

Gosport War Memorial Hospital Inquests

Submissions as to verdict on behalf of Dr Jane BARTON

1. These submissions are made to respond to any suggestion that a verdict of Unlawful Killing should be left to the jury.

The elements of Unlawful Killing

2. A verdict of Unlawful Killing encompasses the criminal offences of murder and manslaughter. Manslaughter comes in various forms, including
 - a. Murder reduced to Manslaughter (partial defences of provocation and diminished responsibility);
 - b. Unlawful Act Manslaughter (unlawful act directed against deceased, and which results in death, but without requisite intent for Murder); and
 - c. Gross Negligence Manslaughter.

On the evidence in this case, only c) needs to be analysed.

3. For a jury to return a verdict of Unlawful Killing, the jury would have to be satisfied
 - a. to the criminal standard of proof,
 - b. that each of the elements of the offence applied to one (or more) person(s) [hereafter "the defendant"],
 - c. who must not be identified in the verdict.

For this exercise the jury would need to analyse the evidence from the perspective of the defendant: i.e. his state of knowledge, experience etc.

4. Given the various states of mind that could be encompassed within the test for gross negligence it is difficult to envisage circumstances in which two or more parties could be jointly responsible for the same oversight etc. People cannot agree to fail to turn their mind to an obvious risk etc.
5. It would not be permissible for a jury to return a verdict of Unlawful Killing on the basis that a number of people, viewed collectively, had been grossly negligent. The position of each such person must be considered separately.

6. The elements of Gross Negligence Manslaughter are as follows:
- a. the defendant owed a duty of care towards the deceased,
 - b. negligence;
 - c. causation;
 - d. gross negligence, Bateman, Andrews, Adomako, [See Jervis 14-36 etc]

Application of Unlawful Killing to the evidence in this case

7. In a case where it was said that the actions of medical and/or nursing staff caused the death it would have to be shown that the actions of each such actor were grossly negligent. In this case, where the medical staff prescribed medication, but did not administer it, and an independent judgement was exercised by nurses as to the need for medication to be administered, a verdict of Unlawful Killing could not be reached merely through consideration of the actions of the doctor(s) alone. Thus, if medication could have been appropriately administered, given the patient's symptoms at that time, there could not be a verdict of Unlawful Killing, however the doctor's actions in writing up the prescription could be characterised.
8. There are other matters which would have to be considered:
- a. the information given to the doctor(s) as to the patient's level of pain, distress etc;
 - b. whether the medication was prescribed on a regular or "as required" basis;
 - c. whether there was any change in the patient's symptoms following the writing of the prescription and before the drug was given;
 - d. a second, or third, doctor may have reviewed the prescriptions and continued them; this will be relevant to issue whether the original prescribing was grossly negligent;
 - e. two nurses will have considered each administration of medication;
 - f. more than one administration may require consideration of the actions of more nurses.

9. There is no evidence as to causation of death, in any of these cases, from a witness who treated the patient, or undertook an examination after death, to suggest that medication may have caused or contributed to the death. In particular, there is no evidence from a toxicologist who considered the analysis of drug levels in blood. Such evidence as there may be to suggest that any patient experienced effects of medication which contributed to the death is speculative. The evidence is not fit to leave to a jury, who could not be satisfied on this issue to the requisite standard.
10. There is no evidence to suggest that any of the practitioners, both medical and nursing, were grossly negligent. If it is contended that there is such evidence, then it is not of such quality that it could properly be left to the jury.

Specific Cases: Robert Wilson

11. This patient was prescribed Paracetamol and Oramorph (5mg to 10mg) on an as required basis. The decision to offer him Oramorph, and at a dose of 10mg, will have been made by nursing staff, and based upon his then condition. The evidence as to when the prescription for Diamorphine to be given via a syringe driver was written up is unclear, but the syringe driver was started after the visit of Dr Knapman on 16th October 1998. Dr Peters attended at a later date, and the syringe driver was continued.

Specific Cases: Enid Spurgin

12. Mrs Spurgin was prescribed Diamorphine and other drugs to be given via a syringe driver. The range of Diamorphine was 20 – 200 mgs sc/24hrs. The records suggest that she was started on 80 mgs in the syringe driver, which was later reduced by Dr Reid to 40 mgs. It is not clear how or by whom the dose of 80 mgs was selected: see statement of Code A 21/2/2006 at p6.

Powers/Duties of the Coroner as to leaving verdicts to the Jury

13. These are set out at Jervis 12-153 and Third supplement. The proper approach is to follow the criminal courts, by considering Galbraith test and whether a verdict would be safe. Given the thrust of the evidence in this case it is submitted that it would be inappropriate to leave Unlawful Killing as a possible verdict for the jury, in any one of these cases.

Outer Temple Chambers,

London

12th April 2009

Alan Jenkins