

GOSPORT WAR MEMORIAL HOSPITAL INQUESTS

Thursday 16 April 2009

The Law Courts
Winston Churchill Avenue
Portsmouth,
PO1 2DQ

B E F O R E:

Mr Anthony Bradley
Coroner for North Hampshire
Assistant Deputy Coroner for South East Hampshire

In the matter of Code A & 9 Ors

(DAY NINETEEN)

MR ALAN JENKINS QC, instructed by **, appeared on behalf of Dr Jane Barton.
MR JAMES TOWNSEND, Counsel, instructed by the Royal College of Nursing, appeared on behalf of a number of nurse witnesses.
MS BRIONY BALLARD, Counsel, instructed by **, appeared on behalf of the acute trust and the PCT.
MR TOM LEIPER, Counsel, instructed by Messrs Blake Laphorn, Solicitors, appeared on behalf of the families of Brian Cunningham, Michael Packman, Elsie Devine and Sheila Gregory.
MR PATRICK SADD, Counsel, (instructed from 23/03/09), appeared on behalf of the Wilson family.

(Transcript of the Official Recording by T A Reed & Co Ltd
13 The Lynch, Hoddesdon, Herts, EN11 8EU

Code A

I N D E X

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A (In the absence of the jury)

THE CORONER: Is there anything anyone needs to say to me before we get the jury in? Can we have the jury, please?

(In the presence of the jury)

B THE CORONER: Is there anything before you retire of relevance? All right. I am going to invite you to retire to consider your verdict in all 10 cases. I want you to do all 10 together, although sequentially, so that you do not take a disproportionate view of any one of them. Before you go I will ask for the jury bailiff to be sworn.

(The jury bailiff was sworn)

C THE CORONER: If there is anything you need as you go through we can get paperwork to you. If you have any questions, as I said yesterday, then it can be done in open court. If you would go with the bailiff then, please?

(The jury retired to consider their verdict at 10:10 am)

D THE CORONER: I suspect they may be some time. I will not take a verdict between one and two.

(The hearing was adjourned)

THE CORONER: (no recording before this point) ... Let me tell you what they are. The statements of Code A

E Code A Those were all admitted under rule 37 and so I need to make those available to them. They have also asked for the reports of Professor Black and Dr Wilcock which they cannot have. They are going to need to rely on their notes of the evidence in order to do that. Is that about right?

MS BALLARD: So far as the statements go, sir, it would be right so long as you have read the entire statement out. If you have not you will have to redact it.

F THE CORONER: The only bits I did not read were the bits that were common throughout. Gillian Hamblin gives the same start.

MS BALLARD: And things like qualifications which you did not read out I do not have an issue about, but if there is anything you did not read out that is pertinent ---

G THE CORONER: That is the provision of rule 37, is it not?

MS BALLARD: Yes.

THE CORONER: As far as I am concerned I read them all.

H MR JENKINS: I do not think you did so far as Shirley Hallman was concerned. (After a short pause) Can I tell you what you read?

A THE CORONER: Yes, thank you.

MR JENKINS: This is the statement of 21 February 2006.

THE CORONER: This is the one that is edited, is it not? Yes.

B MR JENKINS: You dealt with the first page and three quarters of the second page and you stopped after the line "... the role of deputy manager requires an F grade." The rest of that page was not read, nor any of the following pages until we get to page 5.

THE CORONER: I thought we went to page 3. Did I not read that? "Trained in the use of syringe drivers"?

C MR JENKINS: I do not think you did. Page 5 you read the passage which starts: "I have been asked to detail my involvement in the care and treatment of Enid Spurgeon" and you dealt with that page. Over the page to I think the end of that statement. There is a subsequent statement which you read but there is a paragraph on the third page ---

THE CORONER: "I always argued with Dr Barton ..."

D MR JENKINS: That is right. You did not read that to the jury, although I think you summarised it when you summed up. So far as the other statement of Shirley Hallman is concerned – this is Geoffrey Packman – it is the same start as the other statement.

THE CORONER: Page 3 I have the first edits.

MR JENKINS: My recollection is that you did not read the bottom two paragraphs at page 2.

E THE CORONER: I wonder why I have not got that edit.

MR JENKINS: I think I rose whilst you were reading it. It may be that some edits you had prepared in advance. I did say after you had got to F grade, I stood up and said I think you may want to go to page 5 where she indicates that she was starting to detail her involvement with the care and treatment of Geoffrey Packman and she did that. So the rest of that statement was read from page 5 to the end. Of course there can be no objection to the jury getting in written form what has been read to them but it should not be in.

F THE CORONER: On that basis are you happy for me to do the edits?

MR JENKINS: Yes, it is just cutting and pasting.

G THE CORONER: I will just have to say to them that they will need to rely on their notes of evidence for Black and Wilcock and if there is anything specific that they need to confirm they do it in open court.

MR JENKINS: You can certainly say, as you are entitled to, that you can remind them of any evidence if they want to be reminded.

H MR LEIPER: Sir, so far as the report of Dr Dudley is concerned, ---

- A THE CORONER: The caveat of the reservations that the family had.
- MR LEIPER: Yes. While I was not here while sir read it out, I think made representations to you, sir, in relation to amendments which should be made to it before it was read out and I assume that those amendments were made.
- B THE CORONER: No, they were not. The reservation was put on the resuscitation note 4, not 3.
- FEMALE SPEAKER: Reference 4. Discontinuation of dialysis which she did not have but also there were some errors that were corrected when you read it. I do not have it in front of me but specifically with regard to when blood test results were available.
- C MR JENKINS: There was also a part you reminded the jury that Dr Dudley had seen Dr Barton's statement.
- THE CORONER: Yes.
- D MS BALLARD: Sir, I have a note there were four points which you drew to their attention. The first was about the statement of Dr Barton; the second was the documentation that Dr Dudley had did not include the Wessex guidelines. The third was reference to page 7 of his report that the lab results were not available until lunchtime on the 18th and the reference on page 11 to reference 4, as you correctly indicated at the outset. You did raise those matters when you read it out.
- THE CORONER: Anything else?
- E MS BALLARD: Sir, can I just check the written statements which are going to the jury very quickly just to check which ones they were asking for?
- THE CORONER: In the case of **Code A** it is quite a few, is it not?
- MS BALLARD: It was just the witnesses, not the actual statements.
- F THE CORONER: **Code A**
- MS BALLARD **Code A** Clearly they will have to rely on their notes of their evidence. Frieda Shore was a rule 37 so it is three: **Code A**
- G THE CORONER: **Code A** and Dudley subject to the observations and the rest they need to rely on that. They have also asked for the drugs charts.
- MS BALLARD: There is quite a considerable amount of Baker's report that was not read out as well.
- THE CORONER: What does he relate to? Wilson. Mr Sadd is not here, is he?
- H MS BALLARD: Page 13, paragraph 2.

A THE CORONER: Paragraph 2 - I have got that deleted.

MS BALLARD: Starting, "When Mr Wilson was transferred ..." and page 15 starting, "It is important to note ..." the last paragraph which goes over onto page 16 and page 17, paragraph 3.

B THE CORONER: I have got it coming back in "... and judging whether Mr Wilson might ..."

MS BALLARD: Yes, you have it, sir.

THE CORONER: That is the statement of Dr Baker. When I read it out I had deleted those paragraphs if you remember.

C MALE SPEAKER: I cannot remember which ones you deleted but I do know you deleted some.

THE CORONER: If I can put those into working order and I will tell the jury now that is what we are going to do. Can we have the jury, please?

(In the presence of the jury)

D THE CORONER: I will put your note on the file here. The drug charts are no problem, you can have those; they are certainly here. So far as statements are concerned there is a difficulty in that some of those were edited and I will need to remove the edits and you can certainly have those after that.

E Witnesses that were live you need to rely on your note of their evidence. That goes to Professor Black and Dr Wilcock as well. You will need to look at the notes you have got of that. If there is anything you are not clear about, you can come back into court and I can remind you of that and we can update that if there is any problem with it.

Anything else you have thought about whilst you have been out? No, all right. I will do the edits for those and let you have those and we will get the drug charts into you. Thank you very much.

F (The jury further retired to consider their verdicts)

THE CORONER: Do you want to approve the edits before they go in?

MR JENKINS: I think it is better if we do.

G THE CORONER: I have no problem with that. I will go and do that with the assistance of Sergeant Stephenson.

(The court was adjourned)

H MR JENKINS: Sir, thank you for the exercise you have done. So far as one of the Hamblin statements is concerned, I have put a sticky marker next to one paragraph which I think you

A corrected when you read to the jury two of the dates were wrong – it has 1999 and 1998 in the same paragraph – I think you corrected that at my suggestion.

THE CORONER: We are 1998, are we?

MR JENKINS: 1988 when Dr Barton started. I think 1989 was roughly the date when syringe drivers were introduced.

B So far as Professor Baker's report was concerned, we think that you did not include when reading matters ---

THE CORONER: I am almost certain I did not include it.

C MR JENKINS: I have spoken to Mr Wilson. I know that he has had a chance to look at Professor Baker's report – the copy of it that has been produced – his recollection is I think different about the third page, the summary of conclusions and whether that was read to the jury. If it was read of course the jury can have it; if it was not read it would not be appropriate for them to do so.

THE CORONER: It was not, was it, because it went to the issue. I certainly did not read the curriculum vitae.

D MR JENKINS: I do not mind the CV, but so far as pages 5 to 8 are concerned where he goes through a chronology, again that was not read to them.

THE CORONER: They have had that elsewhere. Subject to that, are we agreed with that? Good.

E MR JENKINS: Mr Wilson's recollection is different. He may obviously give you that himself.

MR WILSON: I have actually heard so much along the way that I could be wrong. As it happens, what is in that page 3 is duplicated further on anyway so it makes no odds either way, sir.

F THE CORONER: If you are comfortable with that, then let's do it. Let's get these to the jury now and hope that we will be finished by June.

MR JENKINS: I do not know if you want to add any comments because there are one or two marks in the margin which I think are your marks.

THE CORONER: They are and I could not avoid those.

G MR JENKINS: That is fine, just so long as the jury are told that these are copies of your statements and if there are marks in the margin then just ignore them.

THE CORONER: Do you want me to call them back in?

H MR JENKINS: I do not think that is necessary?

A THE CORONER: I will tell the jury bailiff and he will convey that message to them and ask them to ignore the marks in the margin. It was unfortunate that that was the only copy of that statement for some unknown reason that we seem to have but the rest are clean copies.

I will not now come back in here until 2 o'clock whatever happens. The jury are not going to be ready before then whatever I say or do. I will be back here ready, willing and able at 2 o'clock, so an extended lunch hour. Thank you very much indeed.

B (The court was adjourned)

C THE CORONER: A very simple point that I do not know you will find terribly interesting. The jury have asked for sight of the nursing notes of Elsie Lavender and they have gone in. They have also asked for sight of Yvonne Astridge **Code A** and Dr Peter's statements. I have not got any editing on my notes. The only thing I have got is a change on date which is date of transfer. Why it is wrong stated is it is not amended on that one. It is Dr Peter's statement, final page, penultimate paragraph, she was transferred on I think it is 21 February. He has put 22 February. I think that is actually incorrect. I have corrected it on my copy and I can correct it on the copy that is going to the jury, unless there is any observation? No. It is the 21st. Good, then the jury can have that.

D MR JENKINS: Given the nature of the question, have you booked out all of next week, sir?

THE CORONER: We were just having this conversation. When I went out I said I will see you in June. I was joking! (Laughter)

(The court was adjourned)

E THE CORONER: ... I will read it to you:

Do we all need to be in agreement in answer to the questions? If no, can we fill in our own sheets with our own personal view even if they differ from the rest of the jury? If we do not agree, should we take a majority?

F My answer to the question is that on each individual inquisition I would hope for a unanimous verdict. The difficulty I have got, and I have never had to face the issue before, is the question of the cause of death. On the cause of death, the way I put that to the jury was is it more likely than not? On the cause of death, I am minded to say I would accept a majority because I do not think the issues on that are the same as they are on the substantive questions that they have got to answer.

G So far as the answers to the questions on the narrative verdict are concerned, I would want unanimity on the answers to the questions but I wonder what your view of the actual cause of death was? Obviously one would want unanimity but I do not know that that is the kind of thing that one could achieve if somebody is committed to say that the cause of death was a GI bleed or an MI. On the evidence that we have got, if it is an honest opinion genuinely held what are you going to do with it?

H MR JENKINS: Can I say for my part a majority view is fine. If the experts cannot agree it would seem difficult to oblige the jury to reach a unanimous verdict having heard contrary views from different people in the case.

- A So far as the questions are concerned ---
- THE CORONER: You have got to be unanimous or I will take a majority after a time.
- MR JENKINS: Yes. I do not think you can accept a lot of inquisitions.
- B THE CORONER: No, it has got to be one inquisition completed on behalf of the jury and if there is a dissenter or two dissenters then so be it. I am not at that stage this afternoon. Ms Ballard, what do you think?
- MS BALLARD: Sir, I have nothing to add. I think that a majority on the cause of death would be acceptable. I do not necessarily see why there would be too much cause to treat the two differently – the answers to the questions and the cause of death – because you can of course accept a majority verdict on the answer to the questions as well.
- C THE CORONER: It is a question of what the majority is, is it not? I am required to take a majority of two at the minimum.
- MS BALLARD: Right.
- D THE CORONER: Mr Leiper, what say you?
- MR LEIPER: Sir, I am not sure there is good reason for making a distinction between various issues in relation to cause of death and questions certainly at this time. The preferred course of conduct would be for you to alert them that in due course it may be appropriate for you to accept a unanimous decision but we have not arrived at that position at this stage.
- E THE CORONER: They put specifically the cause of death. I am not sure how you are going to deal with cause of death in any event because it seems fairly arbitrary to me – it is almost multiple guess questions, is it not, where we are at present and which expert are you going to go with. That is why I was minded to say whatever their majority finding on the cause of death was, but if you feel that it would be more appropriate to leave that and see if they can get unanimity, then so be it.
- F MR LEIPER: I would have thought they should be encouraged to strive for unanimity certainly at this stage and should it become apparent that that is unrealistic then at that stage you could give the majority verdict direction.
- MS BALLARD: I had not thought it through, so apologies if it does not turn out to be a problem, but if the course at the end if they do unanimously agree to the questions, but only the majority agree to the cause of death, the usual course of course in a majority verdict is that only those agreeing sign the inquisition. I presume you would have to modify the inquisition form to enable them to sign in two different places.
- G THE CORONER: I would get them to sign dissenting – that is what I have always done.
- MS BALLARD: But if you, for example, have unanimity with regard to the questions, i.e. the verdict but not the cause of death. Do you see what I mean?
- H

A THE CORONER: No, they are dissenting from part of the overall inquisition, are they not? I think that is how I would see that.

MS BALLARD: Yes. As I have just said, I apologise.

THE CORONER: I have never been in the position where I have had to argue causes of death in an inquisition.

B MR LEIPER: They are clearly taking their responsibilities extremely seriously.

THE CORONER: Of course, they are my jury.

C MR LEIPER: Of course, sir. We would not be expecting anything otherwise. The latest questions in relation to Lavender which would suggest they are onto consideration of the second death, as it were, that being the case I would have thought it was appropriate that they should be encouraged to see if they can reach unanimity in relation to answers that have been put in relation to all deaths if and so far as that is possible and if it becomes apparent that that is not going to be possible then at that stage, sir, consideration to be given then.

D THE CORONER: I think what I will say to them is when we come to the end of business this afternoon if they have genuine differences then I will take those first thing tomorrow morning. I think that is the answer to that, is it not?

Let's wheel the jury in and see what we can do with it. I am slightly concerned that they each felt they could fill in their own inquisition. That slightly worried me.

(In the presence of the jury)

E THE CORONER: I have your latest questions. Thank you very much indeed. The answer to the first point is that the eight of you will complete an inquisition form so you will each have your input but one decision. When you have made your minds up I will ask you what that one decision is. At this stage I am looking for you to be unanimous. That will be both in response to the questions and the cause of death. If there comes a point at the close of business this afternoon that you cannot agree and there is no prospect of you agreeing, I can give you a majority direction but I would like to do that tomorrow morning and not this afternoon. It is one inquisition for each of the 10 deceased upon which you are all agreed. After 10 o'clock tomorrow morning I will tell you something different but I would hope on the basis of the information you have got that you can agree.

F If there is only the cause of death that is causing you difficulty then I feel that it would be easier for me to give a majority direction tomorrow morning on that. If you are not agreed on the answers to the questions that I think presents me with a slightly different problem but I will think about that in the morning.

G Does that help? [Yes] At least you know you are completing the one form for each of the ten deceased. When you finish bring it into court and I will ask you all about it and we will go through the ten and then I will ask you each to sign the form so you will sign one form each for ten.

H JUROR: Are we expected all ten to be done today?

A THE CORONER: No, you are not under time constraints; you really are not. It may well be that if you are not heading in the right direction together then you need to talk to me again but if you are all heading in the same direction but it is just a question of fine-tuning, then you can sort that out and you do not need me to do that for you. Thank you very much indeed.

(The jury continued with their deliberations)

B THE CORONER: Thank you, ladies and gentlemen.

(The court was adjourned)

(In the presence of the jury)

C THE CORONER: We will go over until 10'clock tomorrow morning. Can I say that you must not speak about this to anyone, and I mean to anyone. You will find that there has been a fair amount of press interest today and a fair amount of coverage but you will not find it helpful to watch that. What I would like you to have in your minds is what we have been discussing, everything you have listened to and particularly what you have been doing today and I really would not like that to be clouded by issues that other people put in front of you that may be irrelevant for your purposes. So away until 10 o'clock tomorrow morning.

D (The jury were released to the following day)

(The hearing was adjourned to Friday, 17 April 2009 at 10 am)

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