PSYCHIATRY IN CRISIS – 'BOLAM' no longer covers RISK

Removing BOLAM's cover from assessing RISK deepens our Crisis in Psychiatry

It may surprise some to find that the Law now intrudes more deeply into psychiatric practice than ever before, and has recently acquired something mandatory to say on our 'crisis'. Dr Jonathan Bindman's assurance that adverse psychotropic effects are no more than *"medical business as usual"*, and his pungent advice that we stop *"talking up a 'deepening crisis'"* seem likely to crumple under the recent change in the law. We psychiatrists could well be in for a rude legal shock. And drawing on my latest medico-legal experiences, the chances of our being subjected to painfully close legal scrutiny seem to be both high, and rising.

BOLAM had been the legal standard which was generally used to shield controversial medical practice, arguing, as Professor David Healey did against me and in favour of ECT (Grimsby, 2003), that most responsible doctors would do the same, thereby obviating the question of negligence. In the recent case of MONTGOMERY however, the UK Supreme Court transferred the question of consent out from under BOLAM, saying that *"the extent to which a doctor may be inclined to discuss risks with patients is not determined by medical learning or experience."* In other words, just because you are medically qualified, you are in no privileged position, legally, to decide what risks are acceptable to any given patient. It is now your job to explain to the patient what those risks are, so that he or she can decide, or consent, for themselves. "Trust me, I'm a doctor – and most doctors do this too," will no longer wash in a court of law. Whether doctors think the risks justified, or not, no longer cuts the mustard – since MONTGOMERY, we are now legally obliged to go the extra mile and tell them the downsides, whatever our '*medical learning or experience'.*

psychiatry's warts & all

Quite a change, and not one that all will find comfortable. And don't imagine we are talking small potatoes – damages of £5,250,000 were awarded in this case, though the main risk that remained undiscussed there, was less than 1 in 10, and the risk of the actual damage which did occur, down to 1 in 1000. The implications are profound. Consider the following points.

1) You are free to disbelieve the charge that none of our psychoactive drugs work, except by *'intoxication'*, which is Dr Joanna MonCrieff's carefully argued conclusion [*Myth of the Chemical Cure,* last page], but since MONTGOMERY, the law could well expect you to tell the patient anyway.

2) You might not want to know that *" . . there is now clear evidence from MRI studies that both older and newer neuroleptic drugs cause atrophy of the brain within a year."* [loc cit, p114], but the

Court might ask why you didn't tell the patient. And don't forget, ignorance of the law is no excuse, and neither therefore, is ignoring or minimising medical risks.

3) You might normally feel inclined to brush under the carpet, Harrow's findings that being on psychoactive drugs for 20 years, makes it ten times more likely you will still have psychotic symptoms by then, which you would not have had, if you had spent those 2 decades drug-free, [*2014, Psychol Med, CUP*]. Since MONTGOMERY, I can think of a number of patients who would pay good money to a barrister on this point.

4) Whether you mind that ECT does, or does not, inflict brain damage, is no longer material – MONTGOMERY insists you tell the patient before administering it, so they can evaluate the risks themselves. The same goes for the risks from ECT of amnesia or death, including the post-ECT increase in suicide risk, if that transpires too. The onus is now on you. If you are not familiar with the thousands of animal studies showing micro-haemorrhages below the electrode sites, MONTGOMERY might insist that you become so, or answer the consequences in Court.

In 2006, at our public debate with Dr Joanna MonCrieff and Dr Peter Breggin on psychiatric drugs, the room was awash with anguish – a point glossed over by the then representatives of the Royal College. My inbox continues to confirm that there is colossal unease among psychiatric patients and their families – unease which could well find legal articulation, even along the lines noted above. Time we psychiatrists took stock. This crisis could well be rather bigger than we thought. Just imagine, if MONTGOMERY had been applicable back then, ECT might have stopped at Grimsby.

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*[**Please note:** this article is based on **medical**, not legal expertise]*

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