association between their children’s exposure to the measles, mumps, and rubella (MMR) vaccine and subsequent autistic regression and intestinal symptoms. He wrote on May 2, 1998, 3 months after the original paper: “Only one author (AJW) has agreed to help evaluate a small number of these children on behalf of the Legal Aid Board.”

46. But the letter Wakefield was referring to made no reference to any “pilot study” at all. Indeed, I had drawn this matter to the attention of the GMC in my email of the previous month. As background, a doctor had written to The Lancet, following publication of the Wakefield paper, enclosing a factsheet issued by Mr. Barr’s law firm, and suggesting that Wakefield was somehow involved in litigation that might have affected his findings. Wakefield responded by asserting:

Only one author (AJW) has agreed to help evaluate a small number of these children on behalf of the Legal Aid Board.
47. But this response provided no clue that Wakefield had been running any “pilot study,” and anybody reading it would naturally assume that the “help” he referred to arose as a result of his research, not that it was the basis of the research itself. Wakefield had also stated in his May 1998 letter that “No conflict of interest exists,” which was plainly false.

48. As a further example of Wakefield’s tendency to mislead, it may be recalled that the “interpretation” section of the *Lancet* paper stated:

**Interpretation** We identified associated gastrointestinal disease and developmental regression in a group of previously normal children, which was generally associated in time with possible environmental triggers.

49. However, in his 17 April 2004 letter, Wakefield denied the plain words of that section, which his co-authors had retracted. Wakefield said:

Since no interpretation of the possible MMR/autism link was offered in the original 1998 *Lancet* report, other than to state that the data did not constitute evidence of an association and suggest that further research was required, it is difficult to know quite what has been retracted…

50. Around this time, I began to receive the first of countless emails from those whom Wakefield held sway over, filled with bitterness, hatred and abuse. The kind of abuse I received was well illustrated by a series of emails (Ex. 10) on 30 June 2004 from Carol Stott, a chartered psychologist who was put forward by Mr. Barr as an expert witness in the UK MMR litigation. She is a close associate of Wakefield’s, funded by an organisation he set up in the UK, and at one point listed as an associate of his Thoughtful House business in Austin, Texas. On an account of Cambridge University, England, where she lived, she bombarded me with profane tirades. Such abuse has continued, and escalates at any time that Wakefield obtains publicity. For example, on 4 March 2012, as his supporters promoted his lawsuit against me, I received the following, very characteristic, email from somebody called Michael Splendid who wrote “Journalist of the ear? More like fraud of the century” and “Watching Dr. Wakefield tear your
bs apart is like watching the sun burst through the clouds. Truth, ya just can’t kill it. God that must bug you.” I attach this email as Ex. 25.

51. Despite these abusive emails from his cadre of supporters, criticizing my reporting, Wakefield never agreed to sit down with me to answer my questioning.

“MMR: What They Didn’t Tell You”

52. Within a week or so of the first Sunday Times reports, I was approached by a number of television producers. One was a company called Twenty Twenty, based in London. By coincidence, in 1996 this company had made a documentary featuring Wakefield’s claims at that time that the MMR vaccine was a likely cause of Crohn’s disease. After the programme, Wakefield caused to be filed through his then-publicist an extensive, time-consuming, complaint to what was then the Broadcasting Standards Commission, which regulated UK television content. In a statement I attach (Ex. 12), The Commission ruled in 1997:

The Commission considers this edition of The Big Story to have been a responsible investigation into a matter of considerable public interest at a time when the Government’s programme of mass vaccinations against measles was being extensively publicised by its supporters and criticised by its opponents…the Commission does not find any significant unfairness to Dr Wakefield.

53. After some discussion between Twenty Twenty and myself, we agreed to make a proposal to the Channel 4 network, a national broadcaster. After discussion, a project was agreed with Channel 4 in the current affairs series Dispatches, and in August 2004 we started production.

54. I felt it was important to keep this project separate from my work on MMR for the Sunday Times. As far as I was concerned, this was not merely a new chapter in an existing story, but was a whole new book in itself. It was in this spirit that on 8 August 2004, I wrote to the programme’s associate producer, stating:

At least we are agreed that the main thing is to try to maintain a good balance throughout the project, and even though I have obviously written on this subject and formed some ideas, these
are pretty tentative and I want to give Dr W and his colleagues a real opportunity to give it to us straight. There are things I feel the public should know, but I have no axe to grind, and if they can answer the points, all well and good.

Ex. 13.

55. I and the programme’s associate producer made numerous calls, conducted numerous interviews, obtained numerous documents and videotapes. Our first revelation shocked me. Wakefield had not declared, and the public did not know, that almost eight months before he made a call on national television, from his press conference to launch the *Lancet* paper, for parents to ask for single measles shots instead of the triple MMR, Wakefield had filed for a patent on his own single measles shot, and other products, which only stood any chance of success if confidence in MMR was damaged. (A copy of the application is attached as Ex. 14). I produced one of the patent documents and showed it to experts, who, on camera, expressed their surprise at this new conflict of interest. (I attach a script of the programme as Ex. 15.)

56. A second element of the programme concerned a theory of Wakefield’s that the ultimate cause of autism was live measles virus in the vaccine. According to this theory, measles caused gut inflammation – which he would later dub “autistic enterocolitis” – which allowed materials into the bloodstream, ultimately causing damage to the brain. But in connection with my Channel 4 reporting, I tracked down a scientist who had worked for Wakefield at the Royal Free and who carried out sophisticated molecular tests in gut and blood samples from the children in the *Lancet* paper. The scientist confirmed to me in an interview that those samples showed no evidence of measles.

57. We invited Wakefield to participate in the programme, or alternatively to respond to questions. When we got no response, I travelled to Indianapolis, where he was speaking at a conference. When I introduced myself, Wakefield put his hand over the camera lens and fled, making no verbal response of any kind.

DECLARATION OF BRIAN DEER
Wakefield v Channel 4 Television and Other Libel Litigation

58. In my own mind, after the Channel 4 programme, in November 2004, I was finished with Wakefield, and could move on to other areas of journalism. But on 31 January 2005, Wakefield’s lawyers served on Channel 4 a letter (Ex. 16) claiming that we had libeled him. Specifically, Wakefield’s lawyers alleged that we said Wakefield had:

1. Spread fear that the MMR vaccine might lead to autism, even though he knew that his own laboratory had carried out tests whose results dramatically contradicted his claims in that measles virus had not been found in a single one of the children concerned in his study and he knew or ought to have known that there was absolutely no basis at all for his belief that the MMR should be broken up into single vaccines.

2. In spreading such fear, acted dishonestly and for mercenary motives in that, although he improperly failed to disclose the fact, he planned a rival vaccine and products (such as a diagnostic kit based on his theory) that could have made his fortune.

3. Gravely abused the children under his care by unethically carrying out extensive invasive procedures (on occasion requiring three people to hold a child down), thereby driving nurses to leave and causing his medical colleagues serious concern and unhappiness.

4. Improperly and/or dishonestly failed to disclose to his colleagues and the public at large that his research on autistic children had begun with a contract with solicitors who were trying to sue the manufacturers of the MMR vaccine.

5. Improperly and/or dishonestly lent his reputation to the International Child Development Resource centre, which promoted to very vulnerable parents expensive products for whose efficacy (as he knew or should have known) there was no scientific evidence.

59. At the same time, he filed a separate libel suit against the Sunday Times and against me personally over my website, briandeer.com. I was surprised by aspects of his claims, not least because some of the complaints regarded matters that were self-evidently true. For example, his “particulars of claim” (Ex. 17) objected to me saying on my website:

That the 12 children who were the subject of his Lancet article were not a random sample or ordinary patients referred by GPs, but his research had first been commissioned by solicitors suing the manufacturers of the MMR vaccine.

That a substantial proportion of the Claimant’s sample of autistic children had parents who had an interest in seeing a scientific link between the MMR vaccine and autism established.
That he was being funded up to the sum of £55,000 by the Legal Aid Board on behalf of solicitors seeking evidence of a link between the MMR vaccine and autism to use in litigation against manufacturers of the vaccine.

60. There could be no dispute about such matters. (Interestingly, as a result of public debate over my *Sunday Times* reports it was so well known by this time in the UK that “Dr. Wakefield’s research was being funded through solicitors for the twelve children” that this information would later form the basis of a short essay question in a 2008 national science exam for high-school age students. (Ex. 18). But even in 2005, when we received this material, his strategy was clear to us: He would publicise the filing and use the pending litigation for maximum public-relations value.

61. Almost immediately, the lawsuit was leaked to the press. More significantly, I learnt that a local newspaper, the *Cambridge Evening News*, which had run an article (Ex. 19) about the abusive Stott emails (Ex. 10), had been threatened by Wakefield with a libel action in which he said that he was suing the *Sunday Times*. The local paper sold about 5,000 copies and had no resources to defend itself, so it immediately apologised for making a statement that was actually true.

62. Shortly after, I found an internet posting about an event in Washington, DC, in July 2005, described as a “Power of Truth” rally. The posting (Ex. 20) included photographs and text of Wakefield reading out the *Cambridge Evening News* apology, which his own lawyers had drafted. The text said:

In an article published on June 20, we referred to allegations printed in *The Sunday Times* relating to Dr Andrew Wakefield. The allegations related to two studies conducted by Dr Wakefield into the link between the Measles, Mumps and Rubella vaccination and the onset of autism. *The Sunday Times* alleged that the nature of the funding of one of the studies could potentially have affected the outcome. We have been informed that defamation proceedings have been commenced against *The Sunday Times* in connection with this article. We would like to make it clear that there was in fact no conflict of interest nor was Dr Wakefield personally paid to undertake the study as was alleged. Furthermore we wish to clarify that the studies were carried out under proper ethical authorisation. Finally we accept that the subjects of the studies were
selected through appropriate NHS referrals. We apologise to Dr Wakefield for any distress caused and at his request have paid an appropriate sum to selected charities.

63. But Wakefield’s posturing was disingenuous. Even at the time, it was clear to me that he had no intention of actually pursuing the merits of the claims he had filed. In the Channel 4 case, he asked us to agree that his litigation be stayed, pending the outcome of his GMC hearing. Had we agreed, it would have allowed him to spend the next five years telling people that he was suing us, without actually having to proceed with those claims.

64. Accordingly, we opposed Wakefield’s request for a stay. Wakefield was therefore forced to the High Court to attempt to obtain an order staying those proceedings. But he failed. After a two day hearing, in November 2005, the judge, Mr. Justice Eady, lambasted Wakefield over his conduct. Not only did Eady cite the case of the Cambridge Evening News, but also two further incidents where Wakefield’s lawyers had issued threatening letters stating that he was suing us when, in fact, he had not issued proceedings, or, in the case of the Sunday Times, he had obtained (without my approval) a stay by consent. Among other things, Mr Justice Eady said in his judgment (Ex. 21):

It thus appears that the Claimant wishes to use the existence of the libel proceedings for public relations purposes, and to deter other critics, while at the same time isolating himself from the “downside” of such litigation, in having to answer a substantial defence of justification. Tactics of that kind would militate against the granting of a stay.

And:

I am quite satisfied, therefore, that the Claimant wished to extract whatever advantage he could from the existence of the proceedings while not wishing to progress them or to give the Defendants an opportunity of meeting the claims.

And:

I have come to the conclusion, bearing all these considerations in mind, that the interests of the administration of justice require that the Channel 4 proceedings should not be stayed pending the outcome of the GMC proceedings. I appreciate that there will be an increased workload for the Claimant’s advisers, but I do not have any reason to suppose that the firm is incapable of absorbing that extra burden. It is, after all, their client who chose to issue these proceedings and
to use them, as I have described above, as a weapon in his attempts to close down discussion and debate over an important public issue.

I took heart in the fact that Mr. Justice Eady apparently shared my view of the motivation and significance of Wakefield’s proceedings against me and my reporting: Wakefield files cases so he can say he filed a case, not because he has a meritorious claim or even the desire to litigate the merits of his claim.

65. Following this order, the litigation went forward against Channel 4 and me for the next two years. In connection with the defense of our case, we requested and ultimately obtained the previously confidential, unredacted Royal Free medical records of 11 of the 12 children in the Lancet project.

66. For the first time, I was allowed to review them, but only in the office of my attorney, where the documents were required to remain. I spent the entire day reviewing these documents, and I was stunned by their contents. In many respects, the information in them could not be reconciled with the information in the Lancet paper.

67. What I did not expect, however, was that, even as I turned the pages, dense with information, a taxi sped across London to the Royal Courts of Justice bearing Wakefield’s notice of discontinuation. After two years of immensely heavy, time-consuming litigation, which took me away from journalism for long periods, he had thrown in the towel, blocking further access to the Lancet children’s records. As indicated with his notice of discontinuance, (Ex. 22) he acknowledged liability for our costs (which in the UK includes attorneys’ fees).

**Freedom of Information Disclosures**

68. If somebody sues you, they have your attention. And for two years Wakefield had mine. Still waiting on the GMC hearing, which would not begin until July 2007, seven months after Wakefield’s discontinuance in the Channel 4 case, I worked on other journalism,
such as an investigation of the Vioxx scandal, involving the Merck drug company, for the *Sunday Times*. I also spent many months on a *Dispatches* documentary for Channel 4 about a drug trial where six young men were injured by an experimental monoclonal antibody. But always in the background through 2005 and 2006 was the meritless Wakefield lawsuit and the mountains of paper it generated.

69. In 2000, the British government had passed a Freedom of Information Act, much like America’s, which came into force in January 2004. In fact, the government had indicated that, wherever possible, public bodies should accept applications even before 2004, and it was on that basis I had approached the Legal Services Commission in late 2003. I was also able to obtain institutional review board records, describing Wakefield’s research and permissions.

70. One seminal disclosure came from the Legal Services Commission, which I reported in the *Sunday Times* just days before Wakefield discontinued his lawsuit. Under the heading “*MMR Doctor Given Legal Aid thousands*,” I revealed in a 31 December 2006 article (Ex. 23) that the £55,000 which I had learnt of in 2003 - and which he had threatened the *Cambridge Evening News* into asserting that he never received “personally” - was nothing compared with direct, undisclosed, personal payments he received in his deal with Mr. Barr. As I accurately reported, based on a tabulation released to me under the Freedom of Information Act:

> According to the figures, released under the Freedom of Information Act, Wakefield was paid £435,643 in fees, plus £3,910 expenses.

71. For comparative purposes, this was approximately $750,000 equivalent, and about eight times Wakefield’s reported annual salary. I learnt, moreover, that he had billed through a company of his wife’s at the hourly rate of £150, which I understood meant that he was contractually incentivised not only to launch the MMR scare, but to keep it going for as long as
possible. (I attach as Ex. 24 a letter by which Wakefield agreed to this deal.) The contract, moreover, had begun in February 1996 – two years before the *Lancet* paper was published, and before any of the children had been seen at the Royal Free.

72. With this new information, I had an even more revealing insight into Wakefield’s situation when, now nearly nine years previously, he had published and promoted his *Lancet* paper. By the time he attended the press conference and recorded the video news release in February 1998, he had already been retained as an expert in contemplated litigation (for which the first writ was issued about seven months later). If, when asked, he had failed to suggest that the vaccine was defective, he would have jeopardised his lucrative and incentivised position with Mr. Barr. Thus, by setting off a storm over MMR, as an apparently independent expert, he was essentially writing himself cheques of potentially life-transforming value.

73. I viewed this as the grossest conceivable conflict of interest. And yet, following my first *Sunday Times* stories, he had denied any conflict. He had even sued me for reporting this truth. And, in the course of that, he had improperly exploited High Court litigation, to bludgeon from the hapless little Cambridge paper a statement with which to manipulate vulnerable parents at a public event in Washington, DC.

74. Even more striking, if this was possible, were Freedom of Information disclosures from University College London. This institution had taken over management of the Royal Free medical school, and had fought me in a three-year battle over documents. The key material would later be set out in the second of my *BMJ* “Secrets” series of January 2011, revealing, for example, a network of companies established by Wakefield intended to exploit the public alarm he had created. One business plan I obtained (Ex. 25) included the following:

It is estimated that the initial market for the diagnostic will be litigation driven
testing of patients with AE [autistic enterocolitis] from both the UK and the USA. It is estimated that by year 3, income from this testing could be about £3,300,000 rising to about £28,000,000 as diagnostic testing in support of therapeutic regimes come on stream.

And:

Once the work of Professor O’Leary and Dr Wakefield is published, either late in 1999 or early in 2000, which will provide unequivocal evidence for the presence of the vaccine-derived measles virus in biopsy samples, the public and political pressure for a thorough, wide ranging investigation into the aetiology of the bowel conditions will be overwhelming. This pressure will also be reflected in the establishment of a number of class action suits against the manufacturers of the vaccines (such legal action is already under way in the UK).

The GMC Hearing

75. On 16 July 2007, a fitness to practise panel of the GMC convened in London. The panel comprised five members – three doctors and two lay persons – and it sat in public. Such panels are statutory tribunals, charged by Parliament under the 1983 Medical Act, to consider cases of possible serious professional misconduct by medical practitioners. Three defendants, including Wakefield, were each represented by a Queen’s Counsel (“QC”), and two supporting lawyers. A verbatim transcript was later published.

76. With a view to a possible second Dispatches programme, I represented Channel 4 on every day of the prosecution case, which ran until 19 October 2007, and I attended on most days after that. My assignment was not to write daily or weekly reports of the case, but a larger project to follow the setting out of the evidence. I regarded the hearing to be an extraordinary investigative tool, penetrating layers of medical confidentiality and legal privilege so as to lay bare what went on around the Lancet paper. Records were read aloud by QCs, and followed with great forensic care by all participants. Thus, what was being read into the public record would have great accuracy, equivalent for journalistic purposes to the documents themselves.
77. Hundreds of documents were exhibited during the proceedings, and among the most important were those which set out Wakefield’s relationship with Mr. Barr and gave details of a secret deal between them to try to find fault with MMR.

78. For example, the GMC panel inspected a document submitted by Mr. Barr and Wakefield to the Legal Aid Board on 6 June 1996, before any of the children were admitted to the Royal Free, and nearly 20 months before the paper was published. This was a grant application, seeking funding to prove the existence what the two men called “a new syndrome.” Among much else, the document (Ex. 26 emphasis is mine) said:

In contrast with the IBD cases, which have a gastrointestinal pathology, children with enteritis/disintegrative disorder form part of a new syndrome. Nonetheless the evidence is undeniably in favour of a specific vaccine induced pathology.

And:

The objective is to seek evidence which will be acceptable in a court of law of the causative connection between either the mumps, measles and rubella vaccine or the measles/rubella vaccine and certain conditions which have been reported with considerable frequency by families of children who are seeking compensation.

It is hoped that using the testing protocol attached it will be possible to establish the causal link between the administration of the vaccines and the conditions outlined in this proposed protocol and costing proposals. The standard of proof aimed for will be at least the balance of probabilities but it is hoped that in many respects the level of proof will reach certainty or near certainty.

Briefly these conditions consist of: Crohn’s disease (and inflammatory bowel disease); there are also persistent reports of children suffering from symptoms akin to autism (here described as disintegrative disorder) coupled with inflammatory bowel disease.

79. At the time of the GMC hearing, I had already obtained a sheaf of correspondence between Wakefield and Royal Free managers which conclusively proved that, by his own clear assertion, the Lancet research was sponsored by the Legal Aid Board. It also proved that Wakefield was working with a network of families to procure children for the project. The letters spoke of the award of a grant of £50,000 from the board, and said that the money was to
conduct work described in a protocol as a “clinical and scientific study.” I attach these letters as Ex. 27.

80. In the face of overwhelming documentary proof, Wakefield admitted under cross-examination that children enrolled for the *Lancet* project were not routine hospital patients (as they appeared to be on the face of the paper), but had been selected on the basis that they had developmental disorders, plus their parents reported bowel symptoms and, he now acknowledged, associated the problems with vaccination. I attach as Ex. 28 the following extract from the transcript (emphasis is mine):

**SMITH:** What I am suggesting to you and what I now want to ask you is where you make it clear that the children had come to the Royal Free in the first place, at least in the majority of cases, in the letters that we have looked at, because their parents, or in some cases their doctor through their parents, thought that MMR might have caused the damage?

**WAKEFIELD:** That is implicit to anyone reading this paper. When we talk in the discussion about a possibility of a referral, selection bias, in a self-referred group, the group is self-referred because of the symptoms manifest by the children, including the history of a possible exposure to a vaccine or an infection that has led to the problem, and then seeking help from a specific unit. That is explicitly what self-referral means. Inherent in that is, to the reader, those elements of the history of the patient that have caused them to come to that unit. To anyone reading this, we would have considered that to be self-evident. *Self-referral on the basis of one or more of the symptoms of gastrointestinal problems, developmental regression and an association with environmental exposure...*

**SMITH:** I asked you why you did not make it clear, as we have seen from the letters that we looked at yesterday, that, at least in the vast majority of cases, these children came in the first place because their parents thought that MMR had caused that condition. You immediately go a line where you talk about self-referral, but that particular reference does not include the very point that I am asking about, and you say is implicit, namely the association with MMR. How does any reader, whether a scientist, doctor or otherwise, read that into what you say there?

**WAKEFIELD:** The patients, children, are self-referred based on their symptoms and their history. *That contains the three key elements of an environmental exposure, gastrointestinal problems and developmental regression. That self-referral encapsulates those three elements.* That is, I would have thought, evident to any reader.

81. This selection of subjects made a mockery of the *Lancet* paper, which, as its very first finding, purported to find an autism-vaccine association, when it was built into the very
fabric of the project. Previously, Wakefield had denied this, and sued me for saying it. But now there was nowhere to hide.

82. The evidence laid out in front of the panel, moreover, showed countless discrepancies between information in the *Lancet* and records to which Wakefield had access. Many instances are set out in the first “Secrets” report, but for proportionate illustration at this point in my declaration, I review three specimen cases.

*Child 1*

83. In the case of Child 1, Wakefield tabulated in the paper that the “interval from exposure to first behavioural symptom” was “1 week.” This was integral to the sudden-onset temporal link. As the *Guardian* reported in February 1998, and which I read when investigating DTP (Ex. 29):

> A medical study suggests today that there could be a link between the measles, mumps and rubella vaccine (MMR) given to children in their second year of life and inflammatory bowel disease and autism... They also found that the behavioural changes in the children which are typical of autism, such as forgetting the basic language they had just learned, began within days of their MMR vaccination.

84. The facts in the case of Child 1, however, which came out the GMC hearing were as I said in my first “Secrets” report. The Royal Free paediatrician John Walker-Smith, who was the last author of the *Lancet* paper, took a history from the mother of this 3½-year-old boy (almost 2½ years after he received his MMR) in which she is only reported to have positively recalled that after vaccination her son was “*pale.*”

85. In addition, Walker-Smith, added to his notes: “? fever, ? delirious.” This would be taken to mean that the mother said, or (more likely) agreed, that he *might* have had a fever, and *might* have been delirious (as if she would remember paleness, but forget delirium). This note, which would have been available to Wakefield when he wrote the Lancet paper, was repeatedly read into the GMC transcript, and I attach the relevant extract at Ex. 30. But – despite
previously being questioned by Wakefield before she came to the hospital (as the GMC hearing revealed had occurred in almost all cases) – she only positively remembered for Walker-Smith that her son was pale after MMR. In June 1996, Walker-Smith wrote a letter (Ex. 31) to Wakefield in terms which Wakefield would chisel for the Lancet:

I saw this interesting child with autism, which began some weeks following MMR, although there were 7-10 days after the MMR, at the age of 1, a brief illness, during which he was pale, possibly had fever, and his mother said he may have been delirious. Mrs One was keen that you had a look at a document which she’s got concerning homeopathic remedies, and I’m passing this on to you.

On the same day, Walker-Smith wrote to the boy’s GP:

Many thanks for referring Child One with autism. It’s difficult to associate a clear historical link with the MMR and the answer to autism, although Mrs One does believe that One had an illness 7-10 days after MMR when he was pale, ? fever, ? delirious, but wasn’t actually seen by a doctor.

86. Where Walker-Smith told Wakefield that the boy’s autism began “some weeks” after the MMR, and noted paleness, and a possible febrile episode 7-10 days after the shot, Wakefield reported this in Table 2 of the paper that the “interval from exposure to first behavioural symptom” was “1 week.” And this was notwithstanding Walker-Smith only repeating the positive assertion that the boy was “pale”, and placing question marks against other possible features which, in any event, could not credibly be regarded as the first “behavioural symptom” of autism.

87. At the GMC, the GP record was read indicating that, before MMR, the mother was concerned about his hearing, and the doctor found discharge from one ear, giving possible cause for concern. As I indicated in the first “Secrets” report (including in the data supplement where the discharge is noted), hearing issues are widely-recognised by specialists as a classic first symptom of the insidious appearance of autism. And, as Wakefield reported in the case of child 9 in the Lancet paper, an ear infection (reported as otitis media) was also regarded by him – Wakefield – as another possible “precipitating event” for the onset of a developmental disorder.
88. Thus there was the possibility of a problem before MMR. Moreover, as Royal Free hospital records showed, there was also a possibility long after. Notwithstanding the prior concerns of the GP, a selection of records, to which Wakefield had access when he wrote the paper and which were presented at the GMC hearing, documented child 1 as having normal development until up to six months after his vaccination. Although Wakefield represented this child in the Lancet as suffering from a sudden onset of regressive autism one week after MMR (which child 1 received at the age of 12 months and five days), in the boy’s referral letter, for example, another GP wrote to the hospital stating that the patient:

initially developed normally, reaching the normal milestones until he was about 15 months old.

89. That is three months later. Moreover, a Royal Free record, read into the public record in my presence at the GMC hearing (Ex. 32), documented the child’s development as “normal” until he was 18 months old – when he was recorded to have shown what the Royal Free record called his “initial behavioural abnormality.” And this time-frame was reiterated in a Royal Free record, which was entered into the GMC transcript and I attach as Ex. 33 written by a consultant neurologist, and co-author of the Lancet paper, Dr. Peter Harvey:

After normal milestones, deterioration from 18 months or so.

And, if this is not enough by way of evidence, in a document written by Wakefield himself, dated 27 November 2006, he stated of this child, vaccinated at 12 months:

Normal development to approximately 18 months followed by regression with loss of words and stasis of speech, comprehension and social interaction leading to a diagnosis of autism.

He then wrote the case up, to create the temporal link he wanted, with a plainly false “1 week” in the Lancet.

90. Moreover, although Wakefield would claim that this boy had a “regressive” phenotype of autism (where acquired skills, including language, appear to be lost), and elsewhere
claimed that all the Lancet children suffered from “severe developmental regression,” both the child’s hospital admission record and his discharge summary describe him as suffering from “classical autism,” and his official discharge summary makes clear that, at best, the opinion about this was uncertain:

It’s also not entirely clear whether his neurological condition in fact represents a neurological deterioration in view of lost milestones, or whether it is a classic autistic picture.

Child 8

91. In some cases I heard presented, doctors had explicitly warned Wakefield of developmental concerns before a child was vaccinated. One example is the case of child 8, the only girl in the paper. In Table 2, Wakefield reported her as experiencing “Post-vaccinial encephalitis?,” described MMR as the “exposure identified by parent or doctor” and gave the “interval from exposure to first developmental symptom” as “2 weeks.”

92. But, as accurately reported in my first “Secrets” report, based on GMC transcript material such as the extract I attach as Ex. 34 (emphasis is mine), her GP had taken the trouble to write:

Dear Dr Wakefield

[Child 8’s] mother has been into see me and said that you need a referral letter from me in order to accept Child 8 into your investigation programme. I gather this is a specific area of expertise relating to the possible effects of vaccine damage and her ongoing GI Tract symptoms. As far as I am concerned, if [Mrs 8] is happy to proceed with this and it gives her any further information and peace of mind, I am sure it would be beneficial for both her and for [Child 8]. I enclose photocopies of some recent correspondence which gives a fair idea of [Child 8’s] current state. I would simply reiterate Dr Houlsby’s recent comment that both the hospital and members of the Primary Care Team involved with [Child 8] had significant concerns about her development some months before she had her MMR Vaccination. I take Mum’s point that she has video evidence of [Child 8] saying a few words prior to this vaccination being given and her vocal abilities are now nil but I do not think we can be entirely convinced as yet that the vaccine is the central cause of her current difficulties. However, I am quite prepared to support [Mrs 8] in her quest for further information and I hope some useful results come from these tests.

93. Wakefield had received this letter, which was backed by enclosures from the GP to the hospital written by specialists.
94. A further anomaly surfaced in the GMC evidence: the number of children whose parents blamed the vaccine. As I have noted previously, the *Lancet* paper stated that the parents of eight of the 12 included therein made this association. The proposition, put before the medical and scientific communities, as well as the general public, was that the parents of eight of 12 children with regressive developmental disorders, who turned up consecutively at a paediatric bowel clinic at one London hospital, said words to the effect of: “It was the MMR, doctor, and it came on within days [specifically 14].”

95. But, as the cases were laid out in the GMC committee room, it was clear that this was not true. In fact, the parents of three more children made the same allegation to doctors, but their assertions were omitted from the paper. The complaint of the parents of child 9 was one such example. The *Lancet* paper attributed the “apparent precipitating event” for child 9’s “autistic spectrum disorder” to “recurrent otitis media,” an ear infection, one week previously. It also noted “MMR 2 months previously.”

96. However, on day 23 of the GMC hearing, a statement was read from a local doctor who had received correspondence from the Royal Free. The relevant passage of the statement, the transcript of which I attach as Ex. 35, said:

> The letter also informed me that [Child 9]’s mother linked his mental regression at age 18-20 months to MMR which he was given at 16 months of age.

97. Although the paper noted that the child had MMR two months previously, the parental allegation was omitted. The result, with two further omissions noted in the *BMJ*, was to:

(a) Greatly sharpen the temporal link reported in the paper, so as to keep it in line with the 14-day time-frame I first saw in the Kulenkampff paper concerning the DTP vaccine.
Along with the exclusion of two other cases, remove the appearance (of what was indeed the case) that these parents were a pre-selected group of complainants against the MMR vaccine and not routine referrals to the hospital.

98. These exclusions were not reported in the *Lancet* paper, and there were no criteria explained. But after I first reported this anomaly in the *Sunday Times* in February 2009, Wakefield offered an explanation that simply could not be right. In a document to the UK Press Complaints Commission, responding to reports by me in the *Sunday Times* in February 2009, to be discussed below, he said:

Parents of 8 of the 12 children made the link between MMR vaccination and onset of symptoms contemporaneously. Other parents made the link retrospectively, that is, some years later. We reported on those 8 who made the link at the time of their child’s deterioration and excluded those who made the link later in order to remove any bias associated with recall that may have been prompted by, for example, media coverage.

99. But this story cannot be reconciled with the children’s records as a whole. There were numerous notes of parents making the association later, whose testimonies he not only included in the paper, but adopted them as fact in his temporal calculations. For example, in the case of child 1, the GP writing to the Royal Free more than two years after the boy was vaccinated, described the parents’ association with MMR as their “most recent concern” as to the possible cause of his autism.

100. Moreover, it is plain from Wakefield’s explanation for the anomaly that he knows that parents’ recollections can be unreliable. Thus he knows that the entire premise of this project and his campaign against MMR is, on his own account of this matter, untenable.

*Wakefield’s Pre-Referral Approaches to GPs and Parents*

101. Wakefield was not a clinician. He was a former trainee surgeon, doing academic research in the Royal Free medical school into inflammatory bowel disease. He had no authority to perform any kind of medical procedure, make diagnoses or provide care. Yet, during the GMC case, evidence rolled out of his repeated approaches to general practitioners and the
parents of each child he enrolled. He contacted them methodically and had discussions with each before they dealt with the hospital’s clinicians.

102. In the case of child 12, Wakefield’s pre-referral involvement with doctors and patients was clear. This, for instance, is how the GMC transcript recorded his response (Ex. 36) when the boy’s mother approached him on the advice of the mother of the brothers child 6 and child 7:

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.

103. But what, I wanted to know, did he have to say? I believed that he must have been briefing, or at the very minimum, suggestively questioning in a manner that could only contaminate history-taking. And although, again and again, these contacts were logged in records, I recalled no real explanation during his 21 days being questioned at the hearing as to why these were needed at all. I heard GMC experts testify that it was virtually unheard of for a hospital consultant to phone patients in their homes. UK health care is not delivered in that manner.

104. I was so struck by one record introduced into evidence during the GMC hearings that I posted it on my website. It relates to child 8, the only girl. She did not have inflammatory bowel disease, but her mother was led to believe she might, adding no doubt to her grief. As I reported on briandeer.com, and attach here as Ex. 37:

Mum taking her to Dr Wakefield, Royal Free Hospital for CT scans/gut biopsies," wrote one family doctor in the north-east of England, for example, before referring the only little girl in the project (who did not have inflammatory bowel disease). "Crohn’s—will need ref letter—Dr W to phone me. Funded through legal aid.

DECLARATION OF BRIAN DEER
Here is another case from the GMC transcript: a record which appeared in the GP notes of child 5 (Ex. 38):

Re [Child 5], Dr Wakefield, consultant gastroenterologist Royal Free rang and gave a v. lengthy and convincing case for [Child 5] to be referred to Professor John Walker Smith

105. The most striking example was a note found by GMC investigators in the records of one of the brothers, child 6, which, again from the transcript, I attach as Ex. 39. It was dated 25 March 1996 - more than four months before he was referred to the Royal Free, and the month after Wakefield signed up to his £150-an-hour deal with Mr. Barr:

Dr Wakefield – Royal Free. To discuss association measles + Autism + inflammatory bowel disease. Discussed general concerns re family. If we feel relevant can refer for treatment to Professor Walker at the Royal Free for investigation.

106. Wakefield’s activities, however, appeared to be highly productive. Parents turned up and said the right things. For example, the parents of child 5, child 9 and child 10 all brought their little boys for Walker-Smith’s outpatient bowel clinic on the same day, and all said much the same thing. Their children were all admitted and their small intestines were intubated in Wakefield’s hunt for measles virus.

The Sunday Times Reports of February 2009

107. The GMC hearing continued from July 2007, with many adjournments, until a final determination in 2010. I had never envisaged anything of such duration, and my editors at the Sunday Times concluded in February 2009 that, such was the public interest, we should publish reports. At that time, there were substantial outbreaks of measles being reported in the UK.

108. On 8 February 2009, two reports by me were published: one on the front page and the other as a centrepread “Focus” feature. The front page report was headlined: “MMR Doctor Fixed Data on Autism.” The centrepread was headlined: “Hidden Records Show MMR
These reports, which I attach as Ex. 4, contained virtually the same reporting that would later appear in my peer-reviewed *BMJ* “Secrets” series over which Wakefield would issue these proceedings in the Texas court. For example, on Page 1:

> The doctor who sparked the scare over the safety of the MMR vaccine for children changed and misreported results in his research, creating the appearance of a possible link with autism, a Sunday Times investigation has found.

Confidential medical documents and interviews with witnesses have established that Andrew Wakefield manipulated patients' data, which triggered fears that the MMR triple vaccine to protect against measles, mumps and rubella was linked to the condition.

Among much else, the Focus feature reported:

> Only one was a girl, Child Eight, aged 3, from Whitley Bay, Tyne & Wear. She was reported in the journal as having suffered a brain injury "two weeks" after MMR.

> Her medical records did not support this. Before she was admitted, she had been seen by local specialists, and her GP told the Royal Free of "significant concerns about her development some months before she had her MMR".

> Child Six, aged 5, and Child Seven, aged 3, were said to have been diagnosed with regressive autism, with an onset of symptoms "one week" and "24 hours" after the jab respectively.

> But medical records show that neither boy was "previously normal", as the *Lancet* article described all the children, and that both had already been hospitalised with brain problems before their MMR.

> Child Six received his vaccine at the age of 14 months, but had twice previously been admitted with fits.

> Child Seven was given his at the age of 20 months but, again, problems already showed.

"He developed well, had social smiling and was responsive to his mother," a psychiatrist wrote. "But he began to have pale episodes and ? [sic] petit mal [convulsions], and had an EEG [an electroencephalogram, a common test for epilepsy] done at 15 months, which was abnormal."

> Meanwhile, neither was diagnosed with regressive autism, or even nonregressive classical autism.

109. Prior to publication of the *Sunday Times* reports, I wrote to Wakefield setting out the substance of what was proposed to be published and seeking his responses. I received nothing at that time. However, Wakefield published his reply on the internet. I attach
Wakefield’s internet posting, which includes what I put to him, and his response, which I did not see until after publication, as Ex. 40.

110. My *Sunday Times* reporting was covered prominently by media in the US, and I saw their reports at the time. For proportionate examples, on 9 February 2009, the *Los Angeles Times* reported (Ex. 41):

> Dr Andrew Wakefield, the British physician who jump-started the scare about a link between the measles-mumps-rubella (MMR) vaccine and autism, manipulated and changed data to make his case in the 1998 *Lancet* paper, according to an investigation by the Sunday Times of London... by studying confidential and public records, investigative reporter Brian Deer... found a different story.

On the same day, *USA Today* reported (Ex. 42):

> An English doctor who linked childhood vaccines to autism, 'changed and misreported results in his research,' reports the London *Times*... All of the researchers involved in the study deny misconduct, says the *Times*. 'Through his lawyers, Wakefield this weekend denied the issues raised by our investigation, but declined to comment further.'

On 11 February 2009, the *Chicago Tribune* reported (Ex. 43):

> The charge is explosive: a British doctor who led the first scientific study suggesting a link between autism and the MMR vaccine misrepresented data in a prestigious medical journal. The allegation appears in an investigation published Sunday in the *Times* of London and has raced around the world since... Deer is in the US this week to deliver a lecture on his work.

On 21 February 2009, *Newsweek* reported (Ex. 44):

> The first cracks in the vaccine theories of autism appeared in early 2004. An investigation by British journalist Brian Deer in the *Sunday Times* of London revealed that the children Wakefield described in the *Lancet* study had not simply arrived on the doorstep... The investigation has since expanded, with new charges by journalist Deer that Wakefield or his coauthors misrepresented the children's medical records.

*Cedillo v Secretary for Health and Human Services*

111. At approximately the same time as my the *Sunday Times* reports, three special masters in the United States Court of Federal Claims handed down orders in three test cases of Wakefield’s theories. The cases had taken years to bring to court, and all of them failed, dashing the hopes of some 5,000 families, who had been unremittingly strung along with talk of measles
virus and enterocolitis. Wakefield was listed to appear for the lead test case: a severely-challenged Arizona girl, Michelle Cedillo. But the doctor was never called, evidently seen as a liability, leaving others to advance his claims.

112. I had attended the Cedillo hearing in June 2007, and was present for the screening of date-stamped videotapes showing Michelle’s autistic behaviour before her MMR.

113. Later (but long before I wrote the BMJ “Secrets” articles) I read transcripts of the three completed test cases – Cedillo, Hazlehurst and Snyder – and noted strong criticism of Wakefield’s integrity. For example, in October 2007, Dr. Robert Rust, a pediatric neurologist, gave evidence in the Hazlehurst case. The transcript (relevant excerpts of which are attached as Ex. 45) reports Rust commenting (emphasis is mine):

The most striking observations have I can say with confidence been thoroughly discredited in the medical literature and in medical communities on the basis of the ways in which we usually thoroughly discredit things: The lack of validation, the lack of a capacity to repeat the same observations, review of the tissue specimens and the techniques that were used to study those tissue specimens demonstrating that the methods were faulty and the observations were incorrect.

The gathering of information from nonsequential patients, demonstrating those patients in the medical literature in ways that misrepresent the manner in which those patients were gathered, failure to misrepresent economic advantage related to publication, a wide variety of things. The medical community is relatively forgiving about some things in its community, but scientific fraud is not one of those things that we forgive.

We'd be very careful before we assign that sort of thing, but there is abundant evidence that that was the case here, and for us, it's something that we don't like because we try to very hard to do what we can for patients.

114. Similarly in Hazlehurst, Professor Thomas T. MacDonald, an eminent gastrointestinal immunologist and Dean of Research at Barts and the London School of Medicine, gave evidence with regard to Wakefield’s theory about how MMR was supposed to cause autism. In transcript which I attach here as Ex. 46, MacDonald said:

The theory was made up in January 1997 by a lawyer, Richard Barr, a woman called Rosemary Kessick and Andy Wakefield before they had seen a single patient.

(Rosemary Kessick has publicly identified herself as the mother of child 2 in the Lancet paper.)
115. As a matter of fact, it is my belief that they made up their theory up to a year before this date. MacDonald was further questioned by counsel:

Q: Are these studies by Drs. Wakefield, Uhlmann and Ashwood currently viewed by the scientific community as credible and reliable?

A: No, completely incredible and unreliable. Everything that Wakefield has done now is actually considered to be -- unreliable I think is the best way to say it.

Q: Has Dr. Wakefield's data ever been confirmed?

A: No. In fact, it's quite the reverse. Everything Dr. Wakefield has done has always been not confirmed wherever it is possible to do it.

In February 2009, Special Master George Hastings, who presided over the Cedillo case, held in his judgment, a portion of which I attach as Ex. 47 (emphasis is mine):

Dr MacDonald, indeed, went so far as to opine that Dr Wakefield’s “autistic enterocolitis” theory was merely an “invention” created for litigation purposes. Similarly, Dr Rust summarized Wakefield’s process of developing and disseminating his general theory, and described it as “scientific fraud.”

To be sure, the petitioners in this case have stressed that they rely upon Dr Krigsman as their expert concerning the causation of GI symptoms, not Dr Wakefield. Thus, they argue that criticisms of the personal integrity of Dr Wakefield are not relevant here. However, because Dr Krigsman’s general causation approach clearly was strongly influenced by Dr Wakefield’s theory, criticisms of Dr Wakefield’s “autistic enterocolitis” theory are relevant, and criticisms relating to Dr Wakefield’s credibility in developing that theory are of relevance as well. Therefore, it is a noteworthy point that not only has that “autistic enterocolitis” theory not been accepted into gastroenterology textbooks, but that theory, and Dr Wakefield’s role in its development, have been strongly criticized as constituting defective or fraudulent science.

With regard to Wakefield, who advised the Cedillo family, and a Dr Arthur Krigsman, who was brought to Thoughtful House by Wakefield to perform procedures on children, including Michelle Cedillo, the Special Master said in his judgment:

Unfortunately, the Cedillos have been misled by physicians who are guilty, in my view, of gross medical misjudgment.

Public reaction to the three test case judgments was predictable. In an editorial, the Austin American-Statesman said: (Ex. 48):
In every case, the judges believe that Wakefield and Krigsman are wrong and gave the families false hope. Worse, the reaction to Wakefield's theory has been a surge in measles cases fed by unvaccinated children.

It added:

The time and money expended on lawsuits has been misspent, and the money for research into causes and cures should be directed elsewhere. And the vaccination scare should be put to rest for good.

The Press Complaints Commission Complaint

116. In the United Kingdom, newspapers and many other printed publications voluntarily submit themselves to a supervisory body, the Press Complaints Commission (“PCC”). This Commission deals with complaints, particularly regarding fairness and accuracy, and holds itself out to the public as offering a free alternative to litigation. According to the PCC’s website (http://www.pcc.org.uk/AboutthePCC/WhatisthePCC.html) it can enforce the following array of possible sanctions (Ex. 49):

- negotiation of an agreed remedy (apology, published correction, amendment of records, removal of article);
- publication of a critical adjudication, which may be followed by public criticism of a title by the Chairman of the PCC;
- a letter of admonishment from the Chairman to the editor;
- follow-up from the PCC to ensure that changes are made to avoid repeat errors and to establish what steps (which may include disciplinary action, where appropriate) have been taken against those responsible for serious breaches of the Code;
- formal referral of an editor to their publisher for action.

117. In a 58-page letter dated on or about 13 March 2009, Wakefield filed a complaint with the PCC regarding the February 2009 reports in the Sunday Times. This was followed a week later by a 16-page addendum filed on Wakefield’s behalf by his publicist at that time. The complaint itemised almost every aspect of the reports and denied what appeared to me to be virtually each and every statement within them. I attach the complaint as Ex. 50.
118. I reviewed Wakefield’s PCC complaint in its entirety, and I judged it to be meritless. My newspaper, the *Sunday Times* took the same view.

119. The complaint was handled by the PCC deputy director, who marshalled Wakefield’s allegations into a list of 32 headline complaints, which I attach (Ex. 51), none of which had any merit. I would have regarded some as frankly laughable had they not made a considerable call on my time and had plainly been contrived to harass, overwhelm the editorial systems of the *Sunday Times* and hence discourage further inquiry into Wakefield’s conduct. For example, one complaint was, with Wakefield’s agreement, formulated by the deputy director as:

> The allegation that Dr Wakefield’s team claimed to have discovered a new inflammatory bowel disease.

Indeed. Extraordinarily, seven months after he filed this complaint, he gave an interview to CBS News, in October 2009, where at 55 seconds into a 6.28-minute clip (http://www.youtube.com/watch?v=yTh97pANTxc) he was asked:

Q: “What did the study find? What was the conclusion, in essence?”

ANDREW WAKEFIELD: “The conclusion was that there is a bowel disease in children with autism which is new, which has not been investigated before, that this may well be related to the developmental regression, since they had occurred at around the same time, and that the association, the parental association, with MMR exposure needed to be thoroughly investigated.”

Q: “What year was this?”

ANDREW WAKEFIELD: “This was 1998.”

The vexatious, harassing, quality of the complaints was also well-illustrated by this purported grievance, framed by the PCC deputy director on Wakefield’s behalf:

> The claim that researchers have used virology to see if MMR caused bowel disease. He has suggested that virology cannot establish a causal relationship in this way.

120. Yet the very core of Wakefield’s theories, since about 1992, has been that measles virus in MMR was the ultimate cause of autism in the children, a claim which he patented,
submitted as a putative expert in UK litigation, and then saw tried in the US Court of Federal Claims.

121. At the outset, Wakefield sought to press his complaint, asking for immediate, unconsidered vindication. After the *Sunday Times* requested time to respond in detail to his lengthy, tendentious points, he responded in a letter to the PCC, (Ex. 52):

The suggestion made by the ST that if the PCC is minded to consider the substance of the complaint, it should have an opportunity to submit a full response should be rejected.

He said:

However, it is my unwavering position that I have already provided more than enough evidence for the PCC to rule in my favour.

122. The PCC ultimately determined that it would stay its consideration of his complaints until it had received the determination of the GMC panel, then sitting in public and judging the matter to far higher standards of evidence and fairness than would be possible by the PCC.

123. Even as I file this declaration, Wakefield still has not taken his complaint forward, and as a matter of fact I do not believe the PCC would now hear it. And we are now three years on from the 2009 *Sunday Times* reports, almost two years on since the time Wakefield lost his license to practice medicine, and the PCC complaint has gone nowhere beyond wasting my time and that of the PCC. Meanwhile, Wakefield cynically continues to refer to it as if it offers him some form of vindication.

**The GMC Panel’s Findings**

124. A GMC panel gives its conclusions in two stages. In the Wakefield case, findings of fact were handed down on 28 January 2010, a year before the *BMJ* “Secrets” series. I read the findings as soon as they were released. Some three dozen heads of charge were found proven against him, on a criminal standard of “sureness,” which the panel makes clear in its findings.
One proven charge that attracted a great deal of attention concerned an incident at a parents’ conference in California in May 1999 at which Wakefield had joked about how he had purchased blood samples for his research from children as young as 4 years old, attending his son’s birthday party, and how he said children had cried, fainted and vomited. Many other proven charges concerned further ethical misconduct: essentially of causing children with developmental disorders to be abused and exploited. I attach the findings of fact (Ex. 53).

125. However, I felt that the most important proven charges were four which related to his dishonesty over the Lancet research. By virtue of the perpetrator’s intent to do what he knew was wrong, dishonesty goes to a different level of misconduct.

The First Count of Dishonesty Proven to the Criminal Standard

126. The first proven count of dishonesty directly concerned the Lancet paper’s content. I believe, based on many years of experience in public interest and medical journalism and discussion with specialists, that this proven count can correctly be described as “research fraud.” In Wakefield’s case, it involved an intent to mislead the medical and scientific communities and the general public on a grave issue of public concern, impacting on the safety of children.

127. Among other things, the relevant charge said that Wakefield “knew or ought to have known the importance of describing the patient population” enrolled in the Lancet paper and that he “had a duty to ensure that the factual information in the paper and provided by [him] in response to queries about it was true and accurate.” The proven charge also noted that Wakefield “had a duty to disclose to the Editor of the Lancet any disclosable interest including matters which could legitimately give rise to a perception that [him] had a conflict of interest.” The panel ruled:
You failed to state in the *Lancet* paper that the children whose referral and histories you described were part of a research study project, the purpose of which was to investigate a postulated new syndrome comprising gastrointestinal symptoms and disintegrative disorder following vaccination.

It found that Wakefield’s conduct in this regard was:

i. dishonest,

ii. irresponsible,

iii. resulted in a misleading description of the patient population in the *Lancet* paper;

The panel explained its reasoning:

In reaching its decision, the Panel notes that the project reported in the *Lancet* paper was established with the purpose to investigate a postulated new syndrome and yet the *Lancet* paper did not describe this fact at all. Because you drafted and wrote the final version of the paper, and omitted correct information about the purpose of the study or the patient population, the Panel is satisfied that your conduct was irresponsible and dishonest.

The Panel is satisfied that your conduct at paragraph 32.a would be considered by ordinary standards of reasonable and honest people to be dishonest.

128. The next charge also directly related to the *Lancet* paper’s content. The panel noted that the paper stated that the children who were the subject of the paper were “consecutively referred to the department of paediatric gastroenterology with a history of a pervasive developmental disorder with loss of acquired skills and intestinal symptoms (diarrhoea, abdominal pain, bloating and food intolerance) and subsequently described them as a ‘self referred’ group.”

The panel ruled that Wakefield knew or ought to have known that such a description implied:

i. a routine referral to the gastroenterology department in relation to symptoms which included gastrointestinal symptoms,

ii. a routine process in which the investigators had played no active part;

129. Against the criminal standard of sureness, the panel found that the referrals of child 1, child 9, child 5 and child 10 “did not constitute routine referrals to the gastroenterology department in relation to intestinal symptoms as the referring doctors referred the children for
investigation of the role played by the measles vaccination or the MMR vaccination into their developmental disorders and did not report any history of gastrointestinal symptoms.”

130. The panel further found that child 2, child 9, child 5 and child 12 included “active involvement in the referral process” by Wakefield. It ruled that “the description of the referral process in the Lancet paper” was therefore:

i. irresponsible,

ii. misleading,

iii. contrary to your duty to ensure that the information in the paper was accurate;

The second dishonesty count proven to the criminal standard

131. In closing arguments, on 15 October 2009, day 133 of the GMC hearing, Kieran Coonan QC, counsel for Wakefield, made a formal submission to the panel. I was present. With regard to charges concerning Wakefield’s use of money from the government’s legal aid fund, he said (emphasis is mine):

We come to the last few points in relation to the subject of legal aid. I invite the Panel to step back and consider the reality. We say that the reality of the position is that heads of charge 3 and 4 amount to an allegation of fraud against the Legal Aid Board whether or not the prosecution is prepared to characterise it as such.

In sum, Wakefield’s own counsel in the GMC proceedings argued that a finding of dishonesty under charge 3 and 4 was tantamount to a finding of fraud. I attach the relevant portions of the GMC transcript, which I read before publishing the “Secrets of the MMR Scare” articles. (Ex. 54).

132. And that is exactly what the GMC found. Charge 4 included two counts of dishonesty, one of which was found proven to the requisite standard. The matter concerned the grant application by Wakefield and Mr. Barr to the Legal Aid Fund in June 1996. Although they
had supplied detailed costings for the “clinical and scientific study,” and received funding, the clinical work was in fact paid for by the National Health Service.

The panel ruled that Wakefield:

i. failed to cause the Legal Aid Board to be informed that investigations represented by the clinicians as being clinically indicated would be covered by NHS funding,

ii. caused or permitted the money supplied by the Legal Aid Board to be used for purposes other than those for which you said it was needed and for which it had been granted,

It said his conduct was:

i. dishonest,

ii. misleading,

133. Again, according to Wakefield’s counsel’s own interpretation, the GMC found that Wakefield was guilty of fraud.

*The Third Dishonesty Count Proven to the Criminal Standard*

134. In this declaration, I have previously referred to a letter submitted by Wakefield to the *Lancet* in May 1998, replying to a reader suggesting that there was some involvement of lawyers in the research. This is the letter in which, among other thing, he had said “Only one author (AJW) has agreed to help evaluate a small number of these children on behalf of the Legal Aid Board” and said: “no conflict of interest exists.” This letter was the subject of a dishonesty charge, which I interpreted to be an example of Wakefield’s after-the-fact lying.

Among other things, the panel said:

In a letter to the *Lancet* volume 351 dated 2 May 1998, in response to the suggestion of previous correspondents that there was biased selection of patients in the *Lancet* article, you stated that the children had all been referred through the normal channels (e.g. from general practitioner, child psychiatrist or community paediatrician) on the merits of their symptoms,

b. In the circumstances set out in paragraphs 32.a., 34.a. and 34.b. this statement was,

i. dishonest,

ii. irresponsible,
iii. contrary to your duty to ensure that the information provided by you was accurate;

Again, as I understood it, Wakefield had been found guilty by the GMC of dishonestly describing the patient population.

*The Fourth Dishonesty Count Proven to the Criminal Standard*

135. I regarded this proven charge, too, to be an example of after-the-fact lying, by which Wakefield threw sand in the face of those who tried to understand the basis of the *Lancet* paper. Wakefield’s claims had provoked so much public anxiety that, in the month after publication, a blue ribbon panel of experts was convened for a day-long conference involving some 60 participants. During this event, one participant, a senior professor of gastroenterology, sought to understand how Wakefield had obtained the children enrolled into his *Lancet* research.

Among other things, the GMC panel said:

a. On 23 March 1998 at a scientific meeting at the Medical Research Council convened to examine the evidence relating to measles or measles vaccine and chronic intestinal inflammation, you were asked about the issue of bias in generating the series of cases including the twelve children in the *Lancet* paper and you stated that all patients reviewed so far had come through General Practitioners or paediatricians by “the standard route,”

b. In the circumstances set out in paragraphs 32.a., 34.a. and 34.b. this statement was,

i. dishonest,

ii. irresponsible,

iii. contrary to your duty to ensure that the information provided by you was accurate;

The Panel has taken into account that this was an important scientific meeting to consider the implications of your published research and the major public health implications arising from it.

The panel found:

The statement you made would be considered by ordinary standards of reasonable and honest people to be dishonest.

*The GMC Panel’s Sanctions Stage*

136. In May 2010, the panel reconvened in public to issue sentencing statements. I attach the statement for Wakefield (Ex. 55 (emphasis is mine). Among other things, it said:
The Panel made findings of transgressions in many aspects of Dr Wakefield’s research. It made findings of dishonesty in regard to his writing of a scientific paper that had major implications for public health, and with regard to his subsequent representations to a scientific body and to colleagues. He was dishonest in respect of the LAB [Legal Aid Board] funds secured for research as well as being misleading. Furthermore he was in breach of his duty to manage finances as well as to account for funds that he did not need to the donor of those funds. In causing blood samples to be taken from children at a birthday party, he callously disregarded the pain and distress young children might suffer and behaved in a way which brought the profession into disrepute.

And:

The Panel concluded that Dr Wakefield’s shortcomings and the aggravating factors in this case including in broad terms the wide-ranging transgressions relating to every aspect of his research; his disregard for the clinical interests of vulnerable patients; his failure to heed the warnings he received in relation to the potential conflicts of interest associated with his Legal Aid Board funding; his failure to disclose the patent; his dishonesty and the compounding of that dishonesty in relation to the drafting of the Lancet paper; and his subsequent representations about it, all played out against a background of research involving such major public health implications, could not be addressed by any conditions on his registration. In addition, the Panel considered that his actions relating to the taking of blood at the party exemplifies a fundamental failure in the ethical standards expected of a medical practitioner.

137. Wakefield was ordered to be erased from the medical register, with the erasure stayed pending any appeal to the High Court.

138. Wakefield filed an appeal against the sentence. In my view, this was yet another scheme to obtain publicity, as he complained about the “unfair and unjust” treatment he said he had received from the GMC. Through contact with the court, I established that he subsequently abandoned his appeal in December 2010, and was then erased from the medical register.

139. In December 2010, the month before the “Secrets” series, he was formally erased from the medical register, and the following month he was expelled from the Royal College of Pathologists. Despite his improper use of the letters FRCS after his name, including in the petition to this Court and in promotional and fundraising materials directed to the parents of children with developmental disorders, the college has informed me that he was not in fact affiliated with the Royal College of Surgeons at any time in the last 15 years. Therefore, he could not be expelled.
140. In the wake of the GMC findings, I received several unsolicited messages from former Wakefield supporters, who felt they had been used and betrayed by Wakefield. One correspondent had known well a woman named Liz Birt, who had set up a 501(c)(3) organization called Medical Interventions for Autism that, after Wakefield was professionally ruined in the UK, got him a Green Card to live in the United States. Birt’s son had a developmental disorder. Tragically, she later died in a car crash. The email, dated 23 February 2010 (Ex. 56), said that, in the writer’s view, Birt’s life had begun “a long spiral down” as a result of her contact with Wakefield, and that:

He could not even be bothered by the way to attend her funeral.

My Website, briandeer.com

141. Since 2002, I have operated a website, briandeer.com, which contains reporting on a wide variety of topics. I operate this site in the public interest.

142. In paragraph 4.21 of his petition, Wakefield makes a number of references to my website, almost all of which are couched in false or misleading terms. They begin with his first assertion:

As early as April 22, 2011, Defendant Deer published a lengthy, self-congratulatory, four-part article called, Nailed: Dr Andrew Wakefield and the MMR – autism fraud…

The clause “As early as April 22, 2011…” is associated with six “defamatory statements about Dr Wakefield” set out on the following page. The article is of one page, not four. Contrary to the implication of “As early as,” each and every one of the six defamatory statements, listed, and also the headline, was in continuous publication, in identical terms, for more one year before the petition was filed on 3 January 2012.
Although I am unable to print archived versions of pages directly from my website, but the content is accessible online from the WayBack Machine, web.archive.org. The April 2011 version, identified by the petitioner, is:


By April 2011, that content had been posted for at least one year. For example, the 17 April 2010 version is:


A true and correct copy of the 17 April 2010 content, accessible through the WayBack Machine, is attached as Ex. 57.

Unremittingly Evasive and Dishonest

Almost from the outset of my dealings with Wakefield, it appeared to me that he could not be relied upon to tell the truth. This was even on matters of public concern as grave as the safety or otherwise of children by means of vaccination. For example, his response to the *Lancet*’s “retraction of an interpretation” in 2004 simply could not be reconciled with facts that were checkable by anybody of average education. Yet still Wakefield persisted in his untruths, as if he was blind or indifferent to the obviousness of his conduct to those who, like myself, did have reason to take the trouble to check.

Particularly in light of the GMC panel’s findings of fraud and dishonesty, it would be disproportionate here to exhibit all the examples I could cite of what I regard to be Wakefield’s unremittingly evasive and dishonest character. However, I return briefly to the “retraction of an interpretation,” by which in March 2004 the authors of the *Lancet* paper withdrew their conclusions of 1998.

**Interpretation** We identified associated gastrointestinal disease and developmental regression in a group of previously normal children, which was generally associated in time with possible environmental triggers.
On 30 May 2010, some seven months before the BMJ “Secrets” series, Wakefield was interviewed at a website called “The Daily Bell.” By this time in his life, he had been ordered to be erased from the medical register on dozens of charges of serious misconduct, and was reduced to getting his message out to those who might come to his aid by appearing in fringe venues, such as non-mainstream websites and fringe online videos. But, as revealed in an exchange during this interview (Ex. 58), he would not recognise the most basic facts.

**Daily Bell:** We've already touched on it, but explain please in detail why the initial paper was disavowed by the *Lancet*?

**Dr. Andrew Wakefield:** In the first instance, the Editor of the *Lancet* asked us to retract an interpretation of the paper. And that interpretation was that MMR vaccine was the cause of autism.

**Daily Bell:** But you didn't make this claim did you?

**Dr. Andrew Wakefield:** No, the paper did not make that claim. It did not provide the interpretation that MMR vaccine is the cause of autism. However, it did raise the possibility that vaccines may be associated with autism. But you cannot retract a possibility. A possibility exists. It remains a possibility and therefore to retract it is illogical and was done purely as a political expedient.

**Daily Bell:** So you weren't prepared to retract a possibility?

**Dr. Andrew Wakefield:** My two colleagues and I were not prepared to get involved in that kind of illogical, political process.

And yet the words of what was retracted would be clear to anyone. No “possibility” was retracted. Rather, after discovering the circumstances under which Wakefield had been working for a lawyer and the covert involvement of litigants and campaign groups in the recruitment of children, the authors no longer stood by their conclusion.

His relentless mendacity reached a crescendo on the day that the first *BMJ Secret* article was published. Wakefield was enjoying hospitality at a tiny anti-vaccine conference at a luxury villa resort in Montego Bay, Jamaica, and was interviewed via Skype by Andersen Cooper of CNN. Among other things, he ludicrously claimed that I was a “hit man”
who had been “brought in to take me down because they are very concerned about the adverse reactions to vaccines,” when he knew perfectly well that I was a working journalist going about my business. He then said:

He was supported in his investigation by the Association of British Pharmaceutical Industries, which is funded directly and exclusively by the pharmaceutical industry.

149. As a matter of fact, not only did I receive no support from the Association of the British Pharmaceutical Industry, or any person to my knowledge associated with it, I have not even had cause to telephone the ABPI’s press office in more than a decade, or to knowingly speak to any of its employees. Under pressure, Wakefield’s instinct was to baselessly smear. His allegation was simply intended to throw sand in viewers’ eyes, avoiding debate about his own conduct.

My BMJ Reporting: “Secrets of the MMR Scare”

150. As explained at the beginning of this declaration, my initial curiosity over the 1998 Lancet paper was the “temporal link” by which an apparent association between MMR and autism had been generated. But, during the course of the GMC proceedings, I came to look more carefully at the other side of the project, which was a claim by Wakefield to have discovered a new inflammatory bowel disease, which he later called “autistic enterocolitis.” This was a major feature of the plaintiffs’ case in MMR vaccine litigation, both in the UK and the US, but I had not adequately researched the background of this aspect to be able to write about it authoritatively.

151. During the Wakefield GMC proceedings, this changed when I noticed something extraordinary. The Lancet paper reported that 11 of 12 children had what was described in its Table 1 as a “histological finding” (meaning a finding under a microscope) of “non-specific colitis,” and elsewhere the paper referred to a purported new inflammatory bowel disease. But,
reports of the Royal Free Hospital’s pathology service, repeatedly read to the panel, indicated that the children’s colons were healthy. The consultant pathologist responsible, Dr. Susan Davies, a *Lancet* paper co-author, told the panel that, for the majority of the children, she and her colleagues had made no histological diagnosis of colitis. However, she concurred with Wakefield and others who claimed that there had been a “research review” in the medical school which had subsequently found colitis (inflammation of the large bowel), where the pathology service had not. The GMC panel heard that the bases of these revisions were not recorded in children’s records.

152. In April 2010, after the GMC findings of fact, but before the sentencing phase, the *BMJ* published a report by me which explored this curiosity. I spoke to experts, including Professor David Candy, a paediatric gastroenterologist, who had peer reviewed the *Lancet* paper and recommended it for publication. Candy expressed surprise at the new information and said that he believed it was wrong for the authors to have withheld the information about the pathology service findings. My article generally suggested that, in these previously undisclosed circumstances, there was another question-mark over the paper as published. My report was titled “Autistic Enterocolitis under the Microscope,” and led to discussions, initiated by the *BMJ*, over whether there was anything more that could be said, for a medical readership, about what was commonly described in Britain as the “MMR Scare.” In a telephone conference, which I believe took place in June 2010, I raised three topics, and the editor, Dr. Fiona Godlee, commissioned them as a series.

153. In some three decades in journalism, I have never spent so much time in editorial processes on one print-media project, and I have never known of articles to be subjected to such scrutiny and care, as was the case with the *BMJ* series. From commissioning to publication took
approximately five months, and much of the basic reporting had been completed months and years before that. Although we were not all working on the articles for all of this period, the back-and-forth was such as I had not previously experienced.

154. At all times, based on my prior experience with Wakefield, I was mindful that the chances were high that he might initiate frivolous litigation in the High Court, or possibly lodge another time-consuming, vexatious complaint with the UK Press Complaints Commission. Apart from an admission that he was indeed the person shown in the videotape talking about buying blood from children at a birthday party, he had conceded nothing whatsoever (even where the overwhelming evidence left no room for any credible denial). It seemed possible that I would find myself back in a London court or before the PCC as a result of publishing information that I knew to be both true and in the public interest.

155. Thus, I took great care in my reporting, and appreciated that the BMJ did the same. For example, I suggested to the BMJ that an editor independently fact check the articles. Dr Godlee agreed, and assigned Jane Smith to perform this additional level of review. This was not because I believed any of my reporting to be of dubious accuracy or requiring some additional review in order to ensure accuracy. Rather, it was because I was confident in the accuracy of my reporting, and I was eager to make myself and the underlying documents and information available for full review and inspection.

156. From the beginning of my work on the “Secrets” series, I was cognizant of Wakefield’s frivolous PCC complaint regarding my Sunday Times reporting. Given my repeated offers to interview him over the past several years, I believed he well understood that my door was open if he ever wanted to sit down with me, on the record, to discuss any inaccuracies he believed existed in my reporting. He never reached out to me or signaled to me in any way that
he wanted to explain himself personally. Nor did he ever seek any correction to material at my website. Rather, I believed firmly by that time that he had no interest in ever actually explaining himself and subjecting those explanations to further examination. As discussed earlier, several events led me to believe this: his 2005 libel case against me and the Sunday Times that he subsequently stayed and later dismissed; his 2005 libel case against me and Channel 4 that he tried unsuccessfully to stay and then quickly dismissed once I got access to the underlying patient records; his filing of the PCC complaint and efforts to obtain summary adjudication before I and the Sunday Times had an opportunity to defend our reporting; his decision to stay the PCC complaint after the commission rejected his request for summary adjudication; his filing of an appeal of the GMC findings and sanction against him, only to later dismiss that appeal. In essence, I believed that Wakefield was far more interested in issuing public denials, filing lawsuits and appeals, making official complaints, and attempting to intimidate responsible journalists than he was in actually engaging with them.

157. Nevertheless, in the absence of any willingness on his part to give me an interview, I relied on his PCC complaint, along with his book, Callous Disregard, to be an exhaustive exposition of his denial of the allegations against him in my Sunday Times reports—essentially the same allegations that were the subject of my reports for the “Secrets” series. I considered his PCC complaint throughout my reporting, and, as discussed elsewhere in this declaration and as made clear by my “Secrets” series, rejected the substance of those arguments based on my independent consideration of what I believed to be the relevant evidence. Nothing in the PCC complaint or Callous Disregard ever gave me any concern that my reporting in the BMJ “Secrets” series was false in any way.
158. I attended multiple meetings at the BMJ offices during the editorial process for the “Secrets” series. The first meeting was with Dr. Godlee, and we discussed the drafts of the articles, along with significant documents. During another meeting with Dr. Godlee, I answered specific questions regarding various statements, and documents were reviewed. I also met for several hours with deputy editor Jane Smith. She had obtained the GMC transcript, checked my copy against it in advance of the meeting, and now asked me questions and checked further material. I know that the first report was also reviewed by a doctor, but I was not part of that process.

159. These are but fragments of a long and arduous process, which also involved the generation and checking of a mass of footnotes. Medical journals routinely include references to previously published articles and books, but I wanted something more. I wanted footnotes which would allow readers to check my factual statements, and, where appropriate, Wakefield’s denials, for themselves. In my view, on a matter as controversial and filled with suspicion among some vulnerable parents as the vaccine scare, I wanted to go beyond the expectation that I would simply be believed, or that the BMJ’s prestige would carry the day. Although all the information could not practicably be fitted in to the printed edition of the journal, I wanted the online edition to carry factual footnotes in addition to traditional references. There was no obligation upon me to ask for this, but I did, and Dr. Godlee agreed.

160. The first “Secrets” report was followed by 124 footnotes and references (compared with 39 references in the printed edition). The second report online was followed by 55 footnotes and references. The third report online was followed by 27. By this time, the GMC transcript was online, and readers could follow my footnotes to extracts of the original
documents. I published other documents at my website, including, for example, material
obtained under the Freedom of Information Act.

161. And even this was not enough. In addition to the footnotes, references, and online
documents, I submitted a 12-page data supplement, published online with the first report,
containing two tabulations and a further 93 footnotes, making a total for that report, which is the
only one of the three cited in Wakefield’s petition, of 217 checkable footnotes. I am not aware
of any comparable journalistic exercise.

162. I specifically included in the footnotes a cite to Wakefield’s Press Complaints
Commission Complaint against me and the Sunday Times. As discussed above, I did not think
that there was any merit to Wakefield’s claims in the, now inactive, PCC complaint, which by
that time I viewed as having been effectively abandoned by Wakefield, but I knew that the BMJ
series covered the same ground and allegations as the 2009 Sunday Times reports, and I wanted
to make sure readers could locate Wakefield’s positions if they chose to. Moreover, in the body
of the first article, I noted that Wakefield denied all of the allegations against him and gave
specific matters which he had denied, as well as an explanation as to why he believed scientific
fraud is impossible. I thought this was fair treatment of his positions. In my editorial judgment,
they were meritless and did not justify additional space in the body of the article. And, again,
there was a link to the full complaint in the footnotes, allowing readers to simply click on it and
read the whole thing.

163. As I make this declaration, after more than a year of the “Secrets” reports being in
publication, I have become aware of only one error: a two character spelling mistake in one
online-only footnote, where a GP’s first name “Andrea” is, in one of three instances, written as
“Anthea.” I remain entirely committed to the truth and fairness of the reports, and had I not been
so committed at the time of publication, I would not have gone to such enormous lengths – not required of me by any conventions of journalism, whether medical or general interest – to expose myself in the very many footnotes and documents to the potential for the most intensive post-publication review imaginable.

164. Despite my steadfast belief in the accuracy of my reporting in the “Secrets of the MMR Scare” series, I understand that Wakefield alleges in this case that my reporting was false and malicious. Nothing could be further from the truth. In the following sections of this declaration, I have attempted to explain my subjective state of mind as to the statements challenged by Wakefield, as well as give examples of specific factual evidence upon which I relied. Although styled as a present-tense response to Wakefield’s allegations in this case, (unless otherwise indicated) the following represents my thought process and subjective state of mind at the time of publication—why I reported what I did and why I believed it to be true.

The Reporting Challenged by Wakefield: “Fraud”

165. I did not state in any of the “Secrets” articles that Wakefield had engaged in “fraud.” I did not expressly use that word (although I do quote Wakefield in the first article denying what he called my “implications of fraud” against him). Rather, that statement of opinion was made in the first BMJ editorial in the “Secrets” series. That said, I believe (and believed at the time of publication) that Wakefield did engage in fraud. Indeed, this fact is beyond any serious debate. Of course, the GMC determined that Wakefield was guilty of dishonesty, which Wakefield’s counsel equated with a finding of “fraud.” In addition, I believe (and believed at the time of publication) that Wakefield fraudulently falsified and manipulated the terms upon which the research had been carried out, as well as patient histories of Lancet
children, in order to serve the aims of the litigation he was supporting and his own financial interests.

The Context: Wakefield’s Undisclosed Conflicts of Interest

166. By the time I came to write the “Secrets” series, in my mind I had long since solved the riddle which had confronted me when the Wakefield paper was published in 1998. It will be recalled that I wondered why the paper had the same 14-day temporal link that I had noted in the Kulenkampff paper which in the 1970s launched the DTP controversy.

167. I was aware that trying to prove vaccine damage includes the need to demonstrate a proximate relationship between the proposed cause and the putative effect, described routinely in literature as a “temporal link.”

168. During my investigation, I came upon various references to the need for a temporal link in the Barr-Wakefield relationship, and indeed Wakefield invoked close proximity in a patent application in, published in December 1998. (Ex. 59):

Before vaccination the infants were shown to have a normal developmental pattern but often within days of receiving the vaccination some infants can begin to noticeably regress over time leading to a clinical diagnosis of autism.

Similarly, Wakefield wrote in a 1999 confidential report to the Legal Aid Board, which I obtained from a Wakefield contact (Ex. 60), that:

There is a consistent temporal relationship between exposure to MMR and the onset of behavioural symptoms, whether the parents made a contemporaneous link between these two events or not.

169. In my first “Secrets” report, I quoted a document by Mr. Barr referring to Wakefield’s conviction with regard to the importance of a temporal link in their efforts to prove the existence of the “new syndrome” caused by MMR that they had posited to the Legal Aid Board in June 1996. But there were various others. And, at the GMC hearing, Wakefield was
cross-examined on some of these. I attach the transcript of his cross-examination on this point (Ex. 61):

SMITH: (To the witness) This is a letter from Mr Barr to Mrs Cowie [the Legal Aid Board official who signed the legal aid certificate naming Wakefield and granting him up to £55,000 in 1996], and if we look at the last paragraph on that page, please ---

ANDREW WAKEFIELD: Sorry, I think I am in the wrong FTP bundle. Which is it?

SMITH: FTP1 at page 318.

ANDREW WAKEFIELD: Yes.

SMITH: In the last two paragraphs, in fact: “I would like to try and establish” – Mr Barr is saying – “that there is a fairly consistent time link between the administration of the vaccine … and the onset of autistic features. … we have prepared a survey … This has been approved by Dr Wakefield.” He then sets out how they are going to use that survey, and says: “… in particular we would be looking very closely at the date of onset of the beginning of the autistic condition.” Then going on a couple of sentences:

“Dr Wakefield feels that if we can show a clear time link between the vaccination and the onset of symptoms we should be able to dispose of the suggestion that it is simply a chance encounter. The reason for this is that there is quite a wide range of ages between which the vaccination is administered. If we can show that the onset of the autism is related in time to the vaccine we should be able to establish the point that it is no coincidence that children become autistic after the vaccination.”

So that would appear to be Mr Barr saying that you were of the view that that temporal link between vaccination and onset of symptoms was important to the litigation.

ANDREW WAKEFIELD: Yes, I think the attempt here was to conduct what would have been a very large study, a survey of all the clients reported, to determine if a pattern could be observed, again in relation to single exposures, re-exposure, but to see if that temporal association was there in a large group.

SMITH: Because you were of the view that it was important to the litigation to show a clear time link between vaccination and the onset of symptoms?

ANDREW WAKEFIELD: It would have assisted in the analysis, yes.

SMITH: Would you go now to FTP3, please, page 1079. This is a further costing proposal but without any costs on it – a costing proposal to the legal aid board. We have looked at this before. Do you have the page?

ANDREW WAKEFIELD: I do.

SMITH: We see just over half-way down:
“The evidence so far includes: – A striking temporal relationship between MMR exposure and onset of symptoms in many children.”

So again an acknowledgement of the importance of that temporal relationship in the litigation.

ANDREW WAKEFIELD: Again I am not a lawyer and I cannot speak to the merits of a temporal association alone in determining causation, but it is weak evidence on its own.

SMITH: Would you go to the medical records of Child 12, please, Dr Wakefield – the Royal Free records, page 9. Again, we have been to this document. This is the vaccine damage questionnaire document. If we turn to page 11, we see your signature and the date which was January 1998. On page 9, at question 1(d) the question is asked:

“In your view what is the cause of this child’s diagnosis?”

You say:

“MMR at 15 months: Loss of speech development and deterioration in language skills at 16 months. Temporal relationship makes MMR likely cause.”

This is one of The Lancet children, as we have discussed, is it not?

ANDREW WAKEFIELD: Yes.

SMITH: You are expressing a view on causation on the basis of a temporal link in the context of a claim for compensation?

ANDREW WAKEFIELD: I do not think this is a claim for compensation, I think this is a survey that the Medicines Control Agency undertook. I may be wrong, but I think it was a survey they undertook at the suggestion of Mr Barr. In my view, that was the case, but that probably does not get anywhere near evidence in law of proof of causation.

SMITH: What I suggested to you, Dr Wakefield, before I began this series of questions, was that the temporal link, which was a prominent part of the Lancet study and the paper that reported that study, was also important in terms of the litigation. It is apparent from those documents that that is the case, is it not?

ANDREW WAKEFIELD: This is not litigation. In the concept of the litigation, it would require a large systematic study to determine whether there was a consistent pattern of disorder here. I am simply being asked my opinion in the case of this particular child.

And on they went.

_How was the Temporal Link Achieved?_

170. At a press conference to launch the Lancet paper in February 1998 (accompanied by a video news release distributed to media) Wakefield declared that he could no longer support the continued use of MMR, and he recommended that parents ask for single vaccines. It
appeared to be an act of conscience. Here was a purportedly independent researcher from a credible medical institution with apparently novel and disturbing findings, requiring urgent public attention.

171. Distributed to journalists, and then to the world, was the paper for which the press conference had been called, and a videotape made, with the remarkable conclusion, or interpretation:

**Interpretation** We identified associated gastrointestinal disease and developmental regression in a group of previously normal children, which was generally associated in time with possible environmental triggers.

172. At face value, as the proven GMC charge of research dishonesty reflected, this paper purportedly reported on a dozen families who appeared at the paediatric bowel clinic of one hospital and said remarkably similar things. This would certainly appear worthy of an “early report” in the *Lancet*, and the media interest which followed. The way it looked, Wakefield and his associates might have obtained the first snapshot of a hidden epidemic of vaccine injuries. And that was how the global MMR scare started. Countless parents had trusted this man.

173. But what nobody knew was how, behind the scenes, the association in time was created. Since 2004, my investigations revealed how this researcher was hired by a lawyer, explicitly to make a case against the vaccine, and the extent to which he was able to manipulate the obtaining, preparation and publishing of data so as to manufacture an appearance of grounds to believe that MMR might cause a new syndrome involving autism.

174. As indicated, the *Lancet* paper appeared to all the world to be a clinical description by independent researchers of a routine series of 12 consecutive child patients attending a clinic. But I came to realise firstly, that this paper was, in reality, a concoction: a contrived exercise, executed for a project carried out in cahoots with the lawyer and MMR campaign groups. This project was intended, from the outset, to create purported scientific
grounds for a lawsuit against vaccine manufacturers, and was based on children *selected*, and the GMC found sometimes pro-actively *targeted*, from families in which parents could be relied on to criticise the vaccine when they came to the hospital.

175. The paper’s first “finding” that the “onset of behavioural symptoms was associated, by the parents, with measles, mumps, and rubella vaccination” was a manufactured artifact of Wakefield’s concealed recruitment strategy – drawing upon Mr. Barr’s clients and contacts, and parents listed by vaccine campaign groups – and was no kind of “finding” at all. An honest researcher would have declared what he knew, and which, under cross examination on day 66 of the GMC hearing, Wakefield admitted he knew: that the association between developmental disorders, bowel issues and concern over MMR was not discovered at all. As the transcript shows (Ex. 28), it was the essential terms of admission.

SMITH: What I am suggesting to you and what I now want to ask you is where you make it clear that the children had come to the Royal Free in the first place, at least in the majority of cases, in the letters that we have looked at, because their parents, or in some cases their doctor through their parents, thought that MMR might have caused the damage?

ANDREW WAKEFIELD: That is implicit to anyone reading this paper. When we talk in the discussion about a possibility of a referral, selection bias, in a self-referred group, the group is self-referred because of the symptoms manifest by the children, including the history of a possible exposure to a vaccine or an infection that has led to the problem, and then seeking help from a specific unit. That is explicitly what self-referral means. Inherent in that is, to the reader, those elements of the history of the patient that have caused them to come to that unit. To anyone reading this, we would have considered that to be self-evident. Self-referral on the basis of one or more of the symptoms of gastrointestinal problems, developmental regression and an association with environmental exposure...

SMITH: I asked you why you did not make it clear, as we have seen from the letters that we looked at yesterday, that, at least in the vast majority of cases, these children came in the first place because their parents thought that MMR had caused that condition. You immediately to go a line where you talk about self-referral, but that particular reference does not include the very point that I am asking about, and you say is implicit, namely the association with MMR. How does any reader, whether a scientist, doctor or otherwise, read that into what you say there?

ANDREW WAKEFIELD: *The patients, children, are self-referred based on their symptoms and their history. That contains the three key elements of an environmental exposure, gastrointestinal problems and developmental regression.* That self-referral encapsulates those three elements. That is, I would have thought, evident to any reader.
176. Through the unscrupulous concealment of this device – which has had global public health and social consequences – Wakefield’s *Lancet* paper laundered into medical literature, as apparent facts, numerous primed, pre-agreed, but poorly-substantiated and often vague, memories and assertions, often not backed by contemporaneous medical records. These allegations were gathered together by Wakefield, anti-MMR campaigners, and the lawyer, expressly with the pre-agreed motive of linking the vaccine with autism.

177. Wakefield also admitted during the GMC hearing that he had contacted the parents of each of the children, generally by telephone, prior to their attendance at the hospital. I have previously given examples of how local doctors were also approached and briefed by Wakefield.

178. This undisclosed pre-referral activity created a severe, unwarranted and secret selection bias in the study, and it was bound to taint later history-taking by clinicians. Not least because, having spoken to Wakefield, the parents were most anxious to get their child admitted to the Royal Free, where they hoped to get help.

179. The concealment of this activity could only have been expected to mislead the *Lancet*’s peer-reviewers, editors and readers into thinking that the 12 children were purely routine referrals to the hospital, and that a striking accumulation of parental criticism of MMR was a cause for concern. The truth, however, was that the dozen children included in the paper were the first admissions for a project which, over a period of years, turned the hospital’s children’s bowel clinic into a covert litigation factory, generating clients for Mr. Barr, and High Court claims of alleged vaccine damage, which were immensely lucrative for Wakefield, and were in part intended, as I revealed in my second “Secrets” report, to make his fortune through spin-off business ventures.
180. In its critical “findings” section, the Lancet paper expressly claimed that the parents of 8 of 12 – two thirds – of the children linked their child’s alleged “regressive developmental disorder” to the administration of MMR. This “finding,” however, involved further manipulation.

181. Firstly, the reported series was truncated at only 12 children: eliminating a substantial additional number who were admitted to the hospital, and available for inclusion in the prospectively-designed study, but whose parents made no criticism of the vaccine. At my website, I have a page including a chart I drew in 2004, incorporating information about the cases of children admitted to the hospital immediately following the Lancet series of 12. (Ex. 62). It shows a dramatic fall in the numbers alleged to be linked with MMR. As I recount in the third “Secrets” report, I presented a version of this information to the editor of the Lancet. An “addendum” to the paper, inserted by Wakefield, however, implied that another 39 children were of similar status to the 12.

182. Secondly, arising from the biased selection process, the parents of three more children among the 12 also associated their child’s problems with MMR when they came to the hospital. That meant the number making the connection was 11, not 8 (with the 12th later also blaming MMR), but the three additional allegations were improperly omitted from the paper.

183. I believe this omission was intended to avoid exposing the true nature of the project (which was to prove the “new syndrome” agreed in 1996, with a temporal link, and measles virus as the theory), and so dodged potential questions from peer reviewers such as Professor Candy, editors such as Dr Richard Horton, and the journal’s readers as to why so many families (none of whom, I discovered, actually lived in London) would turn up at one London
hospital – which had no department or reputation, and almost no recognized expertise, for evaluating developmental disorders – and make such a disturbing allegation.

184. It will be recalled that, so as to accord with principles of vaccine litigation, to deliver on the Barr-Wakefield deal required, among other things, that children’s apparent problems (a) were proximately linked in time, subsequent to vaccination; and (b) involved a distinct constellation of symptoms and signs. On grounds of proportionality, I truncate the analysis I relied on in compiling the “Secrets” reports, but I note that Wakefield’s goals were satisfied in the paper only after, among other things, he:

(a) Designated all of the 12 children as “previously normal”, when a number were not. Some examples of these cases are reported in the first “Secrets” report, and were previously reported in the *Sunday Times*.

(b) Claimed that the first signs of autism came on within 14 days of MMR, when:

(i) In some cases they actually occurred before vaccination. In the case of child 8, for example, the GP even wrote to Wakefield, telling him this.

(ii) In some cases they occurred months afterwards. On his own account, and published in his book, this is the case he presents for child 11, despite reporting in the paper that the first behavioural symptom occurred “1 week” after vaccination.

(c) Misreported as “behavioural symptoms” what are well-recognised, benign side-effects of vaccination, such as febrile episodes, or other non-behavioural issues. In the case of child 1, for example, the only confirmed symptom was that the child was pale. In the case of child 11 (to be considered in more detail later in this declaration), it was a chest infection.
(d) Claimed that nine of the 12 children had regressive autism, when at least one third of these nine did not. Records suggest that only one of the 12 children clearly had regressive autism, and there was no basis in Royal Free records for Wakefield to claim otherwise. The most well-documented example of a child who, despite Wakefield’s claims, did not have regressive autism is that of child 12. I attach a portion of transcript from the GMC hearing where this is made clear as Ex. 63.

185. As indicated above and reported in the first “Secrets” article, the findings of the Lancet paper were further contrived through the exclusion of the reportable allegations against MMR of one quarter of the 12 children’s parents. Those excluded were invariably parents who volunteered unhelpfully longer time-frames between vaccination and the onset of disorders than the “temporal link” sought for the lawsuit by Wakefield and Mr. Barr.

186. Wakefield’s manipulation of the history of child 1 was considered earlier in this declaration. This was where, to fabricate a “1 week” temporal link, he removed question marks from Professor Walker-Smith’s history-taking, which noted only that the mother positively affirmed that the child was “pale” after vaccination. Wakefield further omitted Dr. Harvey’s history taking and other hospital documents which reported normal development for months after vaccination.

Falsification by Omission of Data

187. In addition to concealing from peer reviewers, editors and readers the basis by which children were recruited to the project, and withholding information about their parents’ status as clients and contacts of Mr. Barr and applicants for compensation over putative vaccine injuries, Wakefield also concealed critical information which, if published, might have caused the paper to be seen in a quite different light, and likely to be rejected.
188. Firstly, as the first “Secrets” article noted, the *Lancet* paper was presented as a report from a paediatric gastroenterology unit on the status and medical conditions of child patients. However, extraordinarily, the principle gastroenterological symptom (or sometimes, in correct parlance, “sign”) from which these patients were suffering was withheld. As it was admitted later by authors (excluding Wakefield), “nearly all” of the children had been found to suffer from “severe” constipation. I attach a later letter to the *Lancet* by clinicians involved in the project evidencing this (which was also made clear during the GMC case) (Ex. 64). However, I established through research, and later heard at the GMC hearing, that constipation, although occasionally associated with inflammatory bowel disease, is generally part of the differential diagnosis excluding such bowel disease. “Constipation” appears nowhere in the paper.

189. Secondly, the paper’s title included the expression “ileal lymphoid hyperplasia,” which means swollen glands in the distal portion of the small bowel. However, the paper entirely excluded any mention of a significant literature describing this feature as a “benign” or even “normal” finding in children. This was highly technical, but vital, information, the omission of which was bound to mislead many readers. I attach a page from my website, giving weblinks, images and references (Ex. 65).

190. Thirdly, I learned at the GMC hearing that blood tests routinely performed so as to screen out unlikely cases of inflammatory disease, were almost all normal for the *Lancet* children. Yet these test results, too, were withheld from the paper, notwithstanding that the paper claimed the putative discovery of a new inflammatory bowel disease. Surely, it would be common sense that, if such a disease could co-exist with normal blood tests for inflammation, that would be important information to share with readers, such as doctors seeing autistic
children. However, in the nature of Wakefield’s project, it would more likely have raised the question of whether there was any disease present at all.

After-the-Fact Concealment

191. Wakefield not only did these things, he concealed the circumstances afterwards. The GMC panel ruled on two examples: firstly where a doctor had written to the Lancet, imprecisely suggesting that a selection bias might exist due to the apparent involvement of lawyers; and secondly at the Medical Research Council meeting of experts where one participant tried to find out where Wakefield had gotten the children. In addition, he was asked at a Congressional committee about who paid for his research. I attach a transcript of the exchange at the committee (Ex. 66).

192. In all three cases (and there are others, omitted on grounds of proportionality) he dissembled.

193. Wakefield has had the benefit of many years to come forward, correct the record and apologise for his conduct. Instead, he has waged a relentless campaign of dissembling, prevarication, and vexatious litigation.

Other Papers

194. Given the practical time and space limitations on this declaration, I have omitted similar analyses of other Wakefield papers, where falsity and misconduct is also evident.

The Reporting Challenged by Wakefield: Access to the GP Records of the Lancet Children

195. The overarching deceit which lay behind the Lancet paper not only extended to concealing from peer-reviewers, editors and readers the true source and status of the children, the funding agency behind the project, and Wakefield’s conflict of interest. Nor was it confined to the manipulation by alteration and omission of critical data on the individual children. Wakefield also made direct false statements, the ultimate falsity of which, though long the...
subject of professional suspicion, have only been finally proven after publication of the “Secrets” series. The first such example was the claim in the paper – which, having interviewed the peer reviewer Professor Candy, I believe was essential to securing its publication – that Wakefield had conducted a thorough, professional inquiry into the children’s medical histories. Beginning at line 8 of the first page, the paper stated:

Children underwent gastroenterological, neurological, and developmental assessment and review of developmental records.

Beginning at the fifth line of the second column of the first page, it elaborated:

Developmental histories included a review of prospective developmental records from parents, health visitors, and general practitioners.

196. In other words, this aspect of the project was held out to be records-based, and not merely reporting on what anxious parents volunteered when they turned up at the hospital. Even my journalistic work, personal experience and common sense tells me that people often tell things to doctors which, for a variety of reasons, may not be accurate or germane. For a learned report in a biomedical journal, raising profound issues of public health, further inquiry would clearly be expected.

197. However in paragraph 4.11 of his petition, Wakefield now denies that he carried out precisely the inquiries which the paper explicitly claims he performed, and which I have no doubt would be expected of a doctor asserting in a preeminent journal of medical science the putative discovery of a new syndrome caused by a vaccine given routinely to countless millions of children.

198. If, as is the case he now asserts in his petition, by failing to consult the children’s extensive medical records, Wakefield published wrong information in the *Lancet*, then that is his responsibility. The omission of due care was hardly likely to have been a question of him being too busy. The children were admitted between July 1996 and February 1997. There were only
12. And the GP records, requisitioned by the GMC using its powers under the 1983 Medical Act, revealed Wakefield telephoning and writing both to GPs and to parents, briefing them on the reason for referrals and discussing the kinds of things they might choose to raise with clinicians when they got to the hospital.

**The Reporting Challenged by Wakefield: The “Autism” Diagnoses**

199. In his 1998 *Lancet* paper, Wakefield described the children as suffering from “regressive developmental disorder” and assigned to them what he alleged to be a “behavioural diagnosis” of “autism.” We reported, accurately:

> But only one—child 2—clearly had regressive autism. Three of nine so described clearly did not. None of these three even had autism diagnoses, either at admission or on discharge from the Royal Free.

The petition states:

> Contrary to Deer’s statements (it should be noted that Deer is a journalist and not a medical doctor), based on the clear underlying evidence, these subjects did suffer from autism.

200. As discussed below, I believe that Wakefield’s complaint on this issue has no merit, and is raised by him in bad faith, with an intent to tax me. Nor have I ever believed that my reporting on this issue was inaccurate.

*The Lancet Paper with Regard to Regressive Autism*

201. As I have previously explained, Wakefield’s driving, but covert, duty to the lawyer who was causing him to be paid was to establish for litigation the appearance of a newly-discovered syndrome, linked in time to MMR. To all the world, it appeared that he had succeeded, linking an alleged new bowel disease with alleged “regressive autism”, both of which he would trumpet for a decade in his campaigning. Laying the ground for his claims, the paper’s first sentence read:

> Background: We investigated a consecutive series of children with chronic enterocolitis and regressive developmental disorder.
202. All 12 of the children are thus designated to suffer from “regressive developmental disorder.” Table 2 of the paper identifies a “behavioural diagnosis” of “autism” in nine of the 12. This information is false.

203. As I correctly reported in the *BMJ*, some of the children were diagnosed with Asperger’s disorder, and other conditions, and had received no diagnosis of autism. And yet, Wakefield’s claim that these children had regressive autism was set out *ad nauseam*, both inside and outside of litigation. For example, in February 1997, a year before the *Lancet* paper, Wakefield issued to doctors what he called a “Rationale for our investigation of children with regressive autism and bowel symptoms,” (Ex. 67). This was a considered document, supplied to the medical profession, purporting to explain what was going on at the hospital. Among other things, it said:

> Finally we hope that the possible role of MMR will be elucidated and that further insights into the pathogenesis of regressive autism will be provided.

204. He even patented the claim. For example, in a confidential UK patent application dated 6 June 1997, almost eight months prior to the *Lancet* paper’s publication (where Wakefield claimed the discovery of his own single measles vaccine and products for the treatment of autism), he identified the research and described all the patients as suffering from “regressive behavioural disease” and “regressive behavioural disorder” (diagnostic descriptions of his own devising) and at line 22 he said:

> All the children exhibited features of severe developmental regression.

205. Similarly, a protocol, submitted by Wakefield to the Royal Free Hospital’s ethics committee in February 1998, titled “Regressive autism and enterocolitis” described the *Lancet* study and reported with regard to the 12 children:

> All children exhibited features of severe developmental regression.
206. Also before the *Lancet* paper was published, Wakefield wrote in a letter, dated 23 May 1997, to the director of finance of the Royal Free hospital, identifying the research and explaining:

My group, The Inflammatory Bowel Disease Study Group, is currently involved in the investigation of a cohort of children with regressive autism and inflammatory bowel disease.

On 29 December 1999, Wakefield gave one of his innumerable public speeches, referring to his paper. I attach a webpage concerning this (Ex. 68).

We’ve presented a paper in the *Lancet* two years ago on 12 children who came to us with ‘regressive autism’. This is the key phenotype that we’ve been looking at – that is, children who are normal for the first year to 18 months of life and then regress either dramatically or over a period of months.

207. In a letter dated 22 December 2005, concerning Wakefield’s later dismissed litigation against Channel 4 and myself, (Ex. 69), his lawyers stated with respect to my reporting on the same research study:

Your clients ignore completely that when presented with a child demonstrating regressive autism and bowel symptoms the clinician is bound to investigate the child’s symptoms...

208. Wakefield’s allegations that the MMR vaccine causes autism, and specifically “regressive autism,” have also come before the courts in both the UK and the US (and have failed). In his expert report, dated September 2003, for the UK litigation, he used the expression “regressive autism” at least 30 times in the first section alone, including in the titles of numerous papers and abstracts bearing his name. I attach sample pages (Ex. 69).

209. Later, in the US Court of Federal Claims, where some 5,000 families were similarly ensnared in Wakefield’s discredited allegations, Special Master Patricia Campbell-Smith said in a February 2009 judgment (Ex. 70):

Petitioners in the OAP litigation assert that regressive autism is a distinct phenotype that is distinguishable from classic autism which is characterized not by the loss of previously acquired skills, but rather by the failure to develop certain skills…
To the extent that the claim precipitated by the work of Dr Andrew Wakefield viewed regressive autism as a relatively new phenotype of the disorder, that claim is undercut by evidence of an epidemiologic study conducted in 1966, more than 40 years ago, that documents a loss of skills in about 30 percent of the studied children.

210. And yet, notwithstanding the import of my proportionate selection of material here (and there is plenty more), Wakefield’s PCC complaint alleged:

The paper did not state that these children had been diagnosed with *regressive autism* as Mr. Deer reported. In fact, at the time that paper was written, *regressive autism* was not a recognized diagnosis.

This is despite his *Lancet* paper itself reporting (at the penultimate page, 640):

Gupta commented on the striking association between measles, mumps and rubella vaccination and the onset of behavioural symptoms in all the children that he had investigated for regressive autism.

211. Moreover, not only did Wakefield claim at the time that the children in his research had regressive autism, he gave clear information about what he deemed this condition to look like. For proportionate example, on 3 February 1997, which was shortly before the last of the children reported in the *Lancet* paper was admitted to the hospital, he wrote to the senior clinical author of the paper, John Walker-Smith, not only referring to “regressive autism”, but describing it as an affliction of “hopeless individuals” who are “chronically disabled.” The letter (which I attach as Ex. 71) is headed:

re: Enterocolitis and regressive autism

He states in the second paragraph:

The future for the children with whom we are dealing is very bleak indeed. Not only are the provisions for these children within the community inadequate at present, but looking ahead to the future, there will come a time when the parents of these children die, and the patients, as chronically disabled adults, left to fend for themselves in an extremely hostile world. Were there any long-term institutions left for such children, then that is where they would end up. Since these hospitals are being closed on an almost weekly basis around the country, these hopeless individuals will be left to ‘care in the community’. One does not like to imagine how it will all end.
Similarly, in his patent application for a measles vaccine and other products, dated 9 December 1998, he characterised what he called “autism (RBD)” [“regressive behavioural disorder”] in the following terms:

Nor is there a cure for autism; sufferers have to live in a silent world of their own unable to communicate with the rest of the world.

*Wakefield Distinguished Autism from Asperger’s Syndrome*

212. As with his PCC complaint, Wakefield’s Petition now adopts a similar tack in an evident attempt to account for the lack of autism diagnoses in some children he reported to suffer with the regressive phenotype. He appears to imply that autism, Asperger’s syndrome, autistic spectrum disorder, developmental disorder and pervasive developmental disorder, all mean the same thing, and that therefore he was entitled to claim that children had a “behavioural diagnosis” of “autism,” and of the regressive phenotype, so as to evidence his purported syndrome for litigation, when in fact they did not.

213. Although not argued in his petition, it appears from previous dealings with Wakefield, particularly his complaint to the PCC, that he takes the position, for example, that Asperger’s disorder is autism, and that, despite his own repeated and routine use of a distinction, it was correct of him to tabulate nine of the 12 children in the *Lancet* – in a specialist, peer-reviewed journal directed at the medical and scientific communities – as having a “behavioural diagnosis” of “autism,” and that all 12 as had a “regressive developmental disorder.”

214. However, such argument comes freshly minted in the wake of his unmasking and the penetration of his otherwise opaque claims about the carefully-recruited, anonymised patients inaccurately reported in his paper. Until publication in the *Sunday Times* in February 2009 and in the *BMJ* in January 2011, the medical and scientific communities, as well as the general public, had no idea that three of the nine children reported in the paper as having been diagnosed
with autism, and who were said to suffer from a particular phenotype, “regressive autism” – as part of what Wakefield claimed to be a “new syndrome” for litigation purposes – in fact did not have diagnoses of autism.

215. Prior to my journalism, Wakefield repeatedly, and over many years, made clear his understanding that, under the classification system he explicitly stated that he relied upon, Asperger’s and autism, in his judgment, would be understood to mean different things. Indeed, once the Lancet paper and its “new syndrome” had accomplished their tasks of securing legal funding, triggering public anxiety such that he and the lawyers who retained him were deluged with families offering their children for tests, and laying ground to launch private venture-capital companies, Wakefield and his associates were glad to extend the frontiers of vaccine damage from autism to Asperger’s disorder and, indeed, any other developmental issue that came their way.

216. It is not my intention to become sucked into debate with Wakefield about the nosology of developmental disorders, as he plainly implies in his emphasis on my status as a journalist. I have been aware for some years that there is a keen debate among specialists about the classifications of developmental disorders, and that many people, including campaigning organisations, use “autism” interchangeably with “autistic spectrum disorder.” I am also aware of proposals to scrap present classifications, including Asperger’s syndrome, for a new DSM-V nosology. In my journalism, I have been careful to rely on Wakefield’s own concepts and, in this instance, have relied on Wakefield’s own use of the distinction, and the simple, clear and indisputable evidence that a diagnosis of Asperger’s disorder, under the diagnostic criteria explicitly stated to have been employed in the Lancet paper, precludes the “severe developmental
regression” Wakefield touted for many years as the very core of the “syndrome” he invented for his deal with Mr. Barr.

**The Lancet Paper**

217. As with enormous numbers of papers in biomedical journals, the *Lancet* paper makes clear that its developmental diagnoses are in accordance with the criteria of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, 4th edition, known universally throughout this field as DSM-IV. As a matter of fact, a careless error allowed Wakefield to use the designation “HMS-4” in the text, but a reference note against the text makes the position clear.

218. Under “patients and methods” – “clinical investigations” – on the first page, the paper states:

> Neurological and psychiatric assessments were done by consultant staff (PH, MB) with HMS-4 criteria.1

As indicated, the reference note takes the reader to:


219. Self-evidently, the *Lancet* is a specialist journal directed at doctors and biomedical scientists, whose readers would expect that, notwithstanding the obvious error, the assessments had, indeed, been conducted against DSM-IV criteria. They would not expect that Wakefield had altered clinicians’ diagnoses to make his syndrome appear more compelling. He was under no obligation to design any tables, but those he did design were entirely adequate to be completed accurately and honestly. However, it appeared to me when studying this paper that – as with the claim in the very next sentence of the paper that Wakefield reviewed “prospective developmental records from parents, health visitors, and general practitioners” – this reassuring
assertion of proper professional thoroughness, assisting the prospects of acceptance by a journal of the *Lancet*’s standing, was also intended to mislead.

220. I have looked at these tables on countless occasions, and it has long been clear to me, well prior to the *BMJ* reports, that even these tables show that Wakefield knew the distinctions used by clinicians and researchers. For example, child 4 is tabulated with the “behavioural diagnosis:”

| Autism?                      |
| Disintegrative disorder?    |

221. These are two different disorders under DSM-IV (and further evidence Wakefield’s understanding of “?”). For good or ill, autism is classified as 299.00. Disintegrative disorder is 299.10. Similarly, child 9 is reported with the behavioural diagnosis:

| Autistic spectrum disorder  |

222. This is the spectrum which includes autism, Asperger’s syndrome (299.80), Rett’s syndrome, disintegrative disorder and PDD-NOS (pervasive developmental disorder, not otherwise specified, including atypical autism). Wakefield’s use of this expression here plainly shows that he was aware at the time that, in the event of uncertainty or mixed features, there are vaguer diagnoses, as, rightly or wrongly, he reported for child 9.

223. Asperger’s syndrome is nowhere mentioned in the *Lancet* paper, but appears frequently in some of the children’s medical records, laid out at the GMC hearing, and elsewhere.


224. When I consulted the DSM-IV for the *Sunday Times* reports of 2009, the feature which most struck me was that Asperger’s is specifically and by definition *not regressive*. I
attach the DSM-IV criteria for autism and Asperger’s syndrome (Ex. 72). The following paragraphs illustrate the position:

(IV) There is no clinically significant general delay in language (E.G. single words used by age 2 years, communicative phrases used by age 3 years)

(V) There is no clinically significant delay in cognitive development or in the development of age-appropriate self help skills, adaptive behavior (other than in social interaction) and curiosity about the environment in childhood.

(VI) Criteria are not met for another specific Pervasive Developmental Disorder or Schizophrenia."


226. I take care in my work, and one of the benefits of working for media organisations of high reputation, such as the Sunday Times, Channel 4 television and the BMJ, is that I’m able to call upon the generosity of specialists to help me understand or check material. On the matter of Asperger’s, I consulted two specialists. Both confirmed to me that my understanding was correct.

227. Eric Fombonne, professor of psychiatry at McGill University, Canada, and a renowned authority on developmental disorders, told me in an email dated 5 October 2007 (Ex. 73):

A child who has a diagnosis of Asperger by definition does not meet criteria for autism. Autism preempts a diagnosis of Asperger. If a child was diagnosed with Asperger, it means that it did not mean criteria for autism. The terminology of ’regressive autism’ (which by the way is not a specific diagnosis, it is just a qualifier attached to the diagnosis of autistic disorder for those
children with autism who experience some loss of skills in the second year of life) cannot therefore used for a child with Asperger unless all these terms are used very loosely and in an interchangeable manner;

He said:

There is no such thing like regressive Asperger. Regression, or loss of skills, occurs in about 20% of children with autistic disorder, usually between 14 to 24 months of age. Most loss of skills involve loss of language skills (typically a few word (10 or 20) that were used and disappaer) and are quite often with concomitant losses of other skills (ie social behavior is affected as well). Regression occurs with about the same proportion in children who have a diagnosis of PDDNOS. Regression is usually not described in Asperger and the terms regressive Asperger was not and is not currently in use. The reason is that by definition language development is normal in Asperger disorder and the presence of a regression of the type seen in autism would almost certainly rule out Asperger as a diagnosis in a child. The first symptoms in Asperger usually occur later than in autism (precisely because of the normal language development) and often the first concerns by carers apply to the social behavior or the unusual interests of the child.

Wakefield’s Paper in the American Journal of Gastroenterology

228. In the September 2000 edition of the American Journal of Gastroenterology, Wakefield was the first author of a (now-retracted) paper titled “Enterocolitis in children with developmental disorders.” This paper stated that the subject children included those whose details were published in the 1998 Lancet paper. It clearly distinguished autism from Asperger’s syndrome. For example, in the “methods” section of the summary abstract (Ex. 74):

Ileocolonoscopy and biopsy were performed on 60 affected children (median age 6 yr, range 3–16; 53 male). Developmental diagnoses were autism (50 patients), Asperger’s syndrome (five), disintegrative disorder (two), attention deficit hyperactivity disorder (ADHD) (one), schizophrenia (one), and dyslexia (one). Severity of ileal LNH was graded (0–3) in both affected children and 37 developmentally normal controls (median age 11 yr, range 2–13 yr) who were investigated for possible inflammatory bowel disease (IBD).

Before a United States Congressional Committee

229. In April 2000, Wakefield gave testimony under oath before the Congressional Committee on Government Reform. Referring to the first 60 children seen, which included the Lancet 12 subjects of my reports, he said (Ex. 66):

I want to report the results today from the first 60 children that we have investigated. We have now investigated over 150 children, and the results that I am going to describe are pertinent to all those children bar about four.
As far as the range of psychiatric assessments, the great majority had autism, but there was a spectrum of neuropsychiatric problems including Asperger’s Syndrome and Attention Deficit Disorder.

Wakefield’s Thoughtful House Website

230. Until his resignation in February 2010, following the findings of dishonesty by the GMC panel, Wakefield controlled a website operated by the former Thoughtful House business, based in Austin, Texas. The Internet Archive shows that between at least August 2005 and January 2010, the website home page carried a prominent, unequivocal statement making a clear distinction between various “developmental disorders,” and itemised disorders which are universally recognised to be part of the autistic spectrum, as well as disorders which are not recognised to be part of that spectrum. Including a photograph of Wakefield, the page (of which I attach two identical examples, years apart (Exs. 75 and 76), said:

Welcome to Thoughtful House. Thoughtful House is fighting to recover children with developmental disorders (autism, PDD, Asperger’s syndrome, ADD, ADHD, and NLD) through the unique combination of medical care, education and research.

The home page header bar, indexed by search engines, said:

Thoughtful House – Fighting Autism, Asperger’s Syndrome, ADD, ADHD, PDD

Presentation to American Parents

231. At the May 1999 presentation to American parents at which he was videotaped recounting how he had bought blood from small children, he made the same distinction, as I attach at Ex. 77:

I want to talk to you about the first 60 patients who make up this study. They’re mainly boys age, medium age of six years with range of three to 16. Four girls, 56 boys. Like I said, 51 children with autism, five with Asperger’s, two with disintegrative disorders…”

Report to the English Court on Behalf of Claimants in Multiparty Litigation

232. In his capacity as the principle retained expert for UK lawyers attempting to mount speculative litigation against vaccine manufacturers, Wakefield was required to submit
reports to the court. In his final report (a portion of which is Ex. 78), exchanged between the parties in July 2003, reporting on the syndrome identified before any child had been investigated, he stated:

The initial description of human disease syndromes has commonly involved the description of less than 20 cases, where patients present with a consistent and idiosyncratic pattern of signs and symptoms that appear to represent a novel and unified disease process. These initial descriptions have rarely contained controls. This applies, for example, to the initial description of Crohn’s disease, which involved 14 patients. Autism was first described by Leo Kanner in 11 children, and Asperger’s syndrome was reported by Leo Asperger in 14 patients. None of these studies were controlled. These eponymous descriptions stand as the benchmarks for our understanding of the respective syndromes. Our study reported on 12 children with novel, unexpected and consistent clinical features.

Report to the UK Legal Aid Board Funding His Research

233. As previously indicated, in early 1999 Wakefield supplied a confidential report to the UK legal aid board intended to advance publicly-funded litigation and thereby to obtain more money. The document stated:

For autism and related disorders... There are data from Sweden that indicate that autistic spectrum disorders may now affect 1% of the population... In the broader context of developmental disorders, data from the Institutes of Mental Health in the US, show that ADHD, for example, now affects 7% of American children... The number of cases of autism in California has risen by over 400% in the last 10 years. The number with rarer disorders such as Asperger’s syndrome has risen by 1500% over the same period.

Before the GMC Panel

234. Under cross-examination in April 2008, Wakefield was asked about the Lancet paper’s title. Under oath, he answered (Ex. 79):

During the stage by which The Lancet had accepted the paper and sent us a galley proof, that is a draft proof for correction of typographical errors, for example, this draft galley proof was circulated to the authors and Dr Berelowitz returned to me with the suggestion that the word “pervasive” should be included, since this is a term used by child psychiatrists, Pervasive Development Disorder, or PDD, under which the umbrella of autism, disintegrative disorder and Asperger’s syndrome sit.

235. Evidently, Dr. Berelowitz, was also concerned (as indeed he stated to the panel as a GMC witness) over Wakefield’s claims about “regressive” autism. Nevertheless, although, in
accordance with Dr. Berelowitz’s request to change “regressive” to “pervasive”, Wakefield removed the claim of regression from the title of the paper, he left it in the text.

Wakefield’s Claim of “Regressive Autism” in the Three Cases Identified

236. At some time in 2004, I was told by a senior paediatrician that paediatricians in the Brighton area of England had indicated to him that they knew of patients included in the Wakefield paper who were described as having regressive autism but who the paediatricians believed did not have autism. However, such is medical confidentiality that my source did not know the identities of the children, and, even if he did now, he would not have disclosed them to a journalist. Subsequently, first in confidential discovery in *Wakefield v Channel 4 & Others*, and then in public session of the GMC, it became clear that this hearsay was well founded.

237. Extraordinarily, I discovered that two of these children (child 6 and child 7 in the Wakefield series) were brothers, and that the mother of the third child (child 12) had been referred to Wakefield, and simultaneously to Mr. Barr, by the mother of the brothers (who must therefore also be inferred to have been involved with contemplated litigation prior to her children’s admission to the hospital).

Child 6

238. As with 11 of the 12 *Lancet* patient cases (excluding the American), this child’s records were extensively reviewed and repeatedly read into the record of the GMC hearing. I was present for most of the hearing, including the entire laying down of the records, and at no time was there ever discussion to the effect that he was diagnosed with autism, much less of the “regressive” phenotype claimed by Wakefield. Almost from the beginning of records suggesting developmental concern, he was suspected to be a case of Asperger’s syndrome.
239. A letter from South Downs Health, dated 13 December 1995, when child 6 was aged 3½, was read into the record, stating that he had undergone a “Griffiths Assessment” – which I understand to mean a structured evaluation lasting perhaps two hours – demonstrating “a rather uneven development profile” and noting that he had particular skills with remembering sequences and sentences. The letter said (Ex. 80):

At home it is clear that [Child 6]’s behaviour is very difficult. His parents find it difficult to reason with him and he does not respond to the usual discipline measures. His mother was particularly concerned that he is not developing good peer relationships. All these features confirm that [Child 6]’s difficulties lie within the Autistic spectrum and he probably has Asperger’s Syndrome, although this will become clearer as he becomes older. I explained to his parents that it is difficult at this early stage to predict how [Child 6] will be in the future.

240. It should be noted that there was no reference anywhere to any “regressive developmental disorder,” which Wakefield stated to be a characteristic of all 12 of the Lancet children, and which for years he hawked as a defining characteristics of his purported “syndrome.”

241. While this child’s case, as in most cases of children with developmental disorders, contains much confusion, casual use of language and information of uncertain provenance, further clarity surfaced at the GMC hearing. There, a letter to Wakefield, dated 4 October 1996, from John Walker-Smith, the physician who admitted the boy to the hospital, directly recorded the diagnosis. The assessment, moreover, was by a child development specialist elsewhere. The letter begins (Ex. 81):

Dear Andy, I was very interested to see [Child 6] in the clinic. This is a child who has been diagnosed as Asperger’s syndrome.

Elsewhere, the letter says:

He subsequently was diagnosed as Asperger’s syndrome by Dr Bennett.

242. This boy was also seen by Dr. Berelowitz, the Royal Free’s child psychiatrist. Although I learnt from evidence during the GMC hearing that the proper assessment of
developmental disorders is a multidisciplinary task, takes a great deal of time, and usually involves several specialists, Berelowitz was a general child psychiatrist and told the panel that his main job at the hospital was to support children being admitted for care by other departments. Nevertheless, the record shows that he issued a speculative opinion, dated 3 June 1997, following an interview with the mother and some form of assessment at the hospital, some six months previously. He wrote to Wakefield (Ex. 82):

Because of the mother’s uncertainty about the timing of his developmental history, it is a little hard for me to be as confident as I would like about the diagnosis. However, it would seem that the most likely diagnosis is Asperger's Syndrome.

Subsequently, Wakefield wrote to the mother, plainly long after the boy’s discharge (Ex. 83):

The diagnosis for [Child 6] was likely to be Asperger’s Syndrome.

243. Information in our possession at the time of the articles did not stop with the GMC transcript. For example, in 2007, child 6 identified himself with his given and surnames in an online bulletin board concerned with Wakefield’s campaign. The boy (then aged 15) discussed his own case. He referred to his birthday with the accurate date which at that time was not in the public domain. He also referred to his brother, who posted his own message on the same day, as well as Wakefield and other doctors. Child 6’s posting began (Ex. 84):

I am one of the affected children with asperger’s syndrome (AS), OCD and bowel disease.

244. As well as the information above, I was also in possession of further details of this patient’s history, as a result of disclosures to me in Wakefield v Channel 4, et al. These disclosures included detailed Royal Free forms for Wakefield’s research, documenting children’s medical diagnoses and histories. I can confirm that these disclosures were powerful reassurance that my reporting was accurate.

245. In all the circumstances, it was clear to me when writing the “Secrets” series that, at the time he wrote his Lancet paper, Wakefield knew this boy had received a diagnosis of
Asperger’s syndrome from an appropriate specialist, had no “behavioural diagnosis” of “autism” as falsely stated in Table 2, and could not honestly be represented as a case of regressive autism or of “severe developmental regression.”

Child 7

246. This child is the brother of child 6, and unfortunately his case calls for more extended treatment. It seemed to me when writing the “Secrets” reports to be an elegant example of Wakefield’s irresponsible and dishonest conduct.

247. The brothers’ mother was (and remains) an MMR campaign activist. She has been prominent in making complaints against me for more than seven years. Her GP was called by the GMC as a witness in the case (as were all the children’s GPs), and, in addition to expressing concern about the mother’s behaviour with regard to her children, he was examined with regard to his opinion of the boy before referral to the Royal Free:

Q: What was your impression of Child 7 in terms of behaviour, doctor?

A: He was an odd child, in the sense that he was quite independent; did not make great eye contact, and behaved in a way, in the consulting room, differently to other children. So he might focus on odd things, like a curtain or something that a child might not ordinarily do. So he was different – without putting a diagnosis to it.

Q: Was it your view at the time – and I do appreciate you are talking as a general practitioner – that he was autistic?

A: I think “autism” is probably too strong a word. I felt he had a social disorder of some sort, yes.

The record, (Ex. 85) shows that the GP wrote to John Walker-Smith at the Royal Free, in a letter which began:

I would be grateful if you could see this boy who is a child whose brother you have recently investigated as part of your programme for colonoscopy for children with autistic problems. He himself probably does not have autism although this is not certain at present but he does have convulsions which I believe may make him eligible for your study.

After seeing the boy with his mother, Walker-Smith, replied to the GP, among other things
stating:

Many thanks for referring [Child 7]. I was very interested to hear the history of this child in which there does seem to be a clear relationship between symptomatology and the MMR. He had the MMR rather later than usual at the age of 21 months. His mother tells me 24 hours afterwards he had a fit like episode and slept poorly thereafter and she attributes changes in his behaviour to this event. I understand that he has not been fully investigated although I understand it is your opinion he could be within the autistic spectrum although it is not your view that he does have autism.

248. Thus, child 7 arrived with no autism diagnosis. At the Royal Free, he was seen by Dr. Berelowitz, who concluded that the boy had a developmental disorder, but did not know what it was and suggested further inquiries. It will be recalled, not least from Wakefield’s Thoughtful House website, that developmental disorders are a much wider terrain than autism, or even the autistic spectrum of disorders. Developmental disorders embrace an enormous range of issues where cognitive or motor skills are challenged. I knew from my general research that they embraced ADD and ADHD, and even Down’s Syndrome.

249. On 3 June 1997 Berelowitz wrote to Wakefield recounting how he had seen the boy and the boy’s mother, with various pieces of information gleaned from the mother. I attach this letter (Ex. 86), which, among other things, says:

At 18 months he had a febrile fit during a chicken pox programme. He was unconscious for about 20 minutes and lost the use of one side for a while. He then had his MMR at 20 months. On the same night as his MMR he had what his mother thought was another fit, but I am not sure about this. From then on he became quiet with a decrease in spontaneous speech, less social engagement, less eye contact and poor language.

Berelowitz told Wakefield in the letter that, during the assessment, he saw “some lovely imaginative play” between child 7 and his brother:

lining up the chairs in the office and pretending they were a train. They also played hide-and-seek. Mother took the lining up of the chairs to be a sign of the children’s obsessionality, but in fact I did not think this and I thought it was a good example of imaginative play. I should add that there were other aspects of what the mother called [child 7’s] repetitive play which I thought was probably normal toddler behaviour.
250. Such has been my research on the subject of autism that I would guess that Dr. Berelowitz’s observations of “pretending,” “lovely” and “good imaginative play,” and “hide-and-seek” were reasonable pointers that this boy did not have “severe developmental regression,” would not spend the rest of his life in institutions, trapped in a world of silence etc, and that obsessionality was likely the mother’s. However, what I think is of minor account. What is of account is Dr. Berelowitz’s diagnosis and recommendation. He told Wakefield that he thought child 7 did have a developmental disorder, but did not know what it was and advised that a more appropriate specialist be consulted. He wrote:

Notwithstanding these comments, I do think [child 7] suffers from a developmental disorder, perhaps somewhere between Asperger’s and Autism. However, I would want Andrew Lloyd Evans’ [a paediatric neurologist and specialist in development] views on the development following the febrile convulsion. I also retain some uncertainties about the strength of the conclusion that we should draw from some of the historical features.

251. Thus, the word “perhaps,” and the proposal for a specialist opinion are crucial in understanding what Berelowitz was telling Wakefield. For simple comparison, a doctor saying that a patient “perhaps” has cancer, and needs more evaluation, is not a diagnosis of cancer. For a third party doctor to relay to the patient that they have cancer on such a basis I would think might well produce a lawsuit and disciplinary action. But that is exactly what Wakefield then did. He wrote to the mother, changing Berelowitz’s diagnosis to what he, Wakefield, wanted it to be.

In a letter read to the GMC panel, Wakefield told her (Ex. 87):

Further to our conversation the other day, I am writing to confirm that following assessment of your children at the Royal Free, in particular by Dr Berelowitz, the Consultant Child Psychiatrist, the behavioural diagnosis in [Child 7] is of a developmental disorder on the autistic spectrum between Asperger’s and autism.

252. Firstly, Dr. Berelowitz made no mention of the autistic spectrum, which Wakefield added to the diagnosis. Secondly, “perhaps” has gone. Thirdly, there is no
suggestion that what Berelowitz had called the “strength of the conclusion” was tentative. And, of course, there is no indication of the psychiatrist’s view that the boy needed more appropriate assessment.

253. But, even on Wakefield’s own altered, misleading and grossly irresponsible account to the mother, he cannot square even his own correspondence with what he later reported in the Lancet. In Table 2, child 7 is stated to have been given a “behavioural diagnosis” of “Autism.” There is no mention of possible Asperger’s syndrome, or question mark, as Wakefield uses (or omits) elsewhere in his reporting of children in the Lancet, or any words of qualification. To me, the conclusion was inescapable: he had sexed-up the case so as to make it appear to fit better with his new syndrome for Mr. Barr.

254. And yet there is more. As indicated previously, Wakefield also claimed in the paper to have discovered evidence of just the kind of inflammatory bowel disease that, before any of the children were admitted, he had told the Legal Aid Board about in 1996. Table 1 documents “non-specific colitis” in 11 of the 12 children reported. And, with regard to child 7, in December 1998, Wakefield issued a letter headed “TO WHOM IT MAY CONCERN.” (Ex. 88):

This is to confirm that [Child 7] is one of a number of children investigated at the Royal Free suffering from a newly identified syndrome comprising of chronic bowel inflammation and autism. The long term natural history of this condition is yet unknown but it is likely that the bowel disorder as well as the autism will require long term medical supervision.

255. But not only did child 7 have no diagnosis of autism, reference to Table 1 of the paper reveals that he was, on Wakefield’s own account, the only patient in the series who did not have chronic bowel inflammation. Indeed, under oath, Wakefield told the GMC panel explicitly (Ex. 89):

Q: And why would this child not be suitable to be seen in the ordinary inflammatory bowel disease clinic?
A: Because he did not have inflammatory bowel disease?

256. Much later, in 2007, child 7, at age 13, contributed to the bulletin board utilised by his brother. (Ex. 90). He identified himself by name and gave a neuropsychiatric diagnosis: “PDA,” which means “pathological demand avoidance syndrome,” which some specialists argue is a developmental disorder, although it is not classified in the autistic spectrum. PDA is associated with manipulative behaviour and an interest in causing distress to others. The PDA contact group on the internet says:

Pathological Demand Avoidance syndrome (PDA) is a pervasive developmental disorder. PDA is related to, but separate from, what is currently termed the autistic spectrum, namely autism and Asperger syndrome. Individuals with PDA are typically socially manipulative with people, and are thus superficially socially skilled, which sets them apart from autism and Asperger syndrome.

257. In his bulletin board contribution, child 7 erroneously refers to PDA as “high functioning autism,” which may well be traced to Wakefield’s diagnosis, and says that he also suffers from a bowel condition. With regard to that, he says:

The type of response I get from doctors is ‘I believe you believe you’re in pain’… They know it’s there. They just don’t want to admit it.

Child 12

258. As I correctly explained in the first “Secrets” report, this child was thoroughly assessed by an appropriate expert before being seen at the Royal Free. He received no diagnosis of autism, but instead was given a diagnosis of a language impairment.

259. At the GMC hearing, counsel examined Professor Sir Michael Rutter, widely regarded as the world’s most respected expert on autistic spectrum disorders, on this boy’s case. In a portion of transcript exhibited previously with this declaration (Ex. 91).

SMITH: In September 1996 there is a GP record at page 121. This was an assessment at the Newcomen Centre at Guy's Hospital, in fact, to help with the research project into communication development. You mention in your report, if we look down under formal assessment, an assessment done by Dr Baird. Is she also a child consultant psychiatrist?

RUTTER: She is a developmental paediatrician, but very experienced in this field.
SMITH: Yes. It says that on a particular assessment which she did that on the test of thinking ability he scores average but his achieved level of reading ability is below average. The rest of the findings were that there was impairment in respect of language.

The boy’s mother gave evidence for the GMC. On 19 July 1996, Wakefield wrote to her (as noted in transcript also previously exhibited as Ex. 36):

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.

260. The following day, the family’s general practitioner, sent a referral letter to the Royal Free, marked for Wakefield’s attention. Among other things, this said:

He has seen Dr Richard Ing, our local Consultant Child and Adolescent Psychiatrist, who has expressed the opinion that [12] may well have Asperger's Syndrome.

Berelowitz issued no report or letter with regard to child 12, but he made a note on 10 January 1997:

Language delay, ?ADD; ? features of Asperger’s.

261. Moreover, Wakefield affirmed under cross examination that he too had relied on a pre-existing diagnosis of Asperger’s syndrome for this child. I attach this portion as Ex. 92.

262. For Wakefield’s GMC hearing, Rutter reviewed this boy’s case. He was asked by counsel whether there was any indication of “why it might have been thought that there was any significant regressive elements about his behavioural disorder?” Rutter answered:

No, no evidence that I could identify.

263. Once again, no diagnosis of autism, much less any evidence of “severe developmental regression.” And yet Wakefield claimed both for this child. As was the case with
child 6, in addition to such information, I also had in my possession a Wakefield document disclosed to me by his lawyers in *Wakefield v Channel 4*.

264. In all the circumstances, it was clear to me when writing the “Secrets” series that, at the time he wrote his *Lancet* paper, Wakefield knew this boy had no diagnosis of autism, or any diagnosis setting aside the diagnosis of a language impairment made at Guy’s, and therefore the patient could not accurately be represented as a case of DSM-IV “autism,” regressive autism, or of “severe developmental regression.”

**The Reporting Challenged by Wakefield: Attacks by Wakefield Supporters**

265. Long before the “Secrets” reports, I became aware that Wakefield had drawn into his orbit a number of individuals towards whom prudence would call for considerable caution. Since publication of the “Secrets” reports, I have in particular come to know of two such individuals, working intensively with Wakefield as fundraisers and propagandists for his campaign: Daniel Olmsted and David L. Lewis.

*Daniel Olmsted*

266. Some years ago, Daniel Olmsted was let go from his job with the news agency of Sun Myung Moon’s Unification Church (popularly known as the “Moonies”). Olmsted has subsequently operated a blog at which he claims not only to have discovered the cause of autism to be mercury poisoning, but also claims the discovery of a putative “real” cause of poliomyelitis. At the time of this declaration, he promotes Wakefield at his blog with some 300 pages of material about him.

267. Following the “Secrets” series, Olmsted obtained through a breach of patient confidentiality the identity of the family of child 11 in my report, who live in California. The father was concerned that his privacy had been betrayed, but thinking that Olmsted was
interested in autism, met with him. At this meeting, the father shared a document which he had not previously shared with me, giving the date in 1997 when he first approached Wakefield. I attach this letter as Ex. 93. This letter expressed the father’s view in 1997 as to when his son’s first symptoms of autism began. Unsurprisingly, this date is different to the dates suggested in the medical record which the father had given to me, and which I quoted in the *BMJ*. On the frail basis of this discrepancy, Olmsted launched a campaign against me, in multiple online attacks, accusing me of lying.

268. As my *BMJ* report correctly stated, Wakefield claimed in the *Lancet* paper that child 11’s “first behavioural symptom” began “1 week” after MMR. The hospital discharge summary, however, indicated a process beginning *before* MMR. The father’s letter, which he supplied to me on 30 October 2011, meanwhile, stated that his son’s problems began some three to four months *after* his MMR. I attach the father’s email to me, supplying the letter as Ex. 94.

269. Despite the plain falsity of the *Lancet* paper, by any account, Wakefield, relying on Olmsted’s material, alleges at 4.13 of his petition:

> Indeed, the child’s father has since written Deer and the BMJ to explain that Deer was misrepresenting facts about child 11, yet Deer and BMJ have printed no retraction, correction, or mention of this fact.

270. Neither I nor (to my knowledge) the *BMJ* have received any letter from this father accusing me of “misrepresenting facts.” Nor have we received any request from this father asking for any retraction, correction, or for us to take any action at all. On the contrary, the father confirms the terms of the medical record (which he gave me at a meeting in California in September 2007), but disagrees with the accuracy of that record. The matter is thus purely a (very common) situation where parental recall and medical records do not coincide, and naturally parents believe their recollection to be right.
271. As will be found elsewhere in my report, I have been diligent in reporting differences between medical records and parental recollections, since this is an important part of the vaccine scare story. Had the father given me the letter, or even told me its content, I am certain that I would have included that information. In fact, when we met in California – our second meeting – the father was more anxious to share with me information (which I reported in the *Sunday Times*) proving that he had taken by taxi slices from his son’s bowel biopsies, removed at the Royal Free and later reported by Wakefield to be infected with measles virus, to a world-renown virology lab in London. They tested negative. My relationship with the father remains entirely amicable, and there is no dispute between us.

272. Last March, the father wrote to Olmsted and myself – effectively really copying me in to a letter he sent to Olmsted following their meeting – among other things stating (Ex. 95):

> While the inaccuracies in the Royal Free discharge summary may be chalked up to sloppy record keeping, if my son really is Patient 11, then the *Lancet* article is simply an outright fabrication. My son’s autistic behaviors did NOT begin a week after administration of the vaccine, in fact they began several months afterwards, with several medical complications occurring in between.

The father subsequently wrote to me stating, among other things:

> Next time I'm in London, I will give you a call. I have learned quite a bit from you on quality investigative reporting. We need more of it here in USA!

273. Wakefield, too, has had more to say on this matter, which cannot be reconciled with the false claim he made in the *Lancet*. Wakefield published a book in the United States (which I read before the “Secrets” series was published), which he timed to coincide with the announcement of his GMC sanction in 2010, and which bore a prominent warning Ex. 96):

> NOTE TO ALL CUSTOMERS
> NOT FOR SALE IN THE UNITED KINGDOM
In this book – which was written after Wakefield’s lawyers disclosed information to me in *Wakefield v Channel 4* – he abandoned his false claim that child 11 developed his first symptoms “1 week” after MMR at “15 months”. Instead the book said (Ex. 97):

He came to us with a history of developmental regression starting at 18 months of age.

274. In short, no party whatsoever – not the father, Olmsted, myself, or even Wakefield – stands behind the information in the *Lancet* table.

275. As in the case of child 6 above, I was also in possession of additional knowledge with regard to child 11’s history, as a result of disclosures in *Wakefield v Channel 4, et al.* Arising from the GMC investigation, Wakefield’s lawyers were in possession of detailed forms, compiled at the Royal Free, which they turned over to me.

276. In all the circumstances, it was clear to me when preparing the “Secrets” series that, at the time he wrote his *Lancet* paper, Wakefield knew that child 11 did not experience his “first behavioural symptom” of autism within one week of MMR, as the paper stated so as to create the required temporal link and to help trigger a public health crisis. I have been unable to think of any credible explanation for Wakefield making such a claim that does not involve an intent to mislead.

277. Moreover, given the very small number of children which generated the temporal link in the *Lancet* paper, and particularly the singular impact of the false claim with regard to this child, I can think of no honest explanation for why Wakefield has not come forward and sincerely apologised.

*David L. Lewis*

278. On the day the first “Secrets” report was published, Wakefield was enjoying hospitality at a small conference of anti-vaccine campaigners at the five-star, 2,000-acre, Tryall
Club villa resort in Montego Bay, Jamaica. I learnt later from inquiries by a respected autism website that this high season event was paid for by wealthy activists through the anti-vaccine National Vaccine Information Center, operated by one Barbara Fisher. She is a prominent campaigner and, during the DTP scare which I investigated in the 1990s, I learnt that she had come to believe, after watching a CBS television programme, that her son was brain damaged by DTP. Since then, she had never looked back, and had likened Wakefield to Galileo.

279. Also accepting air fares to Jamaica and hospitality at the resort was a retired specialist in the science of sewage sludge, David L Lewis. I learnt later that he had been fired by the US Environmental Protection Agency in 2003 following allegations of research misconduct. Curiously, I learnt that his EPA dispute involved a paper submitted to the *Lancet* and the receipt of payments from lawyers. Lewis had subsequently lost a series of administrative complaints and lawsuits, pursued all the way to the Eleventh Circuit Court of Appeals. I have also seen that he holds himself out to be Chief Executive Officer of The International Center for Research on Public Health and the Environment, which is located at his residential address in Watkinsville, Georgia, 40 miles east of Atlanta. I attach a document concerning this international center as Ex. 98.

280. At the January 2011 Montego Bay conference, Lewis took up with Wakefield, working with him (on Lewis’s own account “full time”) for at least most of the rest of the year. In recent weeks, I have seen him listed, with the blogger Olmsted, to appear at conferences seeking to appeal to parents of children with developmental disorders and at an event with Olmsted explicitly advertised to raise money for Wakefield. I attach publicity for such an event, naming both men, as Ex. 99. I have also seen an appeal for money from Lewis stating his
intention to move it, evidently for tax purposes, through a religious 501(c)(3) to Wakefield’s wife.

281. On 10 November 2011 – the same day that Wakefield’s lawyers issued a threat of defamation proceedings against the BMJ and myself – Wakefield and Lewis published, through a Wakefield web-entity, a paid-for press release (Ex. 100). It was headed:

Ongoing Investigations by Dr. David Lewis Refute Fraud Findings in Dr. Andrew Wakefield Case. Well-known Whistleblower Calls for Withdrawal of British Medical Journal Article Alleging Fraud.

On 9 January 2012 – which was the day Wakefield’s petition was served on the BMJ – another website operated for Wakefield published and distributed a second press release (Ex. 101) saying much the same thing:


282. The second press release promoted a bizarre, 167-page, complaint from Lewis, which he sent to three UK public bodies, and of which he had evidently learnt by reading the BMJ. The gist of it all was that I was part of a sinister conspiracy to destroy Wakefield; that I had published fraudulent claims about Wakefield’s bowel pathology findings; and even that there were grounds to believe that I did not write my own reports. Among other things, he complained of me:

The scientific and medical content of his articles are well beyond what any individual with no formal training in science or medicine would normally be able to write.

283. Because of the extraordinary length of Lewis’s attack, and his submission of it to public bodies, Dr. Godlee asked me to write a detailed response. That response (Ex. 102), incorporated his complaints, which included agonizingly tendentious arguments, greatly expanding and relentlessly repeating, over and over, the same allegations as made by Wakefield
in 4.14 of his petition, but, oddly, directing his protests to the April 2010 *BMJ* report by me ("Autistic Enterocolitis under the Microscope"), rather than to the January 2011 "Secrets" report identified by Wakefield. Neither report contained the meanings complained of.

**Post-Publication Developments**

284. The *BMJ*’s conclusion that Wakefield’s work was fraudulent plainly rested upon his covert and dishonest activities to create the appearance of a temporal link between MMR and autism. Specifically, but not exclusively, these included: the concealment of the true source of the children as being from campaign groups and a lawyer, which created the grossest possible selection bias, fatally tainting the paper’s concluding interpretation; the concealment of the predetermined goal of proving a “new syndrome”, which created the grossest possible observer bias; the coaching of parents before they came to the hospital; the representation of methods as findings; the manipulation of the number of parental testimonies blaming MMR; the baseless claim that all children suffered from regressive developmental disorders; the omission of critical information, such as diagnoses of constipation and blood test results, that might have put peer reviewers, editors and readers on their guard; and the alteration and/or intentional and uncorrected misreporting of individual children’s histories (such as in the cases of child 1, child 7 and child 11, set out proportionately in this declaration). The paper also falsely claimed that the investigations children underwent had been approved by the Royal Free hospital’s ethics committee, an institutional review board.

285. Prior to our publication, decisions taken by the paper’s authors in retracting the interpretation, the GMC panel’s findings of fraud and dishonesty, and a judgment by the *Lancet* of dishonesty which led it to fully retract the paper in February 2010, were also important. Subsequent to our reports, we now also know that Wakefield’s statement in the paper claiming
that records from the children’s GPs were consulted for the research was also false and irresponsible.

286. Although we did not come to any conclusion about Wakefield’s intent with respect to the bowel pathology, we did believe that mismatches identified during the GMC hearing were important matters to be brought to public attention. Indeed, a table published with the first “Secrets” report tabulated conflicts between results obtained in the hospital with subsequent results published in the Lancet, said to have been obtained in the medical school. However, as my April 2010 report “Autistic enterocolitis under the microscope” made clear, the case put to the GMC panel was that a “research review” had been carried out, changing the results. But, as of January 2011, we did not have data from that review, and so could make nothing of this claim, but to report it.

287. In September 2011, however, the position changed. Although Wakefield and Lewis were working together (with Lewis highly experienced in litigation, having made to my count, among other things, three unsuccessful appearances as a plaintiff in federal appeals courts), due to the underlying mendacity of their positions, their plot blew up in their faces.

288. Although we had never asserted that the Lancet paper’s “histological findings” were, per se, fraudulent, in a bid to convince Lewis that they were not fraudulent, Wakefield passed to him the original raw data upon which he had based his claim that 11 of the 12 children in the Lancet paper suffered from “non-specific colitis.” I am not sure if Wakefield expected this, but, after being rejected elsewhere, Lewis submitted this data to Dr. Godlee, with a lengthy article which, in essence, generally denounced me. He thought the BMJ would publish it.

289. Within less than six minutes of my receipt of the data from Dr. Godlee, I could see that it reported what would be taken by pathologists to be essentially healthy bowel biopsies,
where the *Lancet* paper had tabulated disease. Within an hour, I advised Dr. Godlee to put the material out to expert review, and I believe that some seven experts in gastrointestinal pathology, in the United States, Britain and mainland Europe, all concurred with what I said.

290. As a result, on 9 November 2011, the *BMJ* published a further, fourth, report by me in the “Secrets” series. It was titled “Pathology reports solve ‘new bowel disease’ riddle,” and was introduced (Ex. 103):

Unpublished data from the research that claimed links between MMR vaccine, autism and enterocolitis reveal no enterocolitis.

291. This picked up where my April 2010 report on “autistic enterocolitis” left off. As noted earlier in this declaration, my previous report had referred to Dr. Susan Davies, the consultant histopathologist for the hospital pathology service, telling the GMC panel that she had not found histological findings of “non-specific colitis,” but that a subsequent research review had generated the *Lancet* tabulation. However, thanks to Lewis, we now had what Wakefield himself held out to be the original data from that review, and this did not square with the *Lancet* either.

At 4.14 of his petition, Wakefield alleges:

Deer asserted in his article that Dr Wakefield had altered or ignored information from on-duty pathologists as to whether or not the children in the *Lancet* paper had intestinal inflammation and specifically, non-specific colitis.

292. This is untrue. No such allegation appears in the report he identifies. We took at face value the claim that there had been a research review in the medical school, and that this had, indeed, brought about the changes in the findings. That the petitioner has evidently not even read the report with sufficient diligence to realise that the meaning he seeks is not within it, is further evidence of the true motives behind his petition.

DECLARATION OF BRIAN DEER

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293. Be that as it may, Wakefield continues at 4.14 stating that the research review was performed by Dr. Amar Dhillon, who was, in fact, named as a co-author of the paper, and signed the 2004 retraction of the interpretation. Wakefield makes further claims regarding Dr. Dhillon for which we have seen no compelling evidence, but in any event, following my fourth “Secrets” report, of November 2011, Dr. Dhillon sent a “statement” to the *BMJ* making clear his position. I attach his statement as Ex. 104.

294. He made many points, including his belief that “the designated diagnosis of colitis seemed to me to be plausible,” but he said that such a diagnosis required patient histories and clinical information which he did not have when he generated his raw data on what are known as “grading sheets.” He explained:

Thus the purpose of my grading sheet observations in 1998 was not, could not have been, nor was it intended to conclude the final diagnostic assignment of colitis (which has to be made in the light of full clinical / endoscopic / radiologic / laboratory data; and response to treatment)

-Therefore on the grading sheets “nonspecific” means: “this microscopical appearance doesn’t remind me of any particular disease entity”, and this is why in none of my grading sheet observations have I stated “colitis”.

Only two consultant pathologists are named on the *Lancet* paper, and thanks to Lewis’s intervention, we now know that, contrary to the heading at Table 1, column 6, neither of them made “histological findings” (findings under a microscope) of non-specific colitis. Not only have both Dr. Davies and Dr. Dhillon directly denied it, but we have the raw data, in Dhillon’s case supplied via Wakefield, which confirms what they say.

**Alleged Conflicts**

295. Since I began investigating the MMR matter in September 2003, my journalism has at all times been conducted at the instigation and under the guidance of other journalists and executives of one or more of three UK media companies of the highest reputation: *Times*
Newspapers, Channel 4 Television and BMJ, the British Medical Journal. I have received no funding for this work from any other source (save a payment of legal costs from Andrew Wakefield, and speaking fees from universities).

296. I have never been supported in this work by pharmaceutical companies, industry bodies or government agencies. Nor has anyone, other than journalistic colleagues, influenced me, or to my knowledge sought to influence me, on what I might or might not include in any article. Apart from journalists assigned by editorial executives of the companies named above, performing conventional editorial functions, no person has written, contributed to, altered, or, to my knowledge, had pre-publication sight of any of my articles on MMR. I do not hold any stock, or have any financial interest, in pharmaceuticals, vaccines or any other products.

297. With regard to the articles, I confirm that, apart from a two-character spelling mistake in an online footnote, I am unaware of material error in fact or inference in the “Secrets of the MMR Scare” reports of January 2011. I also confirm that (including through the Sunday Times reports, my website postings, the Channel 4 programme, and numerous direct requests for interviews and answers to specific questions), Wakefield at all times knew the nature of the allegations and that (including through his lengthy complaint to the Press Complaints Commission, his book, his postings on the internet, and such replies to my questions that he chose to supply), I knew the various positions he wished to publicly adopt. I was also aware of numerous defamatory and dishonest attacks on me by Wakefield by which he sought, less to reasonably defend his reputation, but to rally support and income to himself by attempting to damage mine.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 9th day of March, 2012.

DECLARATION OF BRIAN DEER
Brian Deer