PRIVATE EYE

SPECIAL REPORT PART 28

THE LESSONS OF THE LUCY LETBY CASE

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THE LUCY LETBY CASE: PART 28

Silent witnesses

THE biggest mystery of the trial of Lucy Letby is why her defence chose not to call its expert witnesses to the stand – and MD may have the answer.

In trials reliant on complex expert evidence, both sides may agree to a joint pre-trial meeting of experts, to identify points of agreement and disagreement, record reasons for disagreement and produce a joint signed report to be served on the court. Six experts attended the Letby meeting, and all signed as follows: "This statement each signed by us is true to the best of our knowledge and belief and we make it knowing that, if it is tendered in evidence, we shall be liable to prosecution if we have wilfully stated anything which I know to be false or do not believe to be true." The stakes were clearly very high.

In cases where there are multiple deaths and collapses, and the evidence is very uncertain, it is not unusual for experts to profoundly disagree over the causes, as happened at this meeting. However, the prosecution only has to get the defence experts on board with one case. When one cause of death or collapse is agreed by all the experts, it is likely to be agreed by all the jurors and then the judge may allow it to be used to inform other verdicts. It also makes it very risky for the defence to call its experts to the stand. And so it proved with Letby.

The experts

THE joint expert meeting for Letby took place at Chilworth Manor, near Southampton, on 5-6 August 2022. Two instructed experts attended for the defence: Dr Michael Hall, who retired as a high-level consultant neonatologist in 2018; and Dr Mohammed Shakeel Rahman, a general paediatrician with a specialist interest in diabetes and endocrinology.

Four experts appeared for the prosecution: Dr Dewi Evans (*right*), a consultant paediatrician whose career largely involved older children and whose involvement with neonates stopped when he retired in 2009; Dr Sandie Bohin, who had been a high-level consultant neonatologist until 2008 but then moved to Guernsey, which provides the lowest level of neonatal care; Dr Andreas Marnerides, head of forensic children's *pathology* at Guy's and St Thomas'; and Professor Peter Hindmarsh, a paediatric endocrinologist with no neonatal expertise.

The defence was clearly outnumbered, and it lacked a pathologist and a clinical biochemist with experience of neonatal insulin testing. The prosecution lacked anyone with recent high-level neonatal experience – an extraordinary omission. There was no statistician on either side.

Defence hits

THE defence experts raised reasonable doubts in the following areas…

- **Jayaram:** The joint statement reads: "All clinicians involved in this case noted disappointment that Dr [Ravi] Jayaram (*left*) only reported the skin changes seen at the time of the collapse in a statement some 17 months after the event, yet made no comment about them at the time."

- **Skin changes:** Jayaram was one of the Chester consultants who – along with Evans, Bohin and Marnerides – propagated the idea that these skin changes supported a diagnosis of venous air embolism. Defence experts now argue that this was based on the very amateur misinterpretation of research by Professor Shoo Lee, which Hall picked up on. Lee's post-trial research has shown there is no evidence such skin changes appear.
- **Emboli:** Evans, Bohin and Marnerides stated repeatedly that collapses and deaths were the result of venous air embolus (Babies A, D, E, M), supported in three cases by the skin discolouration now shown by Lee to be an erroneous claim. Hall and Rahman repeatedly said they "did not consider that there is evidence to support the claim".
- **Extubation:** Jayaram came in for more criticism over Baby K, whose breathing tube was dislodged. Hall argued: "It is likely to have been spontaneous, particularly as there were two further unintended extubations over the next 2-3 hours while Baby K was being cared for by different staff. A deliberate act cannot be excluded on simple logical grounds but is, in my opinion, less likely." Rahman agreed: "The extubation was most probably accidental." Hall added: "Two years later, Dr Jayaram stated: 'I cannot recall any alarms sounding,' although he did not record this at the time."

Jayaram later said under oath that Letby had not called him for help when he "almost" caught her in the act of deliberate dislodgement. An email written by Jayaram to his colleagues has since emerged stating that Letby *did* ask him for help. Sir David Davis MP has asked the police to investigate him for perjury.

- **Stomach air:** Rahman stated the collapse and death of Baby C was due to infection. Evans and Bohin stated: "The massive gastric dilatation seen on the x-ray of 12 June 2015 was most likely due to deliberate exogenous administration of air via the NGT." Hall argued: "The cause of the gastric dilatation on the x-ray of 12 June 2015 could be explained by 'CPAP belly'," which is common, harmless and easily rectified.

In a separate disclosure, Evans explained how excess air injected into the stomach via the nasogastric tube "may lead to respiratory failure, respiratory arrest [apnoea] and death". This previously unheard-of way of killing babies was supported by Bohin and Marnerides, even after it transpired Letby had never met Baby C on 12 June. Letby was still convicted of using this method to murder Baby C on 14 June, for reasons that make even less sense now Evans signed a statement to Channel 5 declaring this is not a method of murder after all.

This leaves Bohin and Marnerides as the sole remaining supporters of this method of murder, which is entirely without an evidence base.

- **Double attacks:** Evans and Bohin argued two collapses of Baby I nine days apart were both double attacks of air in the vein and air in the stomach. How the baby survived the first attack is unclear. Hall and Rahman again "did not consider that there is evidence to support this accusation". Marnerides stated: "Death was secondary to excessive amounts of air introduced into the gastrointestinal tract via the NGT." Evans now says this doesn't happen.

Defence misses

HALL and Rahman did argue that some babies were sicker than the prosecution portrayed, but they did not highlight the substandard care they received, which forms a major plank of the new defence expert reports.

The jury found unanimously against Letby on two cases of attempted murder (Babies F and L) and one of murder (Baby O). Evans, Bohin and Marnerides stated Baby O died by air injected into the NG tube (which Evans now says is not a mode of murder) after first suffering "blunt force trauma causing liver haematomas". Several new experts have argued the findings do not support blunt trauma, and there are other causes for the liver haematomas. Two new experts argue that page 97 of the evidence is a resuscitation sheet that clearly shows a large drop in haemoglobin *after* Dr Stephen Brearey inserted a needle in the region of the liver. However, Brearey documented it in the notes as if the fall in haemoglobin had happened *before* the needle insertion.

Hall told MD he never saw page 97. Was it missed or omitted? The new experts also argue the resuscitation and ventilation of Baby O was very poor and contributed to death, but Hall argued that "death is likely to have resulted from the rapid advancement of feeds in a baby requiring respiratory support".

In court, Marnerides won the day with his argument that he had only seen a liver injury like this in a road traffic accident, although presumably not in a premature baby.

Defence capitulation

THE insulin babies (F and L) were the turning point in the meeting and, later, the trial. Hindmarsh, Evans and Bohin all agreed the cause of the abnormal test results and hypoglycaemia in both babies was "exogenous insulin administration, for which there was no clinical indication".

Hall decided to "defer to the expertise of Hindmarsh" in both cases and – even more damning for the defence – Rahman agreed with the prosecution statement. The prosecution had their big win. There was no clinical biochemist to argue that the immunoassay test for insulin in neonates is simply not reliable enough to use in a murder trial, that the machine used was not properly calibrated for C peptide, and that if the insulin levels had truly been that high, the blood sugars and potassium would have been much lower.

Experts on both sides agreed "the management of the hypoglycaemia was poor". But they failed to consider the obvious: that the hypoglycaemia occurred because the management was poor. Sick or septic neonates with high glucose needs had misplaced IV lines and inadequate infusion rates. It did not need insulin injections to explain the clinical findings, but Hall and Rahman weren't able to. For Baby L, Hall did at least ask how insulin could have plausibly been administered to cause hypoglycaemia for 53 hours covering times when Letby was absent. Hindmarsh theorised it was added into the drug port of multiple nutrition bags. So why did it only affect one baby at a time?

Bottom line

LETBY'S barrister, Ben Myers KC, tried to call Hall to the stand at the same time as Evans, to debunk the air embolism and air in the stomach claims which account for all the murders. The prosecution refused, and after the powerful expert descriptions of the liver injury and insulin poisonings, there presumably seemed little point in putting Hall on the stand to admit he had deferred to Hindmarsh. Indeed, the prosecution called for Hall's written evidence to be heard, as they knew what he'd signed up to.

At the meeting, Rahman said that "air embolus cannot be excluded", and Hall said: "If the collapse was due to air embolus, it could have been accidental." Imagine the field day the prosecution would have had. Safer not to call your experts and hope others who are more court-savvy come forward for the appeal. Hall stuck to the legally binding statement and was never called. Evans was called and promptly diverted from the statement, changing his mind on multiple occasions with the judge's permission. He duly won, up against no defence experts at all.

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