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Licensing of homicide by judges

The ruling by Sir Stephen Brown, president of the Family Division, causes me concern. You say that each such case must be considered separately on its merits and that this one must not be regarded 'as a generalised precedent for others'. How can that be? We need a general formulation of what the law of homicide is: that is the nature of law.

You report the judge as saying that the approval of the court should be sought in similar cases 'as a safeguard and for the reassurance of the public'. It is not for the court to license homicide, so presumably the judge is saying this is not homicide because in law the patient is already dead. If that is so, the court will have no jurisdiction in similar cases to approve or disapprove, and reference to it cannot be necessary. You say the ruling grants *immunity* from a homicide prosecution. This is a further confusion, since the courts have no power to grant such immunity. By our constitution that power is vested solely in the Attorney General and those acting under him.

When Sir Stephen Brown draws up his definitive judgment, upon which the Court of Appeal will pronounce, it would be helpful for him to include in it a statement, in quasi-legislative terms, of what the law now is. I offer the following: For the purposes of the law relating to homicide, an unconscious person shall be deemed to be dead if, although his brain retains some functioning, he is permanently incapable, through brain damage, of regaining any degree of consciousness. It may be said that this proposition should apply to the law generally. If somebody like Tony Bland had left a will, at what point in time would it take effect?¹

¹ *The Times*, 23 November 1992.