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Editorial Open Access

Medico-Legal Neurology Now and in the Future

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Editorial

The world of neurology has expanded rapidly at all levels of clinical expression, drawing in the world of genetics, pre-natal medicine, obstetrics,, immunology, imaging, diagnosis and treatment including neuro-surgery. All these have opened up new frontiers with one particular territory, namely, legal medicine. The practitioner of any aspect of neurology needs to be aware of numerous aspects of his particular sub-discipline in its expression at ethical and medico-legal practice. To this must be added the new, ever increase patient empowerment which is increasing its weight in Court. Medical jurisprudence itself is in a state of flux and evolution, which is in fact a healthy sign. The recent ruling in the UK case of *Montgomery V Lanarkshire Health Board* in 2015, (UK SC 11) is clear proof of the evolution of medical jurisprudence. Although the case dealt with the divulging of pre-operative information, the effects are likely to challenge Bolam's test to its limits and potentially even write out of existence. The UK Courts will no longer set the standard of practice in Court according to peer opinion but along its own principles of adjudication.

The present period of practice of neurology is imbued with exciting new developments in all its sub-disciplines. This is encouraging for the practitioner and mostly to the patient, who is the focus of all end scope of research and modified practice. However, when we speak of the patient, we can no longer think along mid-20th century reasoning but a dual headed being – the patient whom we seek to help and that aspect of the patient whose awareness is increasingly encompassing legal retribution for genuine or imagined undesired results. It is crucial for the neurologist to be conscious of this situation, without losing the necessary verve and motivation to attempt to treat and cure.

The contentious nature of the neurological case in Court may be vastly increased when combined with the related aspects of say, obstetrics, immunology or pre-natal diagnosis, to mention but a few fields which may overlap in the clinical picture. The need for speciality and sub-speciality guide-lines is absolute both to guide the expert witness as well as the Court in general. The American Academy of Neurologists (AAN) demands a full understanding of Expert Witness Guidelines which, if violated will lead to AAN disciplinary action. One should reflect that official body contribution to the medico-legal angle of Neurology may go further. One example would be a College Task force to advise the Court on a number of experts including the right expert (from a registered body of such) for the main aspects of a particular case. The idea of one expert, however experienced and qualified, may soon be considered as selling justice short. In the UK case, *AW Pursuer against Greater Glasgow Health Board Defenders* (2015, CSOH 99), centering on Cerebral palsy liability, we find a total of 13 experts: 4 are for obstetric issues, 2 are for neuro-radiological issues, 2 are for neurology issues, 3 are for midwifery issues (2 for the pursuer and 1 for the plaintiff), and 2 experts are for the midwifery issues (2 for the pursuer and 1 for the defender). Not only does this make sense in the light of modern specialisation and sub-specialisation but it may be claimed as a legal right, although Court is the final arbiter. For example in another UK case, *S. V. Chesterfield and North Derbyshire Royal Hospital NHS Trust* in **2003 (EWCA CIV, 1284**) the plaintiff, a victim of Cerebral Palsy alleging obstetric clinical negligence, appealed against the master's order of limiting obstetric experts to one per party.

There is little doubt that medico-legal neurology will witness Court challenges well in keeping with new discoveries and their pari-passu liability at law. Again, borrowing from the great medico-legal chapter of Cerebral Palsy litigation (which is likely to hound the obstetrician rather than the neurologist), the great myths, born in the USA and then widely propagated, have started toppling from their unsound basis, while new challenges are likely to fill the resulting vacuum. These myths, based on incorrect assumptions, interpretations and extra-polations of intra-partum cardio-tocography as well as the over-inflated relevance of intra-partum hypoxia in the genesis of Cerebral Palsy are not extinguished yet, but their dangerous contribution to the jurisprudence of medical liability are likely to be over-shadowed by, facts which are relatively ignored at the moment.

The 2003 ACOG Task Force report on Neonatal Encephalopathy and Cerebral Palsy, amended by the 2014 ACOG Task Force report entitled *Neonatal Encephalopathy and Cerebral palsy: Defining the Pathogenesis*, has laid emphasis on the role of the *antenatal* period as the time where causative factors may play a role in Cerebral Palsy. This is of great clinical and *medico-legal* relevance and is a page turner in the Cerebral Palsy story which since the 1960's has essentially coned on the intra-partum period and its management, often to the exclusion of other aspects, often, blatantly more crucial to the final outcome

Yet, facts are more likely to evolve even further and potentially include not only the antenatal period but even the pre-pregnancy period in those cases where parents submit themselves for childbearing advice. The concept of seeking liability for failure to screen for and detect and subsequently advice the parents is well known. Thus, in Howard v. Lecher (386 New York Supp., 2nd Ser. 460 in 1976), the parents, Ashkenazic Jews of eastern European extraction sought liability from the obstetrician for the birth of their child who died from Tay Sachs disease. The plaintiffs claimed that the doctor failed to discover the condition antenatally, which condition is rather prevalent in their ethnic origin. The subsequent acquittal does not diminish from the argument at hand.

The principle underlying *Howard V. Lecher* may have not been given much attention since 1976. However, this may not remain so in view of the increasing awareness of a genetic predisposition to some forms of Cerebral Palsy and the rapid rate of progress of genetic studies. In 1.6% of cases there is a familial element which may declare itself with a child already suffering from the condition. It is now known

that hereditary factors can predispose to Cerebral Palsy, causing small effects on multiple genes, gene-to-gene interaction or through various complex interactions including environmental influences. The clinical picture is still emerging and more than likely the element of contribution to or even causation of Cerebral palsy through genetic predisposition, may become honed sufficiently to provide clinical grounds for screening in the right circumstances. This will provide a new angle of liability from which birth damage lawyers may direct justified or unjustified attack.

All in all, 2017, is likely to bring in new discoveries, improved cures and no doubt a new batch of medico-legal cases. Medicine at Court is a world which the healers have to learn to adapt to. It does not form part of their dreams of healing the human race. But it is here and is more than likely to stay.