AvMA’s Silver Wedding, and a Funeral

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Co-editor
“‘There were three people in this marriage... it was rather crowded...’”

Diana, Princess of Wales

It is now exactly five years since your intrepid correspondent travelled to report AvMA’s 20th birthday for you and I have now returned from my voyage to northern lands to describe their, er, 25th birthday. In fact, marriage is a more useful analogy to describe those present at the meeting – about 500 lawyers (a “mouthpiece”?), 20 or so medical experts with a death wish and a number of sinister representatives from the Lord Chancellor’s Office dressed in ill-fitting suits, muttering into secret microphones and trying to look inconspicuous. Nevertheless, this particular marriage did not seem overcrowded and, appropriately, carries an air of maturity about its purpose which I thought was lacking when I was first an onlooker about 15 years ago.

The meeting took place in Glasgow and the more lateral-minded of you will already be asking why there, given that the cool boulevards and fleshpots of both Brighton and Liverpool continue to beckon. I have it on the highest authority (thank you, Peter) that the choice of north of the border was no accident, but a not-so-subtle signal to our Scottish compatriots that the level of clinical negligence appears to be astonishingly low. (In my long career as a dilettante expert I have only ever done one case from Scotland.) Certainly the Health Service seems to run better in Scotland than in England (see below) but it is hard to imagine that this explains the apparent satisfaction of the Scottish people with the care that they receive. Presumably lack of available funding and expert legal advice is the more likely explanation and our colleagues in Scotland need to know that they are not alone. It will take much less than the 25 years of AvMA’s history to bring a voice to the patients in Scotland who have suffered an adverse outcome from their treatment, although I suspect that the Scottish medical establishment will be as reluctant as their English colleagues to rethink their long tradition of omerta.

By contrast, the Irish were there in force with a somewhat overpowering mix of talent, enthusiasm and expertise. The specialty of clinical negligence in Ireland is developing apace along the tried and tested route of enhanced communication, professional education and, hopefully, the other side of the coin which relates to risk management and clinical governance. I remain particularly hazy about the differences in the two legal systems because I have never actually appeared in court; all of my cases seem to have settled about 60 seconds before we were due to walk through the court doors. I wonder why?

The AvMA meeting followed their successful formula which leavens discussions on keynote topics with presentations on various medical and surgical specialities from acknowledged expert witnesses. The medical experts have their own day, during which the lawyers attempt, unsurprisingly, to reprogram them, usually unsuccessfully. There were some particularly feisty discussions on this occasion which encouraged me to think that we grumpy old men of the expert witness profession may still have something to offer, apart from a medical report which the barristers will seek to traduce beyond recognition. It was a pity that so few medical experts were present, given the quality of what was on offer. This may be a sign of the malaise affecting the medical expert community in these post-Meadow days; even in my own specialty, which is far removed from that of child protection, the feeling is that “You don’t have to be crazy to be an expert witness but it probably helps if you are”.

For me, the best discussion came at the end of the meeting when a panel of legal luminaries considered the increasingly-severe financial restrictions being placed by the Legal Services Commission on funding for clinical negligence cases. It is, apparently, clear that the Government attaches little importance to this area of the law in comparison to family, criminal or the others that I cannot remember. The number of lawyers in this speciality who
can continue to make a living seems to be decreasing and access by patients to specialist legal advice is becoming harder. There seems to be a clear feeling that the LSC has cost-cutting as its only motivation – access to justice is obviously only a rather small part of the Brownian Movement. I was pleased, as always, to have the last word with my statement that conditional fees for expert witnesses seem to be both the inevitable and logical next step. To my amazement, only one of the four panel members dismissed the suggestion outright, while the others seemed to give it, at least, reasoned consideration. Perhaps I should not be surprised – I can remember when lawyers made the hop, skip and jump to conditional fees without seeming to break step so I suppose that medical experts could do the same. So much for an objective medical report!

The funeral to which I refer above is, of course, the recent debacle about Junior Doctor’s training. You remember the scenario – Witless government finally tires of decades of consultant intransigence in the National Health Service. Highly paid policy wonk has bright idea; accelerate medical training period, churn out large numbers of “sub-consultant” consultants and break the hegemony of the medical establishment. Season the mix by introducing an untried, unworkable and very expensive computer system to handle junior doctors’ applications, fail to issue guidance for the applications and ignore the fact that only 18,000 posts are available for 30,000 junior doctors. Finally, light the blue touch paper, pass the blame to the medical apparatchiks “who are responsible for the system” and retire to witness the subsequent meltdown.

Although the Department of Health is just beginning to breathe a little more easily, thinking that the worst of the shambles is over, this is actually far from the case. As I write this, in August, many Trusts have jobs which are either unfilled or occupied by unwilling or inappropriate doctors. The least consequence will be the reduction in clinical activity which will follow as surely as night follows day, although this will be a major concern to a Prime Minister contemplating an early election in which Health will be near the top the agenda. Additionally, immense personal disruption has been caused to the doctors who have only been notified about their jobs at the last minute, many of whom will face major and unnecessary geographical upheaval. Perhaps even sadder is the loss of a system of medical education which successfully produced experienced consultants who were best able to provide effective care for their patients.

I confidently predict that future medical historians will date the terminal decline of the National Health Service to the events of 2007. A schism is occurring between the junior doctors who have their careers before them and the seniors of the profession who have previously been considered to act in the best interests of all concerned. This is not now the case and there is a very real perception that the leaders of the colleges have failed the doctors that are their constituency and, as I write, the calls for resignations are becoming more vocal. An honourable exception attaches to the Royal College of Surgeons which has withdrawn itself from the Post Graduate Medical Education and Training Board. For the rest, many are viewed as having had their mouths stuffed with knighthoods, to paraphrase. Although some have fallen honourably on their swords, most seem to feel that this is not appropriate. The Chief Medical Officer now has no support amongst doctors nor, I suspect, amongst his political colleagues.

Another of my oft-stated predictions is that the forthcoming appearance of a two-tier consultant system will lead to an upsurge in adverse events and litigation. When I have my prostatectomy I want it to be performed by a Consultant Urological Surgeon rather than a Consultant Urologist. Although surgeons can become very experienced with a more limited repertoire, the problem will be policing the activities of the less-specialised practitioner; the insurance companies may be keen on sub-consultant grades charging sub-consultant fees but how will it play out when the case comes to court? One can almost hear the phrase, “I thought he was a proper consultant, Your Honour.” So, perhaps an encouraging note on which to end for my legal colleagues.