

## Books

October 1995 | Volume 31, Issue 10

# Wrongful Death—A Medical Tragedy

Sandra M. Gilbert

W.W. Norton & Co.

500 Fifth Ave., New York, NY 10110.

364 pp., \$22.50.

Reviewed by **Thomas A. Demetrio**

In *Wrongful Death*, Sandra Gilbert writes a page-turning factual account of her husband's death, which resulted from alleged medical negligence after what was to be routine surgery. This is a gripping story both of Gilbert's attempt to cope with her husband's sudden and untimely death and of how she goes about the arduous task of learning its true cause. Through Gilbert's passionate prose, the reader becomes consumed not only with wanting to know what happened to Elliot Gilbert, but also how the death affected his entire family.

The first part of *Wrongful Death* is titled "Adverse Event." On February 11, 1991, Elliot, a 60-year-old English professor, died in the recovery room of the University of California, Davis, Medical Center, after surgery for prostate cancer. His death was most unexpected. Gilbert and her husband were informed health care consumers. They had interviewed numerous physicians to discuss treatment options before deciding on a surgeon. The prognosis for a complete recovery, they were informed, was excellent, and Elliot was expected to lead a normal life.

One can understand the shock Gilbert and her children felt when they were told that their loved one had died of a heart attack in the recovery room. From the beginning, something did not seem right to Gilbert. Doctors were either unable or unwilling to answer her direct questions. As she stood looking at her husband's casket on the day of his funeral, she asked herself, "What could have happened? What *did* happen?" Gilbert's search for the answers to these questions and others is the underlying theme of the book.

The second part of the book, "Discovery," begins with Gilbert's receiving her husband's death certificate in the mail. It lists, as the cause of death, cardiopulmonary arrest secondary to liver failure and prostate cancer. The postmortem diagnosis does not make any sense to Gilbert or to a family friend who is a physician. Her friend advises her to obtain a complete copy of the medical records.

After some difficulty, the medical records and autopsy report arrive and are analyzed by the friend. After his review, he prepares a summary and time line of the events leading up to Elliot's death. Only then does the family learn that the real cause of death might have been postoperative hemorrhaging. Faced with unanswered questions and a sense of betrayal by the medical profession, the family seeks legal counsel.

"Claim," the third part of the book, takes the reader through Gilbert's experience as a plaintiff in a wrongful death suit. She quickly learns about what her lawyer calls the

"dark side of the moon" in medical negligence cases. At the initial interview the lawyer tells the family the case will be a battle--physicians will stonewall, and roadblocks will arise at every turn. Experts will be hard to find.

Under California law, family members are not compensated for pain and suffering if they did not witness the actual death. Likewise, family members cannot recover for their relative's pain and suffering before the death.

Gilbert learns there will be no punitive damages if the case is successful. Furthermore, in addition to economic damages, she can recover no more than \$250,000 for the loss of her husband's care, comfort, and consortium.

Gilbert relates her experience as the case winds through the court system. Although her stress is great when her own deposition is taken, it is far greater as she reads the deposition of her husband's attending surgeon.

She is surprised that the surgeon is evasive when responding to questions. She still does not have all the answers. Will she ever? Even at the end of the lawsuit, which results in a confidential settlement, Gilbert is left with a sense of disappointment. What she learns of the events leading to her husband's death does not come from the medical professionals but through the legal process.

Despite a flowing, passionate style of writing, Gilbert--an English professor like her husband--succeeds in giving the reader a clear, concise summary of the facts behind the mythical medical negligence "crisis." Gilbert addresses the phrases and terminology the medical professionals adopted at the urging of the insurance industry.

For instance, "adverse events" (difficulties caused by medical mismanagement) Gilbert believes to be underreported. "Defensive medicine" (the alleged unnecessary testing ordered by physicians fearing lawsuits), Gilbert correctly concludes, is simply good medicine. Furthermore, Gilbert reports that despite the so-called crisis, the four California insurance companies providing coverage to physicians continue to make large profits.

This book should be required reading for all politicians and policymakers who advocate reform of the health care system through the passage of consumer-harmful "tort reform" measures. In this courageous account of personal tragedy, Gilbert reminds us that health care providers must continue to be held accountable for negligent actions. Her discussion of the medical negligence crisis does not simply focus on physicians, lawyers, and other special interest groups. Rather, she views the crisis through the eyes of the forgotten--the people hurt by medical negligence. This is refreshing, since they should always be at the heart of any health care reform debate.

Other segments of society would also greatly benefit from reading this book. It will remind physicians of the importance of honesty and compassion when dealing with patients and their family members and remind lawyers of the need for patience when

guiding clients through an unfamiliar and often perplexing legal system. For the public, Gilbert drives home the excellent point that anyone can be harmed by medical negligence--even those who believe "it can't happen to me."

Before her husband's death, Gilbert shared the popular belief that plaintiffs (and, perhaps, lawyers) were greedy, seeking to capitalize on misfortune. She now views plaintiffs as angry, hurt by a depersonalized medical system, interested mainly in learning the truth and obtaining justice.

In writing *Wrongful Death*, Gilbert follows the directive of one of her heroines, Elizabeth Barrett Browning--"weep and write." She ends the book with open letters to the physicians who treated her husband. The letters demonstrate the profound impact her husband's death had on her and her children and serve to mirror the deep grief and pain experienced by countless other survivors.

Gilbert states that she wrote this book for her husband, because he could not. She tells his story with courage and honesty and speaks out passionately for all people hurt by medical negligence. I applaud her courage.

**Thomas A. Demetrio** is a partner with Corboy & Demetrio in Chicago.