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Who Killed Gladys Werlich? A Medical-Legal Moral Dilemma

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Introduction

THE CRIME:

An elderly woman is viciously beaten by a gang of young thugs and left dying in the streets of a major American city.

THE MEDICAL-MORAL CRISIS:

The use of artificial life support units sustain the victim. Brain activity continues. Prognosis for recovery: none.

MEDICAL DECISION:

The respirator is discontinued and death occurs within the hour.

THE COURTS:

At trial, the defense raises the argument: "This was not a case of brain-death." Inference: The defendant did not kill the victim: the doctors who disconnected the respirator did.

THE QUESTION:

"Who killed Gladys Werlich?"

On one of those surprisingly warm days which can occur even in mid-winter Washington, D.C., 85-year-old Gladys Hinckley Werlich, one of the last pre-World War II society matrons who had made that city such a social center in the past, and who still lived a vibrant and independent life, not relying on her children or the public for support, was making her way home after visiting some of her more invalidated friends. It was Jan. 13, 1976, and she was hurrying along Corcoran Avenue, Northwest, a vintage Washington street just then beginning to show signs of the renewal and revitalization which are shaping the

capital city's inner core. Suddenly, from behind, she was viciously attacked by four youths, one of whom clubbed her over the head, grabbed her purse, and disappeared into a nearby alley.

Gladys Werlich was rushed to the intensive-care unit at George Washington University Medical Center; there she lay unconscious, the damage to her skull and brain extensive and irremediable. Unable to speak or move, she was placed on a respirator to assist her breathing and to take the pressure off her other body systems while the full damage could be assessed and evaluated. For five days she lay in this comatose state. On the sixth day, after consultation among her physicians and after discussing the matter with her family who had been gathered at her bedside, the neurosurgeon assigned to her case turned off the respirator support unit. Twenty minutes later, Gladys Werlich was dead.

The Criminal Trial

Arrests were made on the basis of witness descriptions of four youths who had been seen loitering in the area shortly before the attack. One of these youths, Leroy Parker, was charged with the felony murder of Gladys Werlich, a capital offense under District of Columbia law.

Trial began in the D.C. Superior Court in February, 1977. The Public Defender's office, assigned to counsel Parker during the trial, made numerous preliminary motions.¹ Among them was the argument that Leroy Parker had not *legally* caused the death of Mrs. Werlich, but rather that her death had been precipitated by the unwarranted and improper action of the neurosurgeon in disconnecting her life-support units on that sixth day after the attack. The trial judge denied these motions and 19-year-old Leroy Parker was found guilty of second-degree murder and sentenced to six to 18 years in prison.

The Appeal Process

In briefs filed before the U.S. Circuit Court of Appeals for the District of Columbia the first week of September, 1978, this same question of "Who caused the death of Gladys Werlich?" has been raised anew, and with a greater vigor and potential significance not only to Leroy Parker and the physicians who treated her, but also to the very fabric of U.S. criminal law.

Unlike other criminal prosecutions for murder where respirators had been turned off, *all* parties this time agree that at the time of her death, Mrs. Werlich's brain was functioning and that the minimum criteria for "brain death" had not yet been met. She was alive. But what she was, according to Dr. Michael W. Dennis, the neurosurgeon

who had disconnected the support unit, was a patient "who could not talk, a patient who could not think, could not see, could not appreciate anything in the world." It was (and still is) Dr. Dennis' opinion that Gladys Werlich had suffered irreversible brain damage during that attack on Corcoran Avenue, and that she could not have survived even if extraordinary means such as the respirator had been continuously employed.²

In its brief submitted to the Court of Appeals, the Public Defender's Office argued that the neurosurgeon had failed to follow accepted medical practices when he decided to disconnect the respiratory unit and that he had made a legally improper "value judgment as to the quality of life" facing Mrs. Werlich, not the question of biological or medical life itself, which was the only thing he was legally and professionally competent to decide. Thus, according to the Defender's argument, the act of the physician sufficiently broke the causal chain of events,³ to exonerate the Defender's client from guilt for any homicide. At most, goes this argument, Leroy Parker might be found guilty of assault or robbery, but not murder.

The Legal Debate

The Appeals decision in the Werlich death case is not expected until after the first of this year, 1979. But the decision has already precipitated considerable legal, as well as medical and philosophical debate. The District of Columbia Medical Society has set up a committee to evaluate the role of the physician in those treatment situations where death may be considered imminent, but where established brain-death criteria have clearly not yet been met.

Lawyers, specializing in the intersectional areas of medicine and law, have raised considerable question as to the traditional legal concepts of "causality" which date back to America's English common law heritage. What, may we ask, is the purpose of a criminal statute that can be frustrated by unheard of and unbelievable medical advances to a society which had created that law 800 years ago? Or, for that matter, just ten years ago? Victims of crime, like Mrs. Werlich, would have died on the operating table just a few years ago. Now, semblances of life can be maintained — and are we to free the criminal assailants because of this scientific progress?

When decisions are made by physicians as to the termination of life-support treatment, these must be made in full consideration of the views and wishes of the family and the patient, and as a humane and reasonable response to the irreversible conditions that are deemed to exist and the vestiges of life remaining. *No single set of criteria is sufficient*, but in each case the court can establish a standard of reasonableness, sufficient to satisfy both the criminal law, the rights of the defendant, and the needs of society.

New Law or Old

Blind adherence by the law to previously accepted doctrines such as "proximate causality" and "intervening causality" cannot be allowed to frustrate the original purpose of the law. An error was most likely made by the trial court in the original case of *U.S. v. Parker*. At that time the trial judge refused to give the jury any evidence or instructions as to either the medical condition of Mrs. Werlich (an instruction requested by the defendant) nor did he give the jury any evidence or instructions as to the problems facing the treating physicians, the emotional crisis caused to the victim's family, nor to the previously expressed wishes of the patient herself. (Mrs. Werlich had, only a few weeks prior to the attack, executed a so-called "living will," expressing her wish not to be needlessly maintained on artificial or extraordinary medical devices.) This error by the trial court may, in fact, prove fatal to the prosecution's case made against Leroy Parker. Should a re-trial be ordered, I would hope the appellate court would face the issues directly and leave some instructions and guidelines that might help the jury in a future case fully weigh the facts and circumstances. The appeals court must not shy away from establishing a new standard of legal guilt or innocence compatible with advances in medical science and the full meaning and purpose of the criminal law.

A Proposal

Such a standard might take the form of a model jury instruction along the following lines:

If you, the jury, find as a matter of fact that the medical condition of the victim to the alleged crime, and as a result of the acts of the defendant, was irreversible according to current medical standards; and if you find, as a matter of fact, that but for the use of artificial respiratory or other life-support units, the victim would die within a foreseeable period of time because of the injuries attributed to the acts of the defendant; and if you find that the treating physicians to the victim and the family of the victim have acted humanely and reasonably in terminating the use of such artificial respiratory or other means of life-support, then you may, as a matter of fact, find that the resultant death of the victim had been directly and immediately caused by the criminal acts of the defendant, and you may find the defendant guilty of homicide as requested by the People."

The law has never pretended to be perfect. All too often it has had to be dragged "kicking and screaming" into new areas and to break old, no longer meaningful, molds. The question of legal causality in perpetration of a criminal act is considered a material fact generally to be decided by a jury. The judge and the court bear the burden and responsibility of deciding which evidence the jury will hear and how it will be instructed, *as a matter of law*, to evaluate that evidence. New law is needed to meet the exigencies of modern society. Such homicide cases as the Werlich case, can be anticipated to occur with much

greater frequency. We can only hope that the U.S. Circuit Court of Appeals, hearing this case in the first instance, will not back away from breaking the old pattern. Justice demands a recognition of new conditions. Our society can accept nothing less.

REFERENCES

1. Among the other motions made by the defense, and denied by the trial court, was a motion to instruct the jury on the ancient legal maxim of a "year and a day." This rule would have the effect of exonerating from liability, under either criminal or negligence law, any defendant where the victim survived for more than a year and a day after the injury-causing incident. By law, and only through this legal artifice, the victim was presumed to have died from other causes. In this modern era, survival in a greatly debilitated and still fatal state may easily be prolonged in excess of a year.

2. It was Dr. Dennis' opinion that Mrs. Werlich would have lived but a few days longer in any event. The decision to terminate her treatment was made at the request of the family with the approval of the entire medical team treating Mrs. Werlich. If the "year and a day" argument had been permitted before the jury, further instructions would have to have accompanied it to allow the jury to make a "factual" determination as to when Mrs. Werlich would have died, with or without medical intervention. It was the defense's hope to raise the Karen Ann Quinlan situation to show that "life" might be maintained for years yet to come.

3. According to *Black's Law Dictionary* (4th Edition), "proximate causality" is defined as: "That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." The defense's argument was obviously to show that the medical intervention broke the causal chain of events, thus taking the defendant "off the hook," so to speak.
