PRIVATE EYE

SPECIAL REPORT PART 2

THE LESSONS OF THE LUCY LETBY CASE

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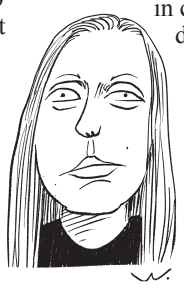
ON WHY THE NURSE SHOULD BE ALLOWED TO APPEAL

THE LUCY LETBY CASE: PART 2

MD ON WHY THE NURSE SHOULD BE ALLOWED TO APPEAL

Serious concerns, credible experts

IN MD's view, convicted baby-killing nurse Lucy Letby should be granted leave to appeal her verdicts, preferably without having to wait 10 years in jail first. There have been sufficient serious concerns raised by credible experts in numerous fields as to whether the science and statistics were presented fairly and completely to the jury at her trials; and had they heard the fuller picture with alternative explanations for the deaths, they may have changed their verdicts on some or all of the cases.



Most of this is not "new evidence", which is why her appeals have been turned down. What was missing was expert defence views on the existing evidence. The prosecution used six expert witnesses; the defence used none. Such a mismatch, although perfectly legal, poses a high risk of bias and false conclusions. For example, defence experts could have explained to the jury that natural causes of death were more plausible, that the prosecution's use of statistics was lamentable and the alleged insulin overdoses, air emboli and "death by squirting air into the stomach" were unproven and in some cases highly improbable. Letby's barrister couldn't make these points but expert witnesses could.

More pathological doubts

SIX of the seven babies Letby is convicted of killing had a full coroner's post-mortem examination at the regional centre of excellence, Alder Hey hospital, carried out by one of three experienced paediatric or perinatal pathologists and signed off by the coroner. Not one of them picked up a trace of foul play (see last *Eye*). MD asked one of the UK's top forensic pathologists how this could happen.

"Coroners' post-mortems in babies are extremely thorough, but if deliberate harm was not suspected at the time, and not detected at the PM, then usually no further testing is done. In contrast, forensic PMs do further tests for, say, insulin overdose but samples have to be sent quickly to a specialist lab for a definitive test." In the Letby case the two babies survived, insulin overdose wasn't suspected at the time, the definitive tests weren't done and overdose (deliberate or accidental) has never been proven.

"A further problem is that photos are not usually taken at coroners' PMs. So you can't go back later and try to independently corroborate findings as to, say, the potential causes of a skin rash. You are entirely reliant on the clinical findings, notes and memories at the time without pathological back-up…

"People often assume pathologists will have the definitive answer but there are many uncertainties and shades of grey, and we tend to be fairly cautious in our pronouncements. Paediatric cases take science to the very limits. We use phrases like 'this feature raises the possibility of…'. We have learned from past terrible injustices in criminal trials the dangers of declaring a sign is beyond doubt."

So why were the doctors on the frontline at the Countess of Chester hospital so certain of her guilt? "I can't say in this case, but my experience in court is that paediatric clinicians can be extremely hawkish and dogmatic on the stand. In one case I was involved in, a paediatrician argued that a child definitely had an infection on clinical grounds when there was simply no microbiological or PCR test evidence that they had. The jury sided with the paediatrician and the parent was deemed negligent for leaving a child when it had an infection.

"In general, the courts want an answer at all costs, even when there isn't one, and it's easy for a jury to be wooed by an expert with oodles of confidence, who presents very well and gives certain answers. You definitely need to hear both sides. All I can say about the Letby case is that it amazes me that she didn't have a battery of defence experts."

Hot-tubbing

MD argued in the last issue that a better way to present the science and statistics in cases of this magnitude and complexity would be to have an independent expert panel of current experts – not those long-since retired – employed by the court rather than one side or the other. The forensic pathologist agrees.

"Paediatric evidence can be near impossible for a jury to understand when you have, say, two professors of equal expertise with widely conflicting opinions based on the same evidence. How is a lay person expected to pick through that? A better approach, in my view, is called 'hot-tubbing'. Experts from both sides take the oath and the stand together, the evidence is more discussive and generally the experts from both sides have met each other beforehand, and agreed on what they agree on and disagree on."

This could have been a much fairer approach at the Letby trial, if only the defence had used the very experienced expert it had (Professor Michael Hall), whose opinion was crucial in changing MD's mind about the fairness of the trial. If he did that to MD, what might he have done to the jury?

Lessons for MD

IN MY 32 years as MD, I've relied heavily on senior NHS whistleblowers, often consultants, to get the story right. Generally they do, most notably the anaesthetist Steve Bolsin, without whom the Bristol heart scandal would never have been uncovered. That scandal taught me a number of lessons. Death rates in a hospital can fluctuate for all manner of reasons, and it took what was then the largest public inquiry in British history with the best scientific and statistical advice to get to the bottom of it. In summary, multiple factors can contribute to excess deaths:

- Random fluctuation
- A cohort of particularly sick patients
- An infectious outbreak
- Insufficient staff
- Substandard surroundings and equipment
- Human errors and substandard care/ surgery
- Clinical negligence
- Deliberate Harm

Deliberate harm is by far the rarest and hardest to prove unless you have a confession or CCTV footage. The Bristol inquiry concluded that although the staff and surgeons were doing their best, their best simply wasn't good enough and Bristol as a unit was not up to the task of dealing with such complex conditions; 30-35 babies had died after complex heart surgery who might not have died had they gone to other units at the time. Cardiac surgeons came under fierce media scrutiny; some started filming their operations to prove their competence, others refused to take on harder operations in case it moved them up the "death league table".

Likewise, a neonatal nurse MD has spoken to since the Letby verdicts has asked for CCTV cameras to be installed on her unit to protect her and her colleagues from accusations of incompetence or murder should a spike of excess deaths occur. Such spikes are surprisingly common. In 2014-2015, the Countess of Chester unit was 12th in the league table of excess deaths (see triedbystats.com for a clear unpicking of the Letby statistics).

Listen to nurses and residents

THE Letby jury (and initially MD) were undoubtedly swayed by the power of seven consultants with 100 years of experience who worked with Letby and are convinced she is guilty. But equally important is to listen to the nurses and resident (formerly junior) doctors who worked even more closely alongside her.

MD has corresponded at length with one of the consultants but has been unable to get

a single nurse or resident doctor to speak up. The *Telegraph* has reported that nurses and resident doctors who tried to speak up on behalf of Letby were told they should *not* give evidence, as to do so might harm their career. The Royal College of Paediatrics and Child Health (RCPCH) had more luck when it conducted a review of the unit, before the murder charges. Some of this information was removed from the final report, for reasons that will hopefully come out at the public inquiry under Lady Justice Thirlwall.

"The neonatal lead, in an effort to be thorough and explore all the possibilities," said the RCPCH's draft report, "had identified that one nurse had been rostered on shift for all the deaths although the nurse had not always been assigned to care for that specific infant. Subsequently the paediatric lead and all the consultant paediatricians had become convinced by the link. Although this was a subjective view with no other evidence or reports or clinical concerns about the nurse beyond this simple correlation, an allegation was made to the Director of Nursing.

"On arriving for the visit, the RCPCH review team was told the nurse had been moved to an alternative position around 10 weeks previously, without explanation nor any formal investigative process having been established. The review team was told that the individual was an enthusiastic, capable and committed nurse who had worked on the unit for four years. She herself explained to the team that she was passionate about her career and keen to progress. She regularly volunteered to work extra shifts when available or change her shifts when asked to do so and was happy to work with her friends on the unit. The directors understood there was nothing about her background that was suspicious; her nursing colleagues on the unit were reported to think highly of her and she responded to emergencies and other difficult situations, especially when the transport team are involved. There were apparently no issues of competency or training, she was very professional and asked relevant questions, demonstrating an enthusiasm to learn, along with a high level of professionalism."

Consultant whistleblower

IN September 2023, MD had a lengthy email exchange with one of the frontline consultants following detailed doubts about the interpretation of the evidence voiced by another consultant who had written to the *Eye*. I have no doubt his belief that Letby is guilty is genuine, but I was not convinced that his explanations were beyond reasonable doubt. I planned to ask for an independent opinion from a very senior practising neonatologist he and I both knew, and he agreed she would give a fair and balanced opinion. This is it…

Senior neonatal opinion

"I HAVE only seen the prosecution's summarising opening statement. I've not been privy to the details of the evidence. But what I've read troubles me deeply. The cases all have much more plausible alternative explanations than those alleged. Yet the defence appears not to have made many of these obvious points. Many of the prosecution's comments are medically illiterate and so too many of the 'expert' witness comments. Why weren't these challenged? Why didn't the defence have better medical advice or – as [Prof] Mike Hall is experienced and credible – why didn't they use the advice they were given to better effect? On the basis of what I've seen, this conviction is wholly unsafe. It totally shakes my faith in the competence of the law."

Closing remarks

NONE of the above proves guilt or innocence; merely that if a jury only hears experts from one side, it only gets one side of the science. Other things that keep MD awake at night are:

- Different authorities give different figures for the total death count for the period under investigation, ranging from 13-17. If they can't even get the body count right, what else have they got wrong? Letby has not been implicated in 6-10 deaths in that period, when the unit average was 2-3. What caused them?
- The pathological evidence doesn't prove guilty beyond reasonable doubt, and the spreadsheet merely proves Letby was on duty when Letby was on duty, although it was paraded in court with a certainty that would fail an undergraduate statistics viva. There must be proper statistical expertise underpinning all such trials.
- The Chester consultant confidently asserted to me: "There are many more unusual deaths and near misses from that period with the temporal association with her (Letby). The [Crown Prosecution Service] went for the ones that they felt had the strongest proof of guilt for the first wave of charges. There will be more to come." Will there? Where are they? How does he know? Should he know? Hopefully the public inquiry will get to the truth. Or perhaps David Davis MP will, as he plans to table a series of parliamentary questions on the Letby trial in September.

This report originally featured in Private Eye issue 1629.

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Ep.118 **BYE-BIDEN**

The team discuss the news from across the pond, plus Labour's record-breakingly short honeymoon; and MD, AKA Phil Hammond, reveals the uncertainties of the Lucy Letby case.

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