

Magazine

False starts

Hard cases

Sydney Brenner

Excerpt from the transcript of the trial of T. Cobley *et al.* vs the Editors and Publishers of *Nascence*, before Lord Justice Abel.



Mr R. Gument Q.C.:

May it please your Lordship I appear for the plaintiffs, T. Cobley *et al.* in this action.

The facts are straightforward and simply recounted. On or about the 10th of October 2000, the plaintiffs submitted a

typescript of a scientific paper to the editors of the journal *Nascence*. Some two weeks later they received a

but pointed out that the third referee had failed to grasp the principle of the method used and that his statements were incorrect. Nevertheless, they had amended the manuscript to emphasise certain of the special features of the work with the express intention of satisfying the third referee's concerns.

The Editor then communicated with the plaintiffs saying that the paper had now been sent for a second deep review, implying, if your Lordship will forgive the jocularly, that the first had been a shallow one. The plaintiffs assumed that this review would be carried out by a new panel of referees but, to their surprise, they discovered six weeks later, when they received a letter from the Editor rejecting the paper, that the second review had been carried out by the original three reviewers.

The Editor in her rejection letter commented that *Nascence* was only

Patagonian Journal of Knee Surgery, to give but one example.

The plaintiffs claim that by not being able to publish in *Nascence*, they have suffered injury to their professional careers and are claiming compensatory damages. It can be argued that this is the fate of many scientists and that their claims should be rejected just as their paper was, but we intend to establish that the plaintiffs were wrongfully excluded, that they were unable to confront the negative referee directly and that the Editor was negligent in not checking the validity of this referee's statements. Even though the Editors will claim that many factors were taken into consideration in their rejection, it is a fair implication that it was the negative comments of one referee that turned the balance.

Your Lordship may find it surprising that, in a profession that prides itself on the objectivity and

considered for publication and would be sent to reviewers. This was already a major achievement as most of the submissions to this journal are returned unread and some possibly even unopened.

A few weeks later, our clients received a letter from one of the editors, enclosing the comments of three anonymous referees. Two of the referees had only minor comments and asked for a few changes and some additional material. What is important, my Lord, is that both praised the research using words such as "original", "clever" and "novel", as may be seen from the documents in Volume 5, Tabs 23 and 24.

The third referee, Tab 25, was severely critical and claimed that the work was fundamentally flawed and should be rejected. The plaintiffs amended the manuscript and provided the extra information as requested by the first two referees,

field and that the plaintiffs had not succeeded in reaching this standard. The reports of the referees were enclosed. Two expressed satisfaction but the third persisted with and, indeed, enlarged his criticisms (Tab 29). The authors pointed out again that this referee's statements were incorrect, but no reply to their letter was received.

Journals such as *Nascence* have what is called a high 'impact factor', of which they are most proud and which they widely advertise. This factor is computed by counting the number of times papers in their journal are referred to by papers written in later scientific literature. Indeed, this impact factor not only significantly affects the commercial success of the publications but it has come to play an important role in the professional success of the scientists. Thus papers appearing in *Nascence* have a much higher academic rating than papers appearing in the

ex cathedra statements without any direct support and that the journals believe that they need to preserve the anonymity of such commentators. Their names have now been provided by the defendants on pain of imprisonment, since your Lordship's ruling that failure to do so would be viewed as contempt of court.

We intend to prove by cross examining the referee that the statements had no justification. We also will show that the Editor, although possessing an academic qualification of some relevance, was essentially a lay person in this specialised field and should have sought additional opinion rather than giving undue weight to a negative view, not once but twice.

We are therefore seeking punitive damages and we hope that this will put a stop to the practice of anonymous referees, so reminiscent of the cloaked accusers in heresy and witchcraft trials of the Middle Ages.