

The Association of Clinical Pathologists

Autumn 2005

acp News

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**Not-So-Silent
Witnesses:
Words to
the Wise**



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What is an Expert Witness?
Defamation: Definitely not what the Doctor ordered
A Mobile Phone and a Surgical Support
Profits of Doom Part Two: Dame Dorothy returns!

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The Association of Clinical Pathologists

189 Dyke Road

Hove, East Sussex, BN3 1TL

Tel: 01273 775700

Fax: 01273 773303

e-mail: info@pathologists.org.uk

<http://www.pathologists.org.uk>

General Administrator

Ms A A Martin

Administrator – Finance

Miss T Moynan

Editorial Assistant

Miss J Rush

(Correspondence should be addressed to:
The Editor, Association of Clinical Pathologists,
189 Dyke Road, Hove,
East Sussex, BN3 1TL
E-mail: mdharris@doctors.org.uk)

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Front cover photo: Eagle owl by Dr Danny Tucker (www.dannytucker.net) – See Cover Story on page 5

Editorial

Dr M D Harris, Editor



Dr M D Harris is Editor of acp News and Consultant Histopathologist/Cytopathologist at Peterborough and Stamford Hospitals NHS Foundation Trust

Travelogue

In a phenomenon akin to the well-recognised herd behaviour of number nine buses, incoming articles seem to sometimes group together on a theme. There is a deliberate theme to this issue, which is medicolegal aspects of medicine and pathology, covered below. But there is also a fortuitous one of reports from foreign climes. At one point I feared this autumn issue would look more like a travel brochure than a pathology magazine. In fact the problem has solved itself, as an excess of material has meant that a good few have now metastasised to the winter issue. But while some have been in exotic places battling with rare diseases, Julian Burton has been doing his duty as *acp News*'s roving reporter on a fact-finding mission into the heart of the red light district of Amsterdam.

So I decided "if you can't beat 'em, join 'em". I, too, have done my bit of travelling this year, in the company of my wife and four teenagers (two of my own and two "borrowed" to keep our ones quiet). We had wanted to go on a safari, but finances did not permit for six people, so we did the next best thing to a safari park; we went mouse hunting.

Now, I was going to omit the name of the organisation that owns this park full of strange beasts, some humanoid to a greater or lesser extent, in case I said anything that could be considered defamatory. After all, I would not want *acp News* to be sued by Disney – there, I've said it now anyway. But I decided that there would be no point in bemoaning the in-your-face commercialism, the overdoses of fast food and fizzy drinks, and the sugary sweet false jollity. After all, there is no pretence at all attached to it and what you see is what you get. You can't say you haven't been warned.



Actually, the French Disneyland is really quite pretty, especially at night, and with a bit of good weather it would be as good a place as any to sit in the sun and read. In fact I did do this and I appeared to be the only one doing so; I may even be the only one to ever have done so. Perhaps they still talk about that

mad Englishman who sat on a bench outside the Magic Castle and read the paper. The only barrier to doing this is the constant noise. You can buy most merchandise in the Disney shops – I once had a Mickey Mouse corkscrew from a previous visit, in fact the ears lend themselves rather well to the design – but try as I may, I could not find a pair of Mickey Mouse ear-plugs anywhere. My guess is that they don't want to encourage any sitting around. The rides may be paid for in the ticket price, but there is still so much merchandise and food to sell you.

The other downside to Euro Disney is the queuing. A quick spin on a rollercoaster may take half an hour, or even an hour, of waiting, which is probably worth it if you are heavily into rollercoasters, but I am afraid I don't have that sort of commitment. Also, that American-style fast food and "soda" should have taken over as the staple diet in a part of France, a country once famed worldwide for its cuisine and wine, is rather ironic. Still at least the park is safe and I was able to relax in the knowledge that whilst two pretty 14-year-old girls could be let loose to torture the local boys, they were as safe as they could be from the white slave trade. And that fact alone made it almost worthwhile.

Wiki

Purely in the line of duty, I have been doing a bit of "net-surfing" recently and I have stumbled across a real gem. *Wikipedia* (<http://en.wikipedia.org>) is a free online encyclopaedia, but one with a difference. Derived from the Hawaiian "wiki wiki", meaning "quick" (book him Danno!), a "wiki" is defined as: "a collaborative website comprised of the collective works of many authors. Similar to a weblog in structure and logic, a wiki allows anyone to edit, delete, or modify content that has been placed on the website, including the work of other authors". Now, put simply, that is an encyclopaedia that can be added to, or modified, by anyone. You might think that this is a recipe for the sort of garbage and anarchic misinformation that the "web" is famous for, but you would be wrong. Probably the sorts of nutters who populate the fringes of the internet do not spend their leisure time editing and contributing to encyclopaedias, and the quality and breadth



Dr J L Burton is Assistant Editor of acp News and Lecturer in Histopathology at the University of Sheffield



Prof K G Kerr is Assistant Editor of acp News and Consultant Microbiologist at Harrogate District Hospital



Dr P J Twomey is Assistant Editor of acp News and Consultant Chemical Pathologist at Ipswich Hospital

of information is stunning. Combined with an efficient search facility, this is a first class source of information and, in some instances, is a better place to start looking for information than even Google. I predict this site will grow and flourish – watch this space.

A plea to the blood cell doctors

Before we get in to the "nitty-gritty" of this issue, I would like to make a small plea for material from one specialty in particular. I have been very lucky in having the support of excellent assistant editors, who have provided a lot of the material in this issue. Although Julian, Shauna and I are histopathologists, with Kevin and Pat we have microbiology and clinical chemistry covered. Eric Watts has written part of the report on the summer NSM, and David Bareford also wrote recently; however, apart from them there is a large hole where haematology should be.

Now perhaps this reflects the state of the ACP membership at present, and there may well be conflicting pressures in that specialty, but let us not forget that the ACP encompasses all laboratory disciplines and both the current president and chairman of the Association are haematologists, as are a number of members of Council. So how about bringing balance to the "Force"? Get writing you haematologists!

If I ruled the world every new member of Council would be required to write at least one article for *acp News* (and the mag would be in full colour, too). That said, if I ruled the world, they would almost certainly depose me after one day; but boy oh boy, what a day that would be!

Trial by jury

In keeping with the medicolegal theme in this issue, I will start the ball rolling with a question: is it time to overhaul the criminal justice system in this country that gives the right to trial by jury? You see, it was fine back in the old days where someone accused of stealing a pig, or raping a milkmaid, had the right to be tried by a jury of their peers, probably their fellow villagers. Back then most people could understand the issues and the evidence; not so now. The Louise Woodward case in America demonstrated the complexity of modern evidence, particularly in medical cases. Defence lawyers may argue for the right to trial by jury, but isn't their view clouded by the fact that it is clearly in their interests to do so, not because it ensures a fair trial, but because it is more likely that they can get their clients acquitted?

Imagine you were a defence lawyer in a system where, in order to get your client off, you were only required to convince a lay jury that there was reasonable doubt. A jury like the one mentioned on TV recently who, in a "shaken baby" case, had to ask what a "paediatrician" was – in fact, didn't a paediatrician have to move out of their home a few years back because the mob got confused between a paediatrician and a paedophile? Not wishing to be unkind, but how is a jury composed of such people ever going to be competent to assess the defence evidence as to whether or not it indeed casts reasonable doubt?

For example, the paediatrician – whatever one of those is – says this baby was shaken, and so does the pathologist. However, the homeopath and chiropractor disagree. And before you say that any jury would be able to distinguish the credibility of the two, go out on to the high street and look at how much the public invests in quackery, as opposed to how much they wish to invest in the NHS. An extreme and fictitious scenario, perhaps, and I have no idea whether a defence can, or ever has, called such non-medics as experts, but there are plenty of "hired gun" medical experts out there who are popular with the defence lawyers, and what they do amounts to much the same thing.

Of course if you were a defence lawyer whose reputation and livelihood depended on your clients being found not guilty, you would do everything permitted within the rules to place that reasonable doubt in the minds of

the jury. And doubt may be much easier to raise in the minds of a lay jury than a group of doctors who might see, for example, that rare metabolic disorders might account for some, but not all, of the clinical and pathological findings in a case.

I found myself as an expert witness in court once. A routine coroner's post mortem I performed, actually on an in-hospital death, turned into a murder investigation. Even though a second forensic examination had subsequently been carried out, the prosecution called me as a witness as well. Arguably I should have been a professional witness, but I was called as an expert and, being a few years ago, I didn't see the need to argue the point. Anyway, the experience was good and it all went quite well, particularly as I had received some courtroom skills training a few years earlier (see Mark Solon's article on page 17) and basically I knew how to avoid trouble.

But what particularly struck me were the blank faces of the jury as the defence counsel and I discussed the finer points of my examination. Now they may have been deceptive, with the facial control of experienced poker players, but in truth I seriously doubt whether they understood a word of it. I didn't keep the brain, and the defence had an expert who said that this was vital evidence. Fortunately the Home Office pathologist agreed with me that it was irrelevant and, in fact, he also had the opportunity to take it during his own examination (albeit sliced by then) but didn't. The defence, however, were going all out to convince the jury that without the brain having been examined by a neuropathologist there was reasonable doubt as to the cause of death. I still believe there wasn't, but you would need a good understanding of pathology to really follow the argument as to why not. I would not have been surprised if the jury had felt what they considered reasonable doubt as a result.

The experience reinforced my view that the system is out-of-date and too open to being manipulated by the legal profession. If that is the case, surely it urgently needs to change.

In this issue

The relationship between doctors and the courts is getting interesting, and not necessarily in a good way. Medical expert witnesses state their opinions in court and the

jury convict or acquit on the basis of their opinion of that opinion. But, as we all know, in certain high profile cases the conviction has been found to be unsafe on appeal and the experts have found themselves the subject of criticism, and subsequent investigation by the GMC. Pathologists may also find themselves the subject of criticism when patients find it hard to understand the subjective nature and "uncertainty principle" in what we do, particularly in areas like cervical screening.

Our two leading articles deal with the nature of an expert witness and what responsibilities attach themselves to the role. The GMC has been criticised by the profession for its involvement and Graeme Catto gives us his own view as to why the GMC is right to be involved. Elsewhere in this issue, Mark Solon shares some insight into how to deal with giving expert evidence in court.

Defamed doctors? Maybe we are now about to move into a "brave new world" and take on those who seek to destroy our professional reputations, whether they are former employees, aggrieved patients, the press, or even other doctors. With lawyers offering to act on a "no win – no fee" basis, how can you lose? Well, I don't know, but I suspect this may be a whole can of worms that, once opened, will not easily be closed. Still you can be sure of one thing, there is one professional group who will not lose out ... the lawyers.

A mobile phone and a surgical support, are these essential requirements for the final MRCPPath practical in histopathology? Well, the support certainly is if you are expected to travel to the other side of the UK with microscope in tow. Ian Chandler is a regular contributor to *acp News* and, encouraged I am sure by his first place in the ACP prizes for journalism 2004, he continues to provide a wealth of material. Maybe he should have used the prize money to pay someone to carry his microscope.

Finally, I hope you enjoyed Dame Dorothy Dixon's writings in the last issue as much as I did. Well the saga continues, and this time the action moves to the UK. But make no mistake, although the piece may be fictional, the writing is on the wall and the involvement of private providers in NHS pathology is something with which we will all need to engage. Whether or not you are involved with private practice yourself, don't be an ostrich: listen to the emu!

Metastatic Curetings

High jump

I met a chap in shorts and a vest, walking along with a long pole over his shoulder.
"Are you a pole vaulter?" I asked.
"Nein, I am German," he replied. "But how did you know my name was Walter?"

Cover Story



This picture of an eagle owl was taken by Danny Tucker at Warwick Castle. The mythical wisdom of owls is probably something to do with their night vision, being nocturnal hunters. Athena, the Greek goddess of wisdom, was often depicted holding an owl. The bird has long been associated with wizardry, from Merlin to Harry Potter.

Danny is currently lecturer in obstetrics and gynaecology in Oxford. More of Danny's pictures can be found at www.dannytucker.net.

Invitation to Contributors

In addition to the constant flow of material from ACP Council, ACP committees and ACP branches, *acp News* needs new material from you, the members of the ACP.

Pathology news items (any length): Any items related to the ACP or the College, pathologists in general, or medical and management matters that may have an impact on pathologists.

Articles (1500-2000 words): These can be papers, reviews, essays, commentaries, critiques, or polemics. Leading articles are generally commissioned; however, submitted articles are always very welcome, as well as suggestions for articles and/or details of people whom the editor may approach.

Reports (1200-1500 words): These may be personal views and reports on interesting meetings, travel, or anything else of interest to the readership. Travel reports are specifically for holders of ACP travel fellowships. Other reports from abroad are welcomed and will be listed as overseas reports.

Columns (600-1000 words): Regular and irregular columnists exercise their thoughts. New and occasional contributions are always welcome.

Pathological creative writing: All literary forms, including short stories, serials, surrealism, and even poetry.

Appreciations (1000-2000 words): We prefer appreciations on retirement, rather than obituaries. Please discuss these with the editor before submission.

Photo-journalism: Favoured subjects include pathologists doing something interesting, or College and ACP officers doing anything at all. Interesting or artistic photographs are welcomed.

Cartoons: Suggestions, or original artwork, are welcomed.

Curetings: Jokes and humorous titbits are always needed.

Debate: Letters to the editor are welcome, but may be shortened for publication, or even converted into articles. Please try to refrain from

writing unless you are prepared to be published. All criticisms of organisations or named individuals will entitle the parties to a right of reply. Please bear in mind the UK libel laws! Argument will usually be curtailed after one cycle.

Trainees: Trainees are especially encouraged to submit material in any and all of the above categories. Appointments committees in particular value publications in *acp News*.

Current editorial desires: The editor would particularly encourage overseas contributors, material from trainees, material from non-histopathologists, commentary on current affairs in pathology, occasional columnists, innovations in pathology, humorous writing on pathology-related topics, and anything downright cantankerous.

All suggestions are welcome; however, the editor's decision is final.

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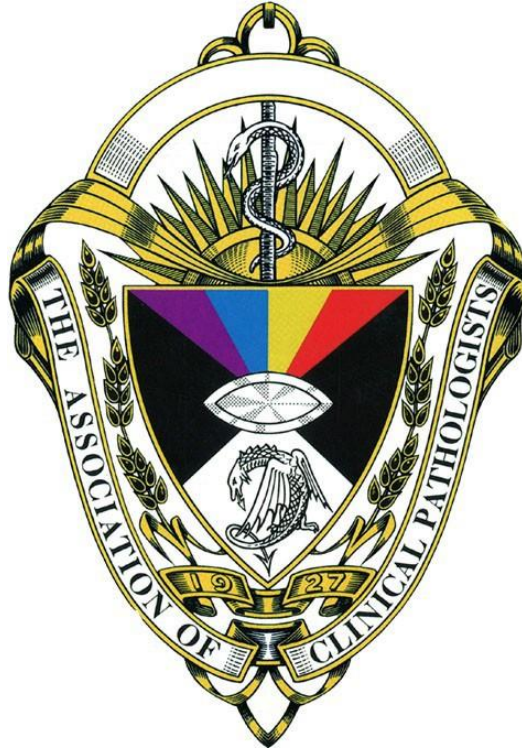
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mdharris@doctors.org.uk

Submissions on paper by snail mail will also be accepted – please send to: Dr M D Harris, Consultant Histopathologist, Peterborough and Stamford Hospitals NHS Trust, Thorpe Road, Peterborough, CAMBS PE3 6DA.

Illustrations can be sent as transparencies or prints, but high-quality digital images (TIFF or JPEG) are preferred. Images submitted as prints will be returned, if requested.



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