

N. G. GARDINER
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Kevin McGinty
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20 Victoria Street
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Our Reference: NGG/LJT1763/2003

6th May 2011

Dear *Mr McGinty,*

RE: Dr David Kelly - Deceased

With reference to your letter of 22nd March 2011 and our subsequent telephone conversation I think Dr Hunt would be better able to deal with the medical aspect than I but you did ask for the longer rather than the shorter reply and I will deal it in that way. It is necessary to consider both the general position and matters specific to this case.

So far as the general position is concerned it is not in all cases that the pathologist will view the body where it has been found but it is by no means uncommon when there is a suggestion that it may be a suspicious death. The pathologist would not normally do more than inspect the scene and would not interfere with the activities of the police. When the body arrives in the mortuary the pathologist will make a thorough external examination before proceeding to dissection. At the conclusion of that macroscopic investigation the pathologist might be able to give a definitive cause of death but if there are any grounds for thinking that the death might be suspicious he will certainly want toxicological tests done and frequently histology. The police and the Coroner will of course be anxious to know the findings as early as possible and the pathologist will usually give this information but always with the caveat that it might change as a result of ongoing tests. This information is sufficient for the Coroner to open the inquest which is invariably done at the earliest opportunity. My practice is, where it is at all possible, to open the inquest within three working days of the death being reported. There is always the possibility that the pathologist will not want to give even a tentative cause of death until he has the results of the tests. Those results may indicate that the tentative cause of death was wrong or

more commonly they will enable the pathologist to define more completely the cause of death. The tentative cause given is quite likely to be the mode of death rather than the cause of it.

To turn to this particular case the discovery of Dr Kelly's body was reported to me by the police on the morning of the 18th July. From the outset it was clear that this was going to be a high profile case. Amongst matters I would have discussed with the police at that point would have been the identity of the pathologist who would be carrying out the post mortem examination. We were both clear in our minds that this would have to be what is commonly called a Forensic Pathologist, that is one recognized by the Home Office, we decided that Dr Hunt would be appropriate. There are a number of factors governing this choice although the number of Home Office recognized pathologists is quite small and they are not always available. Dr Hunt was available and he actually lived locally and so was able to get to the scene quite quickly. As you know he did go to the scene and his observations are recorded.

The body would then have been taken to the mortuary of the John Radcliffe Hospital where Dr Hunt would carry out the post mortem examination. I have no note of it but I am sure Dr Hunt telephoned me after he had concluded the macroscopic examination and would have indicated that the primary cause of death was likely to be haemorrhage as a result of incised wounds to the left wrist. Matters relating to identification had been resolved and so I opened the inquest in open court on the 21st July; evidence as to Dr Hunt's view of the cause of death being given by my officer. The toxicology and histology tests were carried out very quickly and within a few days Dr Hunt was able to tell me that as a result he needed to expand upon the cause of death by indicating that co-proximal and heart disease would be given as contributing causes.

In the mean time I had been contacted by the Department of Constitutional Affairs (Ms Albon) and it was becoming clear that the Lord Chancellor would be making a request under Section 17A(1). By that time I was aware that Dr Hunt wished to expand on the causes of death he had originally given. The agreement that I thought that I had reached with Ms Albon was that I would briefly resume the inquest for the purpose of accepting a full cause of death and then would accede to the Lord Chancellor's request.

However at that point there was a change of heart in the Lord Chancellor's office and it was indicated that I should adjourn under Section 17 immediately. My problem was that if I did that I would have to register the death with an incomplete cause of death that is I would be making a statement to the registrar that I knew to be false. I was not content to do this. It so happened that at the time I was a member of the Coroner's advisory group and we had a meeting on the 8th August which I attended. I discussed the problem with the then secretary of the Coroner's Society of England and Wales (Mr Round) and he agreed with the point I was making.

Our meeting concluded at lunchtime and so we telephoned the Department of Constitutional Affairs and went to meet them that afternoon. Eventually they were persuaded to my point of view. I enclose herewith a copy of a letter dated 12th August 2003 which I received from Ms Albon. Following this as you know the inquest was briefly resumed to admit the proper cause of death which I was then able to convey to the registrar so that the death certificate would accurately reflect the pathologists view.

I hope this is a full answer to your question but if there are any matters you would like to discuss please do not hesitate to contact me. I think it would not be correct to say that Dr Hunt changed his view it is far more correct to say that he simply expanded on it when he had the results of the tests to hand. I can assure you that these circumstances are not at all unusual when there are outstanding tests. Any cause of death given is preliminary and may change as a result of those tests or indeed if evidence comes to light. As a matter of strict law the pathologist only gives an opinion as to the cause of death, it is for the Coroner (or the jury if there is one) to decide on the cause and how to express it.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N.G. Gardiner', written in a cursive style.

N.G. Gardiner
H.M. CORONER FOR OXFORDSHIRE

From the Private Secretary



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12 August 2003

CONFIDENTIAL

Mr N. Gardiner
Her Majesty's Coroner for Oxfordshire
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Dear Mr Gardiner,

HUTTON INQUIRY: SECTION 17A OF THE CORONERS ACT 1988

I refer to my letter of 4 August, to your subsequent telephone conversations with myself and with Michael Collon last Friday, 8 August, and to your meeting yesterday afternoon with Michael Collon, Judith Bernstein and the Worcestershire coroner, Victor Round. Michael Collon has also spoken to Mrs Kelly's solicitor, Mr McCulloch.

The Lord Chancellor considers that the cause of the death of Dr David Kelly is likely to be adequately investigated by the judicial inquiry conducted by Lord Hutton, so that the preconditions for the application of section 17A(1) of the Coroners Act 1988 are satisfied. Accordingly, I am instructed by the Lord Chancellor to request:

- (i) that you adjourn inquest in compliance with section 17A(1); and
- (ii) that you resume the inquest only if, pursuant to section 17A(4), there is in your opinion an exceptional reason for doing so.

The Lord Chancellor accepts that, before formally adjourning the inquest under section 17A(1), you may need to take evidence from the pathologist and the analyst on the cause of Dr Kelly's death. He is however most anxious to avoid any unnecessary distress to the family, and has asked that you keep the proceedings as short as possible and, so far as the Coroners Rules allow, take the evidence in writing.

I will send you the findings of Lord Hutton's Inquiry as soon as reasonably practical after their publication.

The Department intends to issue a Press Notice explaining the action which the Lord Chancellor has taken.

I am sending a copy of this letter to Lord Hutton.

Jane's success,

Sarah Albon

SARAH ALBON
Principal Private Secretary to Lord Falconer