1 Wednesday, 3 November 2010
2 (10.00 am)
3 Approved Ruling
4 LADY JUSTICE HALLETT: There are two issues to be determined
5 and they must be swiftly determined. I must repeat
6 comments I made in an earlier ruling: I have set an
7 extraordinarily tight timetable and, if that timetable
8 is to be met, these issues must be resolved, either at
9 this level or at an appellate level, as soon as
10 possible.
11 The two issues are:
12 i. As a member of the Court of Appeal sitting as
13 a Deputy Assistant Coroner, do I have the power to order
14 disclosure to myself and then adduce in evidence
15 material, if it exists, that would otherwise be excluded
16 by virtue of section 17(1) of the Regulation of
17 Investigatory Powers Act 2000? ("RIPA")
18
19 ii. Sitting as a Deputy Assistant Coroner, do I have
20 the power to hold closed hearings from which the
21 interested persons are excluded and during which I admit
22 evidence of which they have no knowledge?
23 As seems to have been the case on every issue to
24 date, submissions vary widely. I shall summarise:
25 The Secretary of State for the Home Department

Reproduced courtesy of www.independent.gov.uk/7julyinquests
PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 represented by Mr James Eadie QC submits
2 that I have the power to receive and act upon RIPA
3 material, if it exists, and to hold closed hearings.
4 Mr Patrick O'Connor QC and
5 Mr Hugo Keith QC, ably assisted by
6 Mr Andrew O'Connor, argue I have the power to do
7 neither. The families represented by Messrs Coltart,
8 Saunders, Patterson and Ms Sheff agree with the
9 Secretary of State for the Home Department, as did
10 Mr Skelt for the West Yorkshire Police.
11 Mr Taylor, who represents himself and his wife, the
12 parents of one of the deceased, Carrie Taylor, supported
13 the stance adopted by Messrs Coltart et al. Others
14 remain neutral.
15 I have read all the written submissions with care
16 and I hope that counsel will forgive me if, in the time
17 available for preparation and delivery of this ruling,
18 I do not repeat each and every one of their arguments.
19 I am indebted to them all, not only for providing me
20 with considerable assistance, but for adhering to my
21 rigorous timetable.
22 Counsel suggested I consider the closed hearing
23 issue first. It is a broader issue which gives rise to
24 general considerations of principle as well as to
25 considerations of the scope of a coroner's procedural

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 powers, both express and implied, within the scheme of
2 the 1984 Coroners Rules and the Coroners Act 1988.
3 The RIPA point is an interesting but narrow point of
4 statutory construction.

Closed hearings

5 The premise
6 upon which I am asked to rule is that material exists
7 which is so sensitive its disclosure to the public would
8 threaten the interests of national security. In other
9 words, it could put lives at risk.
10 Mr Eadie defined it as material which must be taken
11 into account in order to reach a fair and proper
12 judgment on the identified issues and which, despite the
13 best endeavours of all concerned, cannot be made open
14 for compelling reasons of national security.
15 It is material which cannot be "gisted" (not a verb
16 with which I am familiar, but apparently now in use) and
17 cannot be put into the public domain.
18 I emphasise "into the public domain" because all
19 agree that I have the power and that I should use it to
20 adopt a form of closed process in order to rule on
21 applications relating to public interest immunity.
22 In the course of that, I shall read much, if not
23 all, of the material in question. However, there is
24 a crucial difference between my reading sensitive
25 material for the purposes of PII hearings and my

1 allowing material to be adduced into evidence at
2 hearings from which the interested persons as well as
3 the wider public are excluded.
4 Under the heading "Policy arguments", Mr Eadie
5 wished to emphasise that he advocates for this second
6 more exclusive closed material procedure because the
7 Security Services and the Secretary of State genuinely
8 believe that, without the use of such procedure,
9 I cannot conduct these inquests fairly and effectively.
10 It is important to note, and those who are following
11 these proceedings closely should note, that the material
12 he wishes me to consider in closed hearings is of a kind
13 which is never going to see the light of day. It is too
14 secret. Its revelation in unredacted form would threaten
15 national security.
16 If material attracts public interest immunity
17 for this reason, the Security Services are simply not
18 entitled to waive it, even if they
19 wished to do so.
20 However, the Security Services do wish me to
21 consider this material during closed hearings so as to
22 enable me to conduct full and effective hearings and
23 reach fair conclusions.
24 Mr Eadie accepted, as he must, that the purpose of
25 inquests and, indeed, of an Article 2 investigation into

Hearing transcripts – 3 November 2010 – Approved Ruling
Reproduced courtesy of www.independent.gov.uk/7julyinquests
PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 a death is to involve and reassure the bereaved families
2 to the extent possible about the circumstances of
3 a death. However, he submitted, relying in part upon
4 Lord Rodger's speech in R (JL) v The Home Secretary
5 [2009] 1 AC 588, that even that commendable aim must
6 give way to the overriding principle of an inquest:
7 namely, the conduct of an effective, independent
8 investigation into a death.
9 He claimed that if I do not consider the material he
10 wishes to put before me, I may make findings adverse to
11 the Security Services which are simply unjustified. He
12 claimed I may come to conclusion X when, if I saw the
13 material in full, it would lead inevitably to
14 conclusion Y.
15 He said I may find myself unable to reach
16 a conclusion in the absence of material which would, in
17 fact, drive me to conclusion Z.
18 The net result would be, he argued, that brave men
19 and women who risk their lives to protect the public may
20 be pilloried for judgments made which were entirely
21 rational and sensible at the time.
22 Intending no disrespect (and none was taken)
23 Mr Skelt added that my findings are unlikely to command
24 confidence in any quarter if they are based on
25 incomplete information and ignore what has been

Reproduced courtesy of www.independent.gov.uk/7julyinquests
PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 described as "information potentially crucial to the
2 outcome".
3 Mr O'Connor and Mr Keith observed, however, that the
4 choice is not quite so stark. There is at least one
5 other option. They and others remain unconvinced that
6 the relevant material cannot be put before me in open
7 hearings in some form which will protect the source
8 where necessary and which will not breach national
9 security, but which will enable me to reach fair
10 conclusions.
11 However, if the Secretary of State is truly
12 convinced that vital material exists which cannot be
13 “gisted” and without which the integrity of the whole
14 process would be undermined, the Lord Chancellor has the
15 power to order a judicial inquiry under section 17A of
16 the Coroners Act 1988.
17 Such an inquiry is regulated by the
18 Inquiries Act 2005 and has the power to sit in private
19 and exclude parties from disclosure and hearings. That
20 is not a power that they wish to see invoked.
21 I should explain why for the sake of non-lawyers
22 following these proceedings. A public inquiry, if
23 ordered, as opposed to an inquest, will not necessarily
24 be any more public and will not necessarily provide the
25 bereaved families or survivors with the answers they

1 want. The families and survivors may not have access to
2 all the material considered by the inquiry and they may
3 not have access to all the hearings.
4 As Mr Coltart and others put it, given this is
5 material which is never going to see the light of day,
6 those whom they represent would prefer for me to see it
7 and test it than that they fear that it does not get
8 tested properly at all.
9 I should also add this for the avoidance of doubt:
10 if the decision is taken to announce a judicial
11 inquiry, it should not be thought that I can move
12 seamlessly into the role of inquirer. There remains the
13 very real possibility that these inquests would have to
14 be adjourned and the whole process restarted --
15 I emphasise the word "restarted", not "resumed" -- at
16 a much later date under a different person.
17 I know we would all wish to avoid that scenario, if
18 at all possible. The reasons are obvious. I mention
19 just four:
20 The bereaved families and survivors have waited over
21 five years since the bombings and I have promised them
22 an end to these proceedings by next spring. Many
23 witnesses have been through the ordeal of giving
24 evidence and I am sure would not wish to repeat that
25 experience. The families have had to suffer the

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 distressing experience of hearing witnesses speak of the
2 death of their loved ones in all too graphic terms.
3 They would not wish to relive that experience. And, of
4 course, there is the question of the considerable
5 quantity of public resources expended so far.
6 I begin my analysis of the issues before me with
7 a helpful synopsis of the nature of inquests provided by
8 Mr Eadie.
9 Inquests are, by nature, inquisitorial. In that
10 respect, they are fundamentally different from ordinary
11 adversarial civil litigation. The role of the coroner
12 is very different from the role of a judge deciding
13 which of the opposing private interests should be
14 upheld. The purpose of inquests is to gather together
15 all relevant material and then answer the relevant
16 questions: how, when and where the deceased came by his
17 or her death.
18 The functions of an inquest are public interest
19 functions. Deaths should be properly investigated by an
20 independent coroner. In ex parte Jamieson [1995] QB1 at
21 paragraph 14, Lord Bingham, then Master of the Rolls,
22 said this:
23 "It is the duty of the coroner, as the public
24 official responsible for the conduct of the inquest,
25 whether he is sitting with a jury or without, to ensure

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 that the relevant facts are fully, fairly, fearlessly
2 investigated ... He must ensure that the relevant facts
3 are exposed to public scrutiny, particularly if there is
4 evidence of foul play, abuse or inhumanity. He fails in
5 his duty if his investigation is superficial, slipshod
6 or perfunctory, but the responsibility is his, he must
7 set the bounds of the inquiry, he must rule on the
8 procedure to be followed."
9 In R (Amin) v The Secretary of State for the Home
10 Department [2004] 1 AC 653 Lord Bingham again referred
11 to the nature of an inquest and made reference to the
12 common purposes of state investigations into deaths,
13 both at common law and under Article 2 of the European
14 Convention.
15 Paragraph 30:
16 "A profound respect for the sanctity of human life
17 underpins the common law as it underpins the
18 jurisprudence under articles 1 and 2 of the
19 Convention..."
20 Paragraph 31:
21 "The state's duty to investigate is secondary to the
22 duties not to take life unlawfully and to protect life,
23 in the sense that it only arises where a death has
24 occurred or life-threatening injuries have occurred: ...
25 In this country ... effect has been given to that duty

1 for centuries by requiring such deaths to be publicly
2 investigated before an independent judicial tribunal
3 with an opportunity for relatives of the deceased to
4 participate. The purposes of such an investigation are
5 clear: to ensure so far as possible that the full facts
6 are brought to light; that culpable and discreditable
7 conduct is exposed and brought to public notice; that
8 suspicion of deliberate wrongdoing (if unjustified) is
9 allayed; that dangerous practices and procedures
10 rectified; and that those who have lost their relative
11 may at least have the satisfaction of knowing that
12 lessons learned from his death may save the lives of
13 others."
14 As Mr Patrick O'Connor observed, these passages
15 express the appreciation of the common law for the needs
16 of the bereaved to know as much information as is
17 available about the circumstances of the death of their
18 loved one as a critical part of the grieving process,
19 but also to gain the assurance that, as far as possible,
20 lessons be learned and risks minimised for the future so
21 that others should not suffer in the same way.
22 Mr Eadie and Mr Skelt would add that the impact upon
23 the families, although important, must be balanced
24 against the overriding need for the coroner to have
25 before them all relevant information.

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 A Coroner's Court is an inferior court of record.
2 As the judge of a court of record, a coroner has an
3 inherent jurisdiction to regulate his or her own
4 proceedings. For example, the power to punish contempt
5 or the power to hold pre-inquest hearings.
6 In R v Lincoln Coroner, ex parte Hay [2000] Lloyd's
7 Rep Med 264, the Divisional Court described the inherent
8 jurisdiction exercised by coroners and the limitations
9 upon its use in the following terms at paragraph 46:
10 "We are unwilling for our part to fetter the
11 discretion of a coroner by being at all prescriptive
12 about the procedures he should adopt in order to achieve
13 a full, fair and thorough inquiry ... subject to the
14 need to obey the requirements of the Act and the Rules,
15 it is for each coroner to decide how best he should
16 perform his onerous duties in a way that is as fair as
17 possible to everyone concerned."
18 Subject to the statutory framework, therefore,
19 I have a considerable discretion.
20 Mr Eadie advanced his arguments on two bases:
21 i. There are strong policy considerations
22 justifying the course for which he advocates, to which
23 I have already referred; and
24 ii. Closed hearings are not inconsistent with the
25 statutory provisions. On the contrary, he argued, the

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 Rules are supportive.
2 The passages already cited summarise the position at
3 common law briefly in relation to the importance of
4 a public investigation into a death. Nevertheless, the
5 common law acknowledges that the wider public may be
6 excluded in certain circumstances. What is less clear
7 is the extent to which interested persons may be
8 excluded at common law.
9 The researches of my Inquest team brought to light
10 a decision in Garnett v Ferrand [1827] 6B. & C. 611.
11 The plaintiff, Mr Garnett, who was not what we would
12 now call an interested person, brought an action for
13 battery against the coroner, Mr Ferrand, for having been
14 forcibly ejected from an inquest. At the outside of his
15 judgment, Lord Tenterden made clear that:
16 "It does not appear the plaintiff had any interest
17 in the matter of the inquest which the coroner was about
18 to take or any information to offer which might further
19 the objects of the inquiry."
20 Nevertheless, he continued:
21 "I would not, however, be understood to intimate
22 that if any such matter had appeared our judgment would
23 have been different."
24 In the light of these words, and given the broad
25 discretion that Lord Tenterden went on to hold, that

Reproduced courtesy of www.independent.gov.uk/7julyinquests
PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 a coroner had to exclude persons from an inquest,
2 Counsel to the Inquests accept it is arguable that,
3 prior to 1953, a coroner did have the power, if
4 necessary, to exclude someone who would now be
5 recognised as an interested person from an inquest.
6 Mr Patrick O'Connor, however, suggested that,
7 reading the commendably brief judgment as a whole and
8 given the exceptional nature of the proceedings in that
9 case, one cannot be sure that is what Lord Tenterden did
10 conclude.
11 It might be thought to be helpful to decide the
12 point as an aid to interpreting what came next, but
13 I was not invited to do so.
14 It was common ground that my starting point for
15 deciding this issue should be Rule 17 of the
16 Coroners Rules 1984. Rule 17 began life in identical
17 terms as Rule 14 of the 1953 Rules. Both sets of Rules
18 were made pursuant to section 26 of the Coroners
19 (Amendment) Act 1926, which provided the power to make
20 Rules to regulate the practice and procedure at
21 inquests.
22 Rule 17 provides:
23 "Every inquest should be held in public, provided
24 that the coroner may direct that the public be excluded
25 from an inquest or any part of an inquest if he

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 considers that it would be in the interests of national
2 security so to do."
3 It is that small, apparently straightforward word
4 "public" about which the parties disagree. Mr Eadie
5 argues it includes interested persons and their lawyers.
6 Supported by some of the families, he argues for a broad
7 interpretation of the word "public", ie one that has its
8 literal meaning of the people as a whole, every member
9 of society, so that the power to direct the exclusion of
10 the public is, in fact, a power to direct the exclusion
11 of anyone, including interested persons.
12 The narrow definition for which Mr Keith and
13 Mr Patrick O'Connor contend is that "public" is to be
14 read as meaning members of the public who are present at
15 the hearing but who do not have any formal interest or
16 function in the proceedings. On that reading, the
17 coroner's power under the proviso is limited to a power
18 to direct that proceedings are held in camera.
19 Mr Keith observed wryly that if the Secretary of
20 State's broad construction of the proviso to rule 17 is
21 correct, it is a matter that has eluded the learned
22 editors of Jervis on Coroners for 50 years.
23 The first edition of Jervis to appear after the
24 making of the 1953 Rules and subsequent editions
25 describe the power in the following terms:

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 "Proceedings at an inquest are open to the public
2 unless, in the interests of national security, the
3 coroner is of the opinion that the inquest or any part
4 of it ought to be held in camera. This overRules the
5 common law rule that the coroner had a discretion to
6 decide on the degree of publicity allowed at the inquest
7 (Garnett v Ferrand)."
8 This argument failed to impress Mr Eadie who
9 submitted in less than his usual elegant terms that the
10 learned editors of Jervis were wrong.
11 Counsel representing both sides of the argument
12 place considerable reliance upon those other of the
13 1984 Rules which confer specific rights on an
14 identifiable class of individuals: namely, the
15 interested persons. Mr Keith and Mr O'Connor used them
16 to argue forcefully that, had the draughtsman intended
17 "interested persons" to have been covered by the term
18 "public", he could and would have made this clear by
19 adding a national security proviso to Rules 20, 37 and
20 57.
21 In fact, there is no other mention of national
22 security in any of the succeeding Rules.
23 Rule 20(1) provides:
24 "Without prejudice to any enactment with regard to
25 the examination of witness at an inquest, any person who

Hearing transcripts – 3 November 2010 – Approved Ruling

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 satisfies the coroner that he is within paragraph (2)
2 [ie, qualifying for interested person status] shall be
3 entitled to examine any witness at an inquest either in
4 person or by an unauthorised person."
5 Counsel to the Inquests and Mr O'Connor argue the
6 words "shall be entitled" are unambiguous. The meaning
7 is clear. The definition of an interested person may
8 cover a potentially wide class of person, as Mr Eadie
9 pointed out, but, once the coroner has concluded someone
10 comes within the definition, they have certain rights.
11 Those rights, "absolute rights" as they have been
12 described elsewhere, it was submitted cannot be
13 reconciled with a coroner having the power to exclude
14 interested persons from parts of the hearing. The only
15 limitation upon the right to question any witness that
16 appears within the Rules is rule 20(1)(b) which provides
17 the coroner may disallow any question which is not
18 relevant and proper, which in this context is not truly
19 a limitation at all.
20 Another example of the central role of the class of
21 interested persons is rule 37 which entitles a coroner
22 to admit documentary evidence. This, it was said, in
23 effect gives interested persons the power of veto over
24 the admission of any particular item of documentary
25 evidence.

1 Rule 37.1 provides:

2 "Subject to the provisions of paragraphs (2) to (4),

3 the coroner may admit at an inquest documentary evidence

4 relevant to the purposes of the inquest from any living

5 person which in his opinion is unlikely to be disputed,

6 unless a person who, in the opinion of the coroner, is

7 within rule 20(2) objects to the documentary evidence

8 being admitted."

9 It follows that coroners are required to show

10 interested persons any piece of documentary evidence

11 that they propose to adduce. There is authority to this

12 effect. The following is a summary put before me of

13 what the court said in R v Her Majesty's Coroner for

14 Ceredigion ex parte Wigley [1993] C.O.D. 364:

15 "Material which is in the hands of a coroner upon

16 which he seeks to rely for any purpose must be made

17 available to those who are concerned, primarily the near

18 relatives of the deceased or their representative. It

19 is improper for a coroner to use any material which is

20 not shown and made available for use in any inquest so

21 that there is complete confidence if, for no other

22 reason, that the coroner is heeding only that which is

23 heard by everybody present at the inquest and nothing

24 else."

25 I note the use of the word "improper" to describe

1 the process for which Mr Eadie contends. I am sure he
2 would counter with the assertion it cannot be improper
3 to protect the interests of national security.
4 Under rule 57.1, the coroner is obliged to provide
5 an interested person with copies of "any notes of
6 evidence" or of any document put in evidence at an
7 inquest". Again, the rule is put in mandatory terms.
8 The coroner shall supply a copy.
9 Finally on this point, it was pointed out the
10 findings of the coroner must be ventilated publicly, be
11 those findings in verdict form or rule 43 report form.
12 There is no statutory process for a coroner providing
13 a partially closed verdict or partially closed rule 43
14 report.
15 I was initially attracted by Mr Eadie's argument
16 that, if Mr Keith and Mr O'Connor's interpretation is
17 correct, much of the purpose of the proviso in rule 17
18 might be defeated. It did seem strange, at first blush,
19 that Parliament would have established a system whereby
20 the interests of national security required an inquest
21 hearing to be held in camera, but which entitled
22 interested persons, a potentially very broad class of
23 person indeed, to see and hear the evidence and have
24 a copy of it.
25 Rule 17 plainly expresses the general rule of public

1 hearings and recognises that it can be subject to one
2 exception.
3 It is also true to state, as Mr Eadie did, that the
4 exclusion of the public is expressed generally and is
5 not subject to an exception in favour of those with an
6 interest in the outcome of the process.
7 However, it is, to my mind, something of a leap to
8 proceed from those two facts to the assertion that
9 Rule 17, far from standing in the way of a closed
10 process, is positively supportive of it.
11 Rule 17 does not stand alone. It must be
12 interpreted in the light of its accompanying Rules.
13 They must be read together as a coherent whole, if
14 possible.
15 To my mind, the most coherent reading and least
16 strange result is that the statutory regime provides
17 that, in general, inquests should be held in public. In
18 exceptional cases, the wider public may be excluded.
19 However, Rules 20, 37 and 57 establish a clear principle
20 that, throughout the inquest proceedings, interested
21 persons have an unqualified right of access to the
22 evidence and to documents admitted. There is no
23 provision for excluding them in exceptional cases and
24 denying them their rights. There is no proviso, in the
25 case of threats to national security, in Rules 20, 37

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 and 57. Thus, to my mind, the exclusion of the public
2 means hearings in camera and no reporting.
3 I should emphasise that I have heard no argument
4 yet, although I have seen written submissions, on the
5 question of whether those rights can be expressly waived
6 by the interested persons. My ruling to date is based
7 on my conclusion on the Rules themselves.
8 I note, however, that this reading of the Rules
9 themselves is itself consistent with section 8 of the
10 Coroners Act 1988. Section 8 imposes a mandatory
11 requirement to summon a jury in some cases. I had to
12 struggle with this provision earlier in the year. It
13 was then a finely balanced decision as to whether I was
14 required to summon a jury, whether the parties wanted me
15 to or not.
16 I see considerable force in the submissions of
17 Mr Keith and Mr O'Connor that, had it been intended that
18 Rule 17 would amount to a power to exclude interested
19 persons from an inquest, one would expect to find
20 a complementary power enabling the coroner to dispense
21 with a jury in an inquest where the interests of
22 national security were at stake. There are no such
23 provisions.
24 On the face of it, it would appear to be illogical
25 for Rule 17 to provide a power to exclude the interests

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 of persons from inquests in which a coroner is sitting
2 without a jury but no such power to do so where a jury
3 is sitting.
4 It is true that this issue does not arise directly
5 in these particular proceedings because I have ruled I am
6 not required to sit with a jury and, in the exercise of
7 my discretion, I will not do so.
8 However, it seems to me I must interpret the
9 statutory framework as a whole, and my
10 reading of the Rules is consistent with my reading of
11 section 8 of the Coroners Act.
12 I should also add that I saw force in the argument
13 that the language "excluding the public" used in the
14 rule is well-recognised legal shorthand for in camera
15 proceedings. Sir John Donaldson, Master of the Rolls,
16 in R v Chief Registrar of Friendly Societies, ex parte
17 New Cross Building Society [1984] 1QB 227, at page 235
18 described the principles underlying in camera
19 proceedings. He said this:
20 "The general rule that the court shall conduct their
21 proceedings in public is but an aid, albeit a very
22 important aid, to the achievement of the paramount
23 object of the courts, which is to do just in accordance
24 with the law. It is only if, in wholly exceptional
25 circumstances, the presence of the public or public

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 knowledge of the proceedings is likely to defeat that
2 paramount object that the courts are justified in
3 proceeding in camera."
4 Finally, I gained some comfort in the approach that
5 I have adopted from the judgment of the Court of Appeal
6 Civil Division in the case of Al Rawi [2010]
7 EWCA, CIV 482.
8 Al Rawi is plainly not determinative of the issue
9 before me. The decision can be distinguished, as
10 Mr Eadie pointed out, in many respects. Nor is it
11 necessarily the final word on the subject of closed
12 hearings. It has been joined with at least one other
13 case and is to be heard by the Supreme Court
14 in January 2011.
15 However, the judgment in Al Rawi provided some
16 useful guidance on the issue of closed hearings
17 generally, I emphasise, in civil claims.
18 Paragraph 30:
19 "In our view, the principle that a litigant should
20 be able to see and hear all the evidence which is seen
21 and heard by a court determining his case is so
22 fundamental, so embedded in the common law, that, in the
23 absence of parliamentary authority, no judge should
24 override it, at any rate in relation to an ordinary
25 civil claim, unless (perhaps) all parties to the claim

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 agree otherwise. At least so far as the common law is
2 concerned, we would accept the submission that this
3 principle represents an irreducible minimum requirement
4 of an ordinary civil trial. Unlike principles such as
5 open justice, or the right to disclosure of relevant
6 documents, a litigant's right to know the case against
7 him and to know the reasons why he has lost or won is
8 fundamental to the notion of a fair trial."
9 The Court of Appeal in Al Rawi considered whether
10 there was a power to hold closed hearings against the
11 will of one of the parties in the context of ordinary
12 civil proceedings: namely, damages claims based on
13 tortious causes of action brought by those imprisoned in
14 Guantanamo Bay. The court held there was no basis for
15 a closed material procedure in an ordinary civil claim,
16 absent consent from the parties.
17 Mr Eadie was rightly at pains to state that the
18 ratio is restricted to this. It is not authority for
19 the proposition that a closed material procedure is
20 excluded generally. The court drew a distinction
21 between an ordinary civil claim and a claim with
22 "a substantial public interest dimension". In relation
23 to the latter, the court noted at paragraph 11:
24 "Both the principle and the authorities relied on
25 below seem to us to suggest that a different conclusion

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 may well be justified in such cases, albeit only in
2 exceptional circumstances, but that is an issue which
3 should be considered as and when it arises."
4 The court, therefore, specifically recognised that
5 different principles may apply in circumstances in which
6 there was a significant public interest element to the
7 issues being considered by the court and where the court
8 was not simply acting as arbiter between private
9 interests.
10 This was also the basis on which the court
11 distinguished a series of cases in which a closed
12 process had been operated or contemplated by the courts
13 in circumstances in which there was no express statutory
14 authority.
15 Mr Eadie submitted, firstly, that nothing in Al Rawi
16 purports to preclude a closed process in the context of
17 an inquest and, secondly, that on the contrary, he
18 argued, the court's reasoning powerfully supports the
19 power to do so in such a context. He repeated an
20 inquest is an inquisitorial process designed
21 specifically to investigate all the relevant facts going
22 to the questions the inquest has to address and answer.
23 That function is imbued with public interest elements.
24 Whilst a closed process does impinge on the principle of
25 open justice, it does so, he argued, for compelling

Hearing transcripts – 3 November 2010 – Approved Ruling

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 reasons and represents a less draconian solution than
2 total exclusion of the material from consideration.
3 Mr Keith and Mr Patrick O'Connor, however, relied
4 upon the general principles underpinning the Al Rawi
5 judgment and, in particular, paragraph 41, in which the
6 court observed:
7 "A court's inherent jurisdiction can only be
8 exercised to establish procedures that are consistent
9 with existing Rules of court."
10 At paragraph 41 the Court of Appeal stated:
11 "Even if it was, as a matter of principle, open to
12 the court to adopt a closed material procedure in
13 ordinary civil claim in the absence of all parties
14 consenting, it seems to us, in the light of the
15 existence and terms of the CPR, there would be no
16 jurisdiction to do so."
17 They submitted the same principles should apply
18 here. As a coroner, I have an inherent jurisdiction
19 subject to Rules of court. I have just indicated that
20 I have ruled those Rules prohibit a closed hearing of
21 the kind suggested. Following Al Rawi, it would,
22 therefore, be an impermissible exercise of any inherent
23 jurisdiction to exclude an interested person absent
24 consent.
25 It is for the legislature to consider and introduce

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 specific provisions as it has done in specific
2 classes of case where it considers it appropriate. I see
3 considerable force in those arguments. I can have no
4 inherent jurisdiction to do something, in my judgment,
5 which runs directly contrary to the rights given to
6 interested persons under the Rules. I must exercise my
7 inherent powers in a way which is consistent with the
8 statutory framework, even if compelling policy
9 reasons suggest otherwise.
10 In the circumstances, in order to interpret the
11 Rules, I do not need to trouble with Mr O'Connor's
12 helpful analysis of all the attempts made in Parliament
13 to make express provision for closed hearings at
14 inquests and the comments made by ministers about them:
15 for example, in relation to the Counter-Terrorism
16 Bill 2008 and the Coroners and Justice Act 2009.
17 Section 45.3 of the Coroners and Justice Act
18 does, in fact, provide for closed hearings
19 before a new class of judicial officer called a Senior
20 Coroner, yet the section has yet to be brought into
21 force.
22 I do not accept that the position is now as dire as
23 Mr Eadie would have it. It seems the court in Al Rawi
24 was faced with a similar argument. The court dealt with
25 it at paragraph 68:

Hearing transcripts – 3 November 2010 – Approved Ruling
Reproduced courtesy of www.independent.gov.uk/7julyinquests
PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 "We are conscious that in some cases where evidence
2 which is relevant or even vital to the interests of one
3 of the parties (often the Crown, but sometimes not),
4 limiting the procedure to the classic PII exercise can
5 lead to unfairness, and can even result in what may
6 appear to most people to be the wrong outcome, because
7 the exercise will often result in important evidence
8 being withheld. However, as explained by Lord Woolf in
9 ex parte Wiley [1995] AC274, 306H-307B, even where a PII
10 claim is upheld in respect of material, the effect can
11 often be mitigated by summarising its relevant effect,
12 producing relevant extracts or even producing it 'on a
13 restricted basis'. More generally, the evidential Rules
14 of exclusion, for instance in relation to material which
15 attracts legal professional privilege or 'without
16 prejudice' privilege, will often be to increase the risk
17 of a 'wrong' outcome. But that is a risk inherent in
18 any legal system with Rules, and indeed it is inevitable
19 in any system with human involvement. The risk of a
20 'wrong' outcome can be said to be increased if a party
21 is prevented from relying on oral or documentary
22 evidence for failing to comply with court orders or
23 Rules, or if a party cannot take a point because it was
24 not raised in his statement of case, or even because it
25 did not occur to his legal advisers."

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 I do not accept that my ruling will amount to an
2 abrogation of the inquisitorial function. On the
3 contrary, I am satisfied my ruling is entirely
4 consistent with that function as presently regulated by
5 Parliament. I am still hopeful that, with full
6 cooperation on all sides, most, if not all, of the
7 relevant material can and will be put before me in such
8 a way that national security is not threatened.
9 I am all too aware, given the events of the weekend,
10 of the unenviable task facing the Security Services.
11 I repeat, sources may be withheld, redactions made.
12 I do not intend to endanger the lives of anyone. I do
13 not intend to allow questions which might do so. I do
14 not intend to allow questions which I know to be based
15 on a false premise or which I know to be misleading.
16 There may be times when the parties will simply have to
17 accept my ruling without demur. I may have to forbid
18 certain questions. I may have to rephrase them.
19 Finally, I wish to emphasise I do not intend to make
20 findings adverse to the Security Services which I know
21 to be false.

RIPA

22 I turn to the RIPA issue.
23 This issue arises solely because I happen to be
24 a member of the Court of Appeal. In most inquests, no
25 similar question will arise. The issue is premised on

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 the assumption that there exists material that might be
2 covered by section 17 of RIPA and that is relevant to
3 the issues raised by the inquest. Whether that is in
4 fact so can be neither confirmed nor denied. The issue
5 is whether the inquest has any power to receive such
6 material, if it exists.
7 Section 17 of RIPA provides that:
8 "Subject to section 18, no evidence shall be
9 adduced, question asked, assertion or disclosure made or
10 other thing done in, for the purposes of, or in
11 connection with, any legal proceedings or Inquiries Act
12 proceedings which (in any manner):
13 "(a) discloses, in circumstances from which its
14 origin in anything falling within subsection (2) may be
15 inferred, any of the contents of an intercepted
16 communication or any related communications data; or
17 "(b) tends (apart from any such disclosure) to
18 suggest that anything falling within subsection (2) has
19 or may have occurred or be going to occur."
20 I was specifically asked to note the extent of the
21 prohibition, no evidence should be adduced, question
22 asked, et cetera, or disclosure made.
23 Section 18 of RIPA provides, where relevant:
24 "(7) Nothing in section 17(1) shall prohibit any
25 such disclosure of any information that continues to be

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 available for disclosure as is confined to ...
2 "(b) a disclosure to a relevant judge in a case in
3 which that judge has ordered the disclosure to be made
4 to him alone ...
5 "(c) a disclosure to the panel of an inquiry held
6 under the Inquiries Act 2005 or to a person appointed as
7 counsel to such an inquiry where, in the course of the
8 inquiry, the panel has ordered the disclosure to be made
9 to the panel alone or (as the case may be) to the panel
10 and the person appointed as Counsel to the Inquiry ...
11 "(8) A relevant judge shall not order a disclosure
12 under subsection (7)(b) except where he is satisfied
13 that the exceptional circumstances of the case make the
14 disclosure essential in the interests of justice.
15 "(8A) The panel of an inquiry shall not order
16 a disclosure under subsection (7)(c) except where it is
17 satisfied that the exceptional circumstances of the case
18 make the disclosure essential to enable the inquiry to
19 fulfil its terms of reference.
20 "(9) Subject to subsection (10), where in any
21 criminal proceedings:
22 "(a) a relevant judge does order a disclosure under
23 subsection (7)(b), and
24 "(b) in consequence of that disclosure he is of the
25 opinion that there are exceptional circumstances

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 requiring him to do so,
2 "He may direct the person conducting the prosecution
3 to make for the purposes of the proceedings any such
4 admission of fact as that judge thinks essential in the
5 interests of justice.
6 "(10) Nothing in any direction under subsection (9)
7 shall authorise or require anything to be done in
8 contravention of section 17(1).
9 "(11) In this section 'a relevant judge' means:
10 "(a) any judge of the High Court or of the
11 Crown Court or any Circuit Judge ...
12 "(d) any person holding any such judicial office as
13 entitles him to exercise the jurisdiction of a judge
14 falling within paragraph (a) ..."
15 I was here specifically asked to note that the
16 section is directed at disclosure, and the only
17 reference to the use of the material by a judge in an
18 evidential capacity is in subsection 9(b), which gives
19 a judge who has ordered disclosure to himself the power
20 to direct an admission to be made in criminal
21 proceedings.
22 The provisions relating to disclosure of intercept
23 material to a panel of inquiry and the legal team
24 thereto were added by the Inquiries Act 2005 and
25 section 74 of the Counter-Terrorism Act 2008.

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 Section 74, Mr O'Connor informed me, is the only
2 provision from part 6 of the Counter-Terrorism Bill to
3 survive debate in Parliament and to be enacted.
4 He asked rhetorically, if it was intended that
5 section 18 should apply to inquests as well as
6 inquiries, why were they not also specifically included?
7 Legal proceedings are defined in section 81 (1) of
8 RIPA as:
9 "Civil or criminal proceedings in or before any
10 court or tribunal."
11 Civil proceedings are defined as:
12 "Any proceedings in or before any court or tribunal
13 which are not criminal proceedings."
14 The concept of legal proceedings is, therefore,
15 fortunately straightforward, and it is a very broad one.
16 The House of Lords in R v NIHRC [2002] HRLR 35
17 proceeded on the basis that inquest proceedings are
18 legal proceedings for these purposes, although the point
19 did not arise directly. However, it is common ground
20 before me the definition within section 81(1) includes
21 inquest proceedings.
22 Thus it is accepted on all sides that adversarial
23 and non-adversarial court proceedings, adversarial and
24 non-adversarial tribunal proceedings, are all covered by
25 the prohibition in section 17.

1 Parliament intended to preserve, for operational
2 reasons, it seems, the secrecy of intercept material, if
3 it exists, and the fact of interception, and to permit
4 only carefully drawn and narrow exceptions to the
5 statutory preclusion against disclosure.
6 As Mummery LJ put it in Coles v Barracks,
7 Secretary of State for the Home Department intervening,
8 [2007] ICR 60 at paragraph 47:
9 "The need to preserve secrecy in the conduct of
10 security and intelligence-gathering activities is the
11 explanation for the provisions."
12 If the material does fall within section 17(1), the
13 next question is whether disclosure is permissible as
14 falling within one of the exceptions set out in
15 section 18. The focus of argument before me has been on
16 section 18(7)(b), which permits disclosure to a relevant
17 judge in a case and on what is meant by the word
18 "disclosure".
19 The test for disclosure to a relevant judge and to
20 a panel of inquiry, Mr Eadie described as materially the
21 same. He pointed out that the disclosure must be made
22 only in exceptional circumstances and disclosure must be
23 essential, either in the interests of justice, where
24 a relevant judge is concerned, or to enable compliance
25 with the terms of reference where an inquiry is

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 concerned, (see sections 18(8) and 18(8A)).
2 Mr Eadie argues that these proceedings indicate that
3 the judge, or the inquiry, can not only can consider the
4 material, but can act upon it.
5 The first question is whether I am a relevant judge
6 when sitting as a Deputy Assistant Coroner. Taking the
7 words "relevant judge" at their face value, I am
8 included by the words "judge of the High Court".
9 The question is whether the words should be read
10 literally, so as to permit disclosure to me, whether or
11 not I am exercising a jurisdiction that is not the
12 jurisdiction of the High Court, the Crown Court, the
13 County Court, et cetera.
14 Mr Eadie argued for the plain, literal meaning of
15 section 18(11)(a). First, he submitted there is good
16 reason for not restricting its meaning. The concept of
17 "relevant judge" acts as the gateway to receipt of
18 material that could not otherwise be received by
19 a judicial decision-maker. Section 18 strictly controls
20 the circumstances in which such a judge can receive such
21 material.
22 Thus, the premise on which the section 18(11) issue
23 arises is that there is material which the
24 decision-maker would conclude should exceptionally be
25 considered because it's in the interests of justice to

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 do so.

2 The essential interests of justice should be served

3 wherever possible.

4 That, he argued, is a powerful indicator against

5 a restrictive and in favour of a generous

6 interpretation.

7 Second, he pointed out the alternative

8 interpretation seeks to add a gloss to section 18(11)(a)

9 along the lines of “whenever acting as such”. The

10 subsection does not say that and it could have done.

11 Third, he submitted it is neither incoherent nor

12 unprincipled to have disclosure permitted to the more

13 senior judiciary in whatever capacity they happen to be

14 acting. Parliament has simply concluded that disclosure

15 can properly and safely be made to them whatever

16 jurisdiction they are exercising.

17 The consequence is that some jurisdictions,

18 including the coronial jurisdiction, would not, in the

19 ordinary course, be permitted to receive RIPA material,

20 but would, in exceptional circumstances, and in the

21 interests of justice, be permitted to do so.

22 Fourth, he pointed out that section 18(11)(d) also

23 includes as a separate category of person to whom

24 disclosure can be made "any person holding any such

25 judicial office as entitles him to exercise the

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 jurisdiction of a judge of the High Court", et cetera.
2 Mr Eadie, supported by others, invited me to note
3 this provision is not cast, as it could have been, in
4 jurisdictional terms; it is cast in status terms. It
5 does not say "any person exercising the jurisdiction of
6 a judge falling within paragraph (a) or (b)". It is
7 cast rather in terms of status, the holding of
8 a particular judicial office.
9 Finally on this point, Mr Eadie invited my attention
10 to the view of the Court of Appeal in Coles v Barracks
11 which concerned a Circuit Judge sitting as and exercising
12 the jurisdiction of the Employment Tribunal whose
13 members would not otherwise be permitted to receive RIPA
14 material.
15 At paragraph 50, Mummery LJ observed:
16 "These provisions are potentially relevant to the
17 position of the person who should chair the employment
18 tribunal hearing, if we remit the matter to the
19 employment tribunal to proceed to a substantive hearing.
20 A problem on RIPA could arise during the course of the
21 hearing. It would be possible for disclosure of
22 information, possibly covered by sections 17 to 19 of
23 RIPA, to be made to a Circuit Judge if and when the
24 occasion were to arise during the hearing. This
25 suggestion should present no practical problems as there

Hearing transcripts – 3 November 2010 – Approved Ruling
Reproduced courtesy of www.independent.gov.uk/7julyinquests
PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 are circuit judges who double as chairmen of the
2 employment tribunal."
3 The contrary argument from Mr Patrick O'Connor,
4 supported in his written submissions by Mr Keith, is
5 that section 18 does not, on its face, make any
6 reference to coroners or inquest proceedings at all and
7 that the words "case" and "relevant judge" are not apt
8 to apply to inquest proceedings. Moreover, if the
9 Secretary of State's submissions are well-founded, they
10 suggested one would expect to see a provision enabling
11 counsel to an inquest of this kind to see RIPA material
12 similar to the provision
13 made for inquiries.
14 Pausing there, I am not entirely sure that the use
15 of counsel in inquest proceedings is yet quite as
16 recognised a role as the use of counsel to an inquiry
17 has become.
18 Further, they argued, if the Secretary of State's
19 arguments are correct, they have uniform application and
20 the ability of a coroner to have disclosed to him or her
21 RIPA material will depend on happenstance rather than
22 principle. They argued for a narrow construction to the
23 exceptions provided by section 18. They submitted such
24 an approach would be consistent with the statutory
25 intention, which appears to have been to establish, as

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 the Secretary of State herself argued, that only
2 carefully drawn and narrow exceptions were permitted.
3 They concede, as they must, that the words "whenever
4 acting as such" could have been, but were not, inserted
5 into section 18(11)(a) after the words "any judge of the
6 High Court", and that some interpretative weight can be
7 attached to the omission of those words. But they
8 remind me of what they say are the qualifying words "in
9 a case".
10 If one adopts the narrow approach to construction,
11 they argue the words "in a case" should be given
12 a specific legal meaning. Attention should be paid to
13 the precise words that the draughtsman chose to use and
14 those he chose not to omit. Section 18(7)(b) does not
15 refer to disclosure made to a judge in any legal
16 proceedings which would echo the broad language used in
17 section 17(1).
18 This, they suggested, appears to reflect
19 a deliberate decision to use a narrower term than "legal
20 proceedings" and one which connotes an action that is
21 pursued in the sphere of adversarial litigation.
22 Inquest proceedings are not “a case” in that sense.
23 However, the word "case" is used many times
24 throughout the Act and in different senses. For
25 example, section 18(8A) of RIPA refers to "circumstances

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 of the case" where the context is an inquiry. In
2 relation to this use of the word "case" Mr O'Connor
3 observed that, although the word "case" is used in
4 a more nonspecific way, it is apparent from
5 section 17(1) that an inquiry is not even necessarily
6 considered by the draughtsman to fall within the broad
7 term "legal proceedings".
8 Mr O'Connor dealt with the reference by
9 Mummery LJ in Coles v Barracks to the fact
10 that the remitted proceedings in that case could be
11 heard by a circuit judge sitting in the employment tribunal, so
12 that the judge could, if necessary, receive disclosure
13 of RIPA material as being per incuriam and not the
14 subject of full argument.
15 Mummery LJ certainly described the
16 argument on RIPA before the court as "tentative", see
17 paragraph 43.
18 My attention was also drawn to the fact that the
19 proceedings in the employment tribunal are, in fact,
20 adversarial by nature.
21 I accept that the RIPA provisions must be carefully
22 and strictly interpreted. They are concerned with the
23 disclosure to a judge of material which it is said would
24 threaten the operations of those tasked with protecting
25 the public. The prohibition is undoubtedly a broad one

1 and would cover most inquests. Plainly, Parliament
2 intended section 17 to include inquests. However, in
3 the very next section, the provision for limited and
4 exceptional disclosure, Parliament does not expressly
5 exclude inquests. It does not expressly exclude
6 non-adversarial proceedings before a court or tribunal.
7 It draws no distinction.
8 It did not define the category of person to whom
9 disclosure could be made by means of jurisdiction. It
10 defined the category by means of the status of the
11 judge.
12 Having done so, it did not limit the class of judge
13 to those conducting adversarial litigation or those
14 exercising the jurisdiction of the High Court,
15 Crown Court or of a Circuit Judge more generally.
16 It was described to me as a "finely balanced
17 argument", but to my mind, the words are clear. For
18 these purposes, I count as a High Court judge and,
19 exceptionally, where the interests of justice demand,
20 disclosure can be made to me. The fact
21 that certain powers are given to judges of a particular
22 seniority is entirely rational and replicated in many
23 other parts of the justice system. It is not an
24 unprincipled approach. It is a well-recognised rational
25 approach.

1 I can find no warrant for the assertion that the
2 words "in a case" have a strict legal meaning of a legal
3 action or adversarial litigation. The word "case" is
4 used repeatedly and loosely throughout the Act, even
5 before amendment, in its ordinary, much broader
6 meanings, and I emphasise the word "meanings", plural.
7 As I drafted this ruling I used the word "case" in
8 its loose, broader meaning to refer to inquest
9 proceedings. I am told the word "case" appears up to
10 100 times throughout the Act. I am told the phrase "in
11 a case" appears 21 times throughout the Act. Yet it is
12 only on this one occasion that Mr O'Connor suggests it is
13 used in a strict fashion. I cannot accept that was
14 the draughtsman's intention.
15 However, having concluded that I am entitled to
16 order disclosure to me of RIPA material, if it exists,
17 it is at this stage I part company with Mr Eadie's
18 argument. Interpreting the section strictly to my mind
19 leads to the inevitable conclusion that disclosure means
20 what it says: disclosure to a judge.
21 I am told these arguments are not novel, they have been
22 canvassed elsewhere, but not decided definitively. I have
23 been asked to note that the stance adopted by the state
24 has not been entirely consistent. However, it was not
25 suggested that I would find much assistance on the facts

1 here from the debate elsewhere.
2 The principal argument advanced by the Secretary of
3 State in these proceedings and in support of the wider
4 reading of section 18(7)(b) is that the statutory
5 requirement under section 18(8) that a disclosure under
6 section 18(7)(b) must be “essential in the interests of
7 justice” indicates that judges must receive disclosure
8 under that section for the purpose of enabling them to
9 perform all their functions which, it is said, must enable
10 a judge both to receive and take into account the
11 material in question for the purpose of making
12 a judgment on the issues arising for determination.
13 Thus, Mr Eadie, having criticised others for asking
14 me to add a gloss to the statutory words, has asked me
15 in this context to do just that. A gloss which, to my
16 mind, seems unnecessary and unlikely.
17 I accept the submissions of Counsel to the
18 Inquest this is to take an unwarranted all or nothing
19 approach to the concept of a judge's functions in this
20 situation. While it is clear that a judge must, and
21 must only, order disclosure under section 18(7)(b) in
22 connection with fulfilling his functions, it does not
23 follow that he must therefore be entitled to use the
24 disclosed material in connection with all of those
25 functions.

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 To my mind, section 18(7)(b) does not permit me to
2 adduce RIPA material in evidence. I agree with Mr Keith
3 that a striking feature of the language of the section
4 is that the derogation it creates is defined exclusively
5 and repeatedly in terms of disclosure to a judge. No
6 mention is made of the material being used in evidence,
7 or questions asked about it, save for the one provision
8 that it may form the basis in a criminal prosecution for
9 an admission.
10 A natural reading of this section suggests to me
11 that Parliament intended simply to permit disclosure of
12 RIPA material to enable a judge to protect the interests
13 of justice. Reading section 18(7)(b) in this way, it
14 does not deprive it of any purpose. There are a number
15 of reasons why it might be appropriate for a judge, in
16 exceptional circumstances, to look at RIPA material,
17 even though that material was incapable of being adduced
18 as evidence in the substantive proceedings.
19 A judge might wish to satisfy him or herself that
20 material that was being excluded from the proceedings
21 pursuant to RIPA really was material that was caught by
22 the prohibition. It might be necessary for a judge to
23 look at the underlying RIPA material, to rule as to the
24 appropriateness and accuracy of any gist being offered.
25 A judge conducting a criminal trial in which the

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 prosecution had asserted that, because of the way they
2 had put the prosecution and made admissions, there was
3 no relevant RIPA material leading to any disclosure
4 difficulties and the jury would not be misled might wish
5 to satisfy him or herself of that point.
6 If necessary, the judge could then exercise the
7 powers under section 18(9)(b) to direct the prosecution
8 to make admissions.
9 Most importantly, a judge, by ordering disclosure to
10 themselves alone, can ensure that no one is misled, no
11 bad or unfair points are taken. Any of these reasons,
12 I agree with Mr Keith, would plainly serve the interests
13 of justice.
14 Moreover, I find it difficult to envisage
15 circumstances in which it would be appropriate for
16 a judge to receive disclosure of RIPA material under
17 section 18(7)(b) and then adduce that material in
18 evidence in circumstances where only the judge and
19 perhaps one of the interested persons in the case (the
20 government body privy to RIPA material) had seen it.
21 As was discussed in argument, judges are accustomed and
22 expected to provide judgments or rulings in which they
23 set out the material they have considered and give
24 reasons for accepting or rejecting it. It would be
25 a very considerable derogation from the principles of

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 natural justice for me to admit into evidence material
2 which at least one interested person, with an identified
3 interest in the proceedings, had not seen and of which
4 they were completely unaware and in the absence of their
5 consent.
6 In a criminal trial, the adducing of RIPA material
7 as evidence would be impossible, since RIPA clearly does
8 not permit such material being adduced as evidence
9 before the tribunal of fact: namely, the jury.
10 I have added the words "absent their consent"
11 because I have indicated some parties were anxious
12 I should not close the door on the possibility of my
13 holding closed hearings, if, and only if, the interested
14 persons all agreed that I should do so. The position,
15 as far as I see it, is far from straightforward in law
16 and in practice. I will wait to see whether it is
17 necessary to rule upon the issue.
18 So for all those reasons, I rule that I do not have
19 the power to conduct closed hearings from which the
20 interested persons as well as the broader public are
21 excluded absent a waiver of their rights by all interested
22 persons. If exceptional circumstances exist and if it
23 is in the interests of justice, I do have the power to
24 order disclosure to me of RIPA material. I do not,
25 however, have the power to allow such material to be

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk

1 adduced in evidence in what would have to be closed
2 hearings.
3 Before leaving this ruling, I should mention the
4 possibility of any challenge to it or any part of it.
5 First, any such challenge must be launched promptly
6 and I wish to know of the decision to challenge within
7 a strict timetable, which we shall discuss in a moment.
8 Second, no attempt at challenge is to derail these
9 proceedings. If and when we reach the point that the
10 public interest immunity and limited RIPA disclosure
11 process fails to satisfy the genuine concerns of the
12 Security Services or any other party, I shall obviously
13 hear submissions. Until then, I expect the fullest
14 cooperation from all sides.
15 I also expect the parties to rack their brains to
16 find a way, if at all possible, to allow Counsel to the
17 Inquests access to any RIPA material, if it exists,
18 which is to be put before me. If there are ways and
19 means in which, as Mr O'Connor called them, the battery
20 of lawyers acting for the Secretary of State can have
21 access to that material, I would urge the parties to see
22 if there is a way Counsel to the Inquests can also have
23 access to it.
24
25

Reproduced courtesy of www.independent.gov.uk/7julyinquests

PDF print version produced & hosted by J7: The July 7th Truth Campaign - www.julyseventh.co.uk