

PRIVATE EYE

SPECIAL REPORT PART 8



THE LESSONS OF THE LUCY LETBY CASE

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ON THE BOOK OF LETBY

THE LUCY LETBY CASE: PART 8

MD ON THE BOOK OF LETBY

Losing again

TO THE surprise of no one, Lucy Letby has not been given permission to appeal her conviction, at retrial, for the attempted murder of Baby K. She lost on the narrow legal argument as to whether her retrial was fair given all the adverse media comment about her. Her (now) former barrister Ben Myers KC argued that, after the initial trial, “the vitriolic nature of public comment and the prejudicial matters reported created exceptional prejudice”.

As evidence Myers submitted 64 “killer nurse” media reports, including *Daily Mail* podcasts starring the police officer in charge of the investigation and a police officer who interviewed Letby. The former referred to Letby being able to manipulate others at the unit so she was able to get away with murder. The latter spoke of her being one of the worst murderers of modern times.

Lead prosecution expert Dr Dewi Evans gave interviews to Talk TV in which he said what Letby had done was beyond belief, and repeated this on Channel 4 News and Sky News. Multiple reports said police were investigating further possible murders by Letby and looking into 4,000 admissions of babies into the unit. The BBC’s *Panorama* screened, “Lucy Letby: The Nurse who Killed”, with interviews with parents, police officers and a doctor from the hospital. Newspaper and online references to Letby placed her with Myra Hindley and Rose West, describing her as evil. Leading politicians, including Rishi Sunak, chipped in too.

Nearly all these mainstream media offerings remained available for the public and jury to view on catch-up both in the run-up to and during the retrial, despite severe reporting restrictions which forbade any challenging of the verdicts. The appeal court ruled that this did not make her retrial unfair. She was already a convicted baby killer, so what the media said in addition was of little consequence. So why impose such draconian and one-sided reporting restrictions? Letby’s application failed; but if her one to the Criminal Cases Review Commission (CCRC) is successful, she at least has a long list of people to sue.

Doctor in the dock

THE court of appeal (CoA) judgment specifically “did not involve any detailed analysis of the evidence at the first trial or the retrial.” However, it took the highly unusual step of calling out Dr Ravi Jayaram, the consultant who told the BBC and ITV that he had “almost” caught Letby red-handed dislodging Baby K’s breathing tube. As he told ITV: “That is a night that is etched on my memory and will be in my nightmares forever.”

The CoA judges observed: “Legitimate criticism could be made of his evidence. Although he believed that Letby had deliberately dislodged the endotracheal tube, he had said nothing at the time nor for many months thereafter. There was an inconsistency between his evidence and the contemporaneous records.”

Thirlwall rebuke

UNLIKE Lady Justice Thirlwall, who is chairing the inquiry into what happened at the Countess of Chester hospital while Letby worked there, the appeal court judges did not dismiss challenges to the original verdicts as “noise”. Instead, they noted that the media had reported “a critique of the medical and scientific evidence called at the first trial... Some of the public comment has called into question whether Letby

ought to have been convicted in August 2023...” The judges then neatly passed the buck to the CCRC: “Nothing we have said can contribute to any debate about the wider case against Lucy Letby... Whether there are or may be issues arising from the first trial which have yet to be the subject of judicial consideration is not for us to say.”

Barrister barred

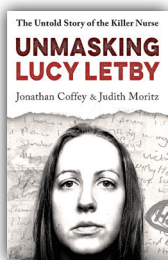
LETBY’s new barrister, Mark McDonald, has been refused permission to attend the Thirlwall inquiry to provide her with legal representation and to challenge further allegations against her that have not been proven in court. This was denied on the grounds that it would be “disruptive”.

Gaping omission

THE application to the CCRC will include detailed analysis of the cases by currently practising neonatal experts who are used to managing babies as premature and complex as those Letby is convicted of murdering. The prosecution experts at her trial were clearly not in this league and her defence team called no experts.

The jury never heard if the collapses and deaths – far from being unexpected and unexplained – were both expected and explained in an understaffed unit which was out of its depth coping with a cohort of particularly challenging premature babies. For example, it is not unusual for babies as small as Baby K to dislodge their own breathing tubes. As one senior neonatologist told MD: “Self-extubations are common enough for me to have written a parent leaflet explaining why they happen.” Despite this, in his ITV interview Dr Jayaram stated: “The only possibility was that that tube had to have been dislodged deliberately.” Even the *Mail on Sunday* is now supporting Letby, reporting “a new audit of baby deaths at the hospital has found that many of the most rapid deteriorations took place when she was not on duty” and questioning the reliability of the expert witnesses and their air embolism diagnoses.

Panoramic view



THE danger of publishing a book about a killer nurse before her appeals’ process is completed is that you may end up being sued if she wins. It’s a tricky call for the publisher, Seven Dials, as the CCRC can take years to consider a case. However, given how many experts are publicly questioning the

fairness of the trial, the CCRC will be under pressure to review the case in a timely manner when the application is submitted, and it may have been wiser for authors Judith Moritz and Jonathan Coffey to hold fire.

Unfortunately, *Unmasking Lucy Letby: The Untold Story of the Killer Nurse* – as seen on BBC *Panorama* – is already out of date, as it fails to mention that on 3 August, in a signed statement to Channel 5, Dr Evans withdrew his opinion that air or fluid injected down the nasogastric tube could kill (*Eyes passim*). This alone could be enough to warrant a retrial, given the jury was repeatedly told how deadly it was. He also told the jury it was a “clinically proven mechanism”. He then told the *Daily Mail* that injecting air in the stomach was “utterly bizarre”

and something he’d never heard of before. And he told the *New Yorker*: “There are no published papers regarding a phenomenon of this nature that I know of.” So about as far from “clinically proven” as you could get.

More hot air?

THE book goes into impressive detail about how convinced during the trial the prosecution experts Dr Evans and Dr Sandie Bohin were that babies died by air in the stomach, backed up by pathologist Dr Andreas Marnerides and radiologist Owen Arthurs. The jury didn’t seem to mind that Letby wasn’t even on duty when Baby I and Baby C were found to have an unusual amount of air in the stomach. The authors conclude: “Either the prosecution experts had misinterpreted two ‘stomach air’ events as ‘suspicious’ when in fact they were innocent, or alternatively, someone other than Letby was pumping air into babies’ stomachs.”

Elsewhere they observe: “Do the ‘stomach air’ cases amount to a smoking gun? Dewi Evans and Sandie Bohin believe they do.” Well, they did until Evans changed his mind, too late to make it into the book or the trial.

All change

THAT Evans keeps changing his mind is no surprise; what is more surprising is that the court allowed it, particularly after appeal court judge Lord Justice Jackson had taken the unusual step of writing to Judge Goss in December 2022 to warn him of the unreliability of Evans in a previous case, and that his evidence had then been “worthless”.

As Moritz and Coffey observe: “In his initial report on Baby C, Dr Evans wrote: ‘One may never know the cause of [Baby C’s] collapse. He was at great risk of unexpected collapse.’” How can a collapse be unexpected if a baby is at great risk of one? Evans struggled with pinning baby C’s death on Letby. He produced eight pre-trial reports, but only sided with Dr Bohin on death by stomach air in the witness box. Under cross examination, Evans then decided Letby may have killed Baby C twice, once by air into the stomach and again by air into the vein. Evans was accused of “theorising on the hoof” but he argued his views evolved with new information.

Expert reliability

EVANS now says he has finished his final report on the death of baby C, just 14 months after Letby was convicted of murdering him (see last *Eye*). The authors are spot on when they say: “What we have is retrospective analysis – months or even years after the events – of medical records and eyewitness testimony. And that analysis boiled down to interpretative judgements made by the prosecution’s experts. So in many ways, the reliability of the evidence against Lucy Letby was ultimately a question about the reliability of the prosecution’s expert witnesses – in particular, the two paediatric experts Dewi Evans and Sandie Bohin.”

One won’t answer my questions and the other boasts to me that: “In 35 years I have never lost a murder, manslaughter or serious



abuse case other than one...

Losing my one case still rankles.” One has to wonder, if Evans had been working for the defence, would Letby be a free woman?

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