

Coroner's Inquests into the London Bombings of 7 July 2005

Hearing transcripts - 21 December 2010 - Morning session

1 Tuesday, 21 December 2010

2 (10.00 am)

3 Directions hearing re PII

4 (In open session)

5 LADY JUSTICE HALLETT: Mr O'Connor?

6 MR ANDREW O'CONNOR: Good morning, my Lady.

7 My Lady, there is one main item on this morning's

8 agenda and that is for you to hear submissions on

9 a PII hearing that has been made by the Secretary

10 of State for the Home Department, Mr Garnham is

11 here to address you on that.

12 There are, I imagine, also a number of other

13 ancillary matters that the Bar may wish to raise,

14 relating to outstanding directions and so on.

15 My Lady, we think that insofar as the PII

16 claim is concerned, the logical order of things

17 would be for you to have an open hearing now, so

18 that you can hear submissions from Mr Garnham and

19 from those acting for the other interested

20 persons about the general principles that are to

21 be applied.

22 Once you have heard submissions on those, you

23 will then need to go into a closed session to

24 hear more detailed submissions. My Lady, the

25 question of whether you hear submissions on the

1 other ancillary matters at the same time as the
2 open submissions on the PII claim or whether you
3 think it more appropriate to hear open
4 submissions on the PII claimed, then closed
5 submissions, then come back for another open
6 hearing to hear any other matters, my Lady, is
7 really a matter for you.

8 LADY JUSTICE HALLETT: What is the present
9 estimate for the length of time the closed
10 hearing will take, and how long will we be
11 keeping Ms Gallagher -- who I gather has had to
12 step into the breach -- and others waiting, if we
13 go open, closed, open?

14 MR ANDREW O'CONNOR: Mr Garnham is saying two
15 hours.

16 LADY JUSTICE HALLETT: Well, I am not going
17 to keep them hanging around for two hours, so
18 let's do everything open that we can, whilst we
19 are in open session, and then go into closed.

20 MR ANDREW O'CONNOR: My Lady, yes.
21 Perhaps, then, I think really it's probably
22 for Mr Garnham to make his submissions on the PII
23 claim, and perhaps those others here can make
24 their submissions in response to the PII claim
25 and any other ancillary matters they wish.

1 LADY JUSTICE HALLETT: Very well. Yes,
2 Mr Garnham?
3 MR GARNHAM: My Lady, as you know, this is my
4 application to order from this court that the
5 material contained in what has been called
6 bundle A is protected from disclosure to both the
7 PIPs and the public, as a result of public
8 interest immunity.
9 As Mr O'Connor has indicated, it is
10 anticipated you will hear opening submissions
11 from all of us now and then there will be closed
12 submissions from me subsequently.
13 You, my Lady, and all of my learned friends
14 have seen the certificate signed by Theresa May,
15 the Secretary of State for the Home Department.
16 The certificate speaks for itself, and I don't
17 propose to read it all out, but this is a public
18 hearing and I ought, perhaps, to summarise the
19 effect of what the Home Secretary says.
20 The Secretary of State refers to documents
21 contained in what she calls bundle A. The nature
22 of those documents cannot be described in open
23 session without damaging the very interests this
24 application seeks to protect.
25 You will see that the bundle contains

1 information falling into three loose categories.
2 First, material you have identified as relevant
3 through your counsel; secondly, information which
4 those advising the Secretary of State believe is
5 likely to become relevant; thirdly, information
6 potentially relevant to the issue whether you can
7 properly and fairly make any ruling on particular
8 subissues.

9 I should make it clear, my Lady, that I will
10 not be inviting you in open or closed sessions
11 today to make any ruling or give any indication
12 one way or the other about that latter matter.
13 Whether that would be appropriate, in fact, will
14 be for another occasion. But information that
15 may be relevant to that issue is a part --
16 a relatively small part, but a part
17 nonetheless -- of what I propose showing you in
18 closed, and we took the view that it was right
19 that the existence of such potentially relevant
20 material -- reference to it should be made
21 openly.

22 The Secretary of State makes clear in
23 paragraph 6.1 of her certificate that attempts
24 have been made to agree a gist -- in other words,
25 a summary -- of the information contained in the

1 closed material that could be made public without
2 damaging national security.

3 At the time of the certificate, those
4 attempts have not been successful. I can tell
5 your Ladyship that those efforts have continued
6 and I will be able to tell you in closed where
7 they have got to. If a gist can be agreed which
8 meets with the court's approval, that, of course,
9 would then be made public and made available to
10 the PIPs.

11 The Secretary of State sets out in the
12 certificate the approach she has taken following
13 the House of Lords' decision in R v H and the
14 Divisional Court's decision in Binyam Mohamed.

15 She identifies a three-stage test. Put
16 shortly, first, relevance; secondly, does it
17 attract PII in principle; and, thirdly, the
18 balancing exercise. My Lady, largely familiar
19 stuff, save in one respect. The one, somewhat
20 novel issue is how the balance should be struck,
21 or conducted, in the case of an inquest.

22 Self-evidently, we would submit, it is not
23 precisely the same issue that arises in
24 proceedings in the usual criminal or civil
25 proceedings that most of us are more familiar

1 with. The Secretary of State sets out the advice
2 that we have given her, which she explains that
3 she has followed, and that is in paragraph 12.
4 In essence, she has accepted advice that the
5 balance here should be between the interests of
6 national security, on the one hand, and, on the
7 other, the public interest in this being an open
8 and effective inquiry, which inquiry pursues the
9 objectives of an inquest identified in what we
10 would submit is the most authoritative statement
11 from the House of Lords in the speech of
12 Lord Bingham in the Amin case.
13 It perhaps is right that I read the relevant
14 quotation, because it sets in context all that
15 follows. This is from paragraph 12 of the
16 certificate, from Amin:
17 "In this country, effect has been given to
18 the duty to investigate for centuries by
19 requiring such deaths to be publicly investigated
20 before an independent judicial tribunal with an
21 opportunity for the relatives of the deceased to
22 participate. The purposes of such an
23 investigation are clear: to ensure, so far as
24 possible, that the full facts are brought to
25 light, that culpable and discreditable conduct is

1 exposed and brought to public notice, that
2 suspicion of deliberate wrongdoing, if
3 unjustified, is allayed, that dangerous practices
4 and procedures are rectified and that those who
5 have lost their relatives may at least have the
6 satisfaction of knowing that lessons learned from
7 his death may save the lives of others."
8 Our submission is that that is the correct
9 approach to the public interest in open
10 proceedings' side of the balance.
11 The Secretary of State then explains that she
12 has personally examined the documents and
13 satisfied herself that they attract PII. She
14 then sets out in general terms, deliberately
15 general terms, the reasons she says that PII
16 applies -- that's in paragraphs 13 and 17 --
17 those amount to the familiar descriptions of why
18 documents may create a risk to national security.
19 In essence, she says that their disclosure
20 would damage national security. As you will
21 appreciate, my Lady, it's not possible for me to
22 say, nor for her to say in her certificate in
23 open surroundings, which of those categories the
24 material in bundle A relates to, because doing so
25 would itself cause damage to national security.

1 The detail, however, is set out in a schedule to
2 the certificate, which has been disclosed to you,
3 my Lady, and to your counsel, but not to the
4 properly interested persons.

5 The Secretary of State then describes the
6 balancing exercise she has performed and gives
7 her opinion that the material ought not to be
8 disclosed. In paragraph 21 of that certificate,
9 she acknowledges that the final decision is not
10 hers, but yours and, my Lady, you will have seen
11 that she has said at paragraph 8 that she has
12 made the certificate for the purpose of assisting
13 the court in coming to this decision in PII.

14 My Lady, I think that is all I need to say in
15 open.

16 LADY JUSTICE HALLETT: Thank you very much.

17 Ms Gallagher, are there any submissions you wish
18 to make at this stage?

19 MS GALLAGHER: Yes, just to ensure I'm on the
20 correct microphone?

21 Could I just begin by apologising for
22 Mr Patrick O'Connor, Queen's Counsel's, absence.
23 He was taken ill this morning, so I'm appearing
24 and making these submissions very much in
25 understudy role, although, of course, as you are

1 aware, there is also Mr Patterson, so there are
2 two of us representing the bereaved families
3 before you here today.

4 What I intend to do is very briefly make some
5 general observations in relation to the
6 applicable principles and then make some general
7 observations in relation to the certificate
8 itself.

9 I will be brief, as is inevitable, because
10 my Lady, of course the decision on PII, as is
11 recognised by the Home Secretary in paragraph 21
12 of the certificate, and by Mr Garnham QC in his
13 submissions just now, is in your hands and, of
14 course, post-Wiley, it is evident that striking
15 the balance is going to depend very much on the
16 specific context of bundle A. Me, myself, and
17 Mr Patterson and the other interested parties not
18 involved in the closed proceedings have seen the
19 context, so we are disabled from making effective
20 representations under the Wiley test; all we can
21 do is make these general observations.

22 Could I start firstly by just dealing with
23 what the issue of presumption is in this context?

24 We agree with Mr Garnham that, in the inquest
25 context, the balance that you need to strike is

1 not necessarily the same as the balance you will
2 strike in a criminal context. This relates to
3 the issue he raised at paragraph 12 of the
4 certificate, quoting from Lord Bingham. However
5 we would say that the presumption in favour of
6 disclosure in an inquest context is a strong one
7 and it's not equivalent to civil proceeding. It
8 is well known that the presumption in favour of
9 disclosure in a criminal context is more emphatic
10 than in a civil context where ultimate risk is
11 failure of a potential private claim.
12 In this particular context, there is a number
13 of reasons why we say there is a strong
14 presumption in favour of disclosure.
15 The first is a general one which simply is
16 echoing what Lord Bingham said in the context of
17 Article 2 in the Amin case, that one of the
18 principle purposes of an inquest is, of course,
19 to assuage public anxiety and hold those
20 responsible to account. That's an argument, in
21 our submission, for there to be a greater need
22 for public scrutiny than there may be in other
23 civil contexts. There are also some issues very
24 specific to this case, which we have raised, and
25 three in particular.

1 Firstly, my Lady, we would refer to
2 paragraph 111 of your ruling of May 2010. I
3 don't intend to go to it in any great detail, but
4 that's the paragraph, my Lady, where you make
5 clear that an inquest isn't limited to being the
6 last link in the chain, and the new events in the
7 spring of 2004 and in the wider lead-up to 2005
8 may be relevant and, quoting from you, because we
9 now know two of those to do with the police have
10 attributed responsibility for the bombings were
11 not only on MI5's radar but were seen with
12 a terrorist and a known bomb expert.

13 If that is correct, to my mind that seems far
14 from remote. I am satisfied that to embark on
15 a consideration of the bombers' backgrounds to
16 this extent, if it proves possible, would be in
17 accordance with my duty to ensure that the
18 details of the catastrophic events of 7 July 2005
19 are to adopt the term employed in Jamieson
20 "fully, fairly and fearlessly investigated" and
21 that, of course, was your current intention at
22 the time, if proved possible.

23 Secondly, we would emphasise the importance
24 of the preventability issue to the bereaved
25 families. We noted in April that, amongst those

1 who responded to Dr Reid's questionnaire, the top
2 three issues which were identified as requiring
3 investigation at that stage were interrelated and
4 all related to reasonable preventability by state
5 agencies.

6 They were, my Lady, number one, level of
7 intelligence or knowledge of pre-attack; number
8 two, possible prevention of an attack; number
9 three, failings and accountability of the state.

10 The importance of that issue to the families
11 has been echoed since then. As we know, at the
12 April hearing, and continuing until today, there
13 has been unanimity from the bereaved families in
14 terms of the importance of that issue, and that
15 is a very powerful factor.

16 The third factor we would highlight is the
17 wider -- again, using your phrase from the
18 judgment in May, albeit in a slightly different
19 context -- obviously, it is a judgment of public
20 interest beyond the bereaved families themselves
21 in this issue being fully and appropriately
22 investigated.

23 So for all those reasons, my Lady, we would
24 say there is a strong presumption in favour of
25 disclosure.

1 There's two other general matters which I
2 would note. I'm not going to, for obvious
3 reasons, go through Wiley and what the relevant
4 factors are, but we would draw your attention to
5 the decision of Silber J in the High Court in
6 June of this year. I do have copies of it. It's
7 just a small point. It's simply the reference
8 that was made to the test on public interest
9 immunity being best supplied at the end of the
10 disclosure exercise.

11 We are very conscious in this case that,
12 because of disclosure being a rolling process,
13 a decision on bundle A is potentially being made
14 now before the disclosure process has been
15 completed and that obviously makes it more
16 difficult for Mr Patterson and I and the other
17 bereaved families to make full submissions. We
18 find it difficult to make full submissions
19 anyway, given how general the information in the
20 certificate is, but in the absence of further
21 disclosure, we are also restricted somewhat. So
22 we just echo what was said by Silber J in that
23 case. I do have copies, if needed.

24 We would also draw your attention to the case
25 of Orr v Kenneth Johnson where the Court of

1 Appeal set out what the minimum evidential
2 requirements were for PII in an observation-type
3 case, and that was in a criminal context.
4 We, of course, don't know how much, if any,
5 of bundle A relates to observation-type issues,
6 but again we would think that may be relevant to
7 your consideration. I do have copies of the
8 judgment and also there's a brief summary at
9 Archbold paragraphs 12 and 37. Again, I can make
10 that available, if it's of relevance.
11 My Lady, could I also make just a number of
12 brief observations in respect of the certificate
13 itself. Mr Garnham said that the certificate
14 speaks for itself and, of course, to a certain
15 extent that's true, but for those of us outside
16 the closed process, it stills remains
17 a relatively impenetrable document.
18 We recognise the inevitability of that, at
19 this stage, so we are not making any criticism,
20 but we must note it, simply because it's
21 difficult for us to make meaningful submissions
22 in that context.
23 There's numerous headings of national
24 security interest which are given that are
25 described in relatively vague terms and it's

1 quite difficult for us to engage in any
2 meaningful way, given that context, my Lady.
3 We would note that from the certificate it
4 doesn't appear that any reference is made to
5 whether any of the material in bundle A is
6 already within the public domain. We would
7 assume it isn't, but of course, a highly relevant
8 factor will be whether any of this material was
9 touched upon in Crevice or Theseus or elsewhere
10 and it is not clear from the face of the document
11 that that is the case.

12 We do also note there is a reference at
13 page 6, paragraph 15A, the security forces -- as
14 distinct from the Security Services -- and we
15 were unclear whether that was a typographical
16 error or deliberate, but again, we were surprised
17 to see the reference to security forces in this,
18 and we simply note that.

19 My Lady, we recognise it is a matter for you
20 and we are very much in your hands. We emphasise
21 the presumption in favour of disclosure, the
22 importance to all the families of ensuring that
23 this issue is fully, fairly and fearlessly
24 investigated, and we hope that our submissions
25 can be borne fully in mind when you consider this

1 issue.

2 Unless I can assist you further, my Lady?

3 LADY JUSTICE HALLETT: No. Very helpful

4 indeed. Thank you very much. Mr Patterson?

5 MR PATTERSON: My Lady, may I echo what has

6 been said by Ms Gallagher and, in summary, the

7 essential points I would make are, first, when it

8 comes to the ex parte Wiley balancing exercise

9 I know that the families that I represent, and

10 I'm confident that those represented by other

11 counsel not present today, would agree that we

12 have absolute confidence in your Ladyship,

13 assisted by your team of counsel, and we are very

14 grateful for the hard work that has been clearly

15 put into this exercise already. We've absolute

16 confidence in the striking of the balance in the

17 right place.

18 The families that I represent simply want

19 proper answers to the questions that you listed

20 in that list of factual issues some six months

21 ago and sometimes it is the case that, with the

22 passage of time, the acute desire for an answer

23 diminishes, but for many of the families, as has

24 been said, preventability is the big issue and

25 I know that they are keen to embark upon that

1 exercise with your Ladyship in six weeks or so.
2 The coronial process has had an impact
3 already in a whole host of respects. Your
4 Ladyship has inquired very thoroughly and very
5 robustly into issues already, such as possible
6 delays, protocols that may have hampered the
7 emergency responders on the day, and we are
8 confident that the exercise, in terms of
9 preventability, will be as thorough and robust,
10 not only in ensuring transparency and
11 accountability for those who are entrusted with
12 protecting national security and the safety of
13 the public, but also in terms of identifying
14 lessons to be learned.
15 The threat from terrorism, as we see, sadly,
16 in the papers most days, is as pressing as ever.
17 Your Ladyship plays a very important role on
18 behalf of the public, so yes, it is not
19 a criminal prosecution and, yes, the liberty of
20 the individual isn't at stake in that respect,
21 however the competing public interests are such
22 that there is a very pressing need for your
23 Ladyship to enquire thoroughly into what went on
24 and to ensure that the questions listed in the
25 factual issues are fully and fearlessly

1 investigated.

2 That's all I say, my Lady, in relation to the
3 certificate.

4 In terms of the timeliness of disclosure,
5 your Ladyship knows there are a lot of people
6 eager to get started on the exercise and we all
7 have competing demands in January in other
8 issues. Unless I can assist further, those are
9 my submissions.

10 LADY JUSTICE HALLETT: Thank you very much
11 indeed, Mr Patterson.

12 Right, Mr O'Connor, well I have the
13 submissions as far as the public interest
14 immunity is concerned. Are there any other
15 matters we can deal with in open court, or need
16 to deal with, which involve the other advocates?

17 MR ANDREW O'CONNOR: My Lady, as far as PII
18 is concerned, I think Mr Garnham may wish to
19 reply to some of the points made by my learned
20 friends. Before he does so, may I briefly make
21 some submissions on three points relating to PII.
22 We can then perhaps move to the ancillary points
23 and --

24 LADY JUSTICE HALLETT: It seemed to me there
25 wasn't a great deal of conflict between people.

1 MR ANDREW O'CONNOR: There wasn't. I don't
2 think there is a great deal, my Lady.

3 LADY JUSTICE HALLETT: But there are nuances.

4 MR ANDREW O'CONNOR: May I just make three
5 points?

6 The first, which is the point which has been
7 touched on by all of those that have spoken so
8 far is the question of how to approach and how to
9 formulate the considerations that you need to
10 take into account in performing the balancing
11 exercise, and in particular what goes into the
12 mix, as it were, on the open justice side of the
13 balance.

14 My Lady, we endorse the approach taken by
15 Mr Garnham and I think this is probably common
16 ground at a high level of generality that the
17 considerations are those referred to in
18 paragraph 12 of the certificate and the points
19 made by Lord Bingham in the Amin case.
20 Ms Gallagher says that those are strong
21 considerations in favour of openness and we would
22 also endorse that.

23 As far as her submission that they are
24 stronger considerations than the considerations
25 which apply in civil proceedings, we would submit

1 that it may be that there is little to be gained
2 from trying to establish some sort of rank here
3 as between criminal PII, civil PII and inquest
4 PII, when, as the case makes clear, the whole
5 process is fundamentally a fact-specific one and
6 different criminal cases will give rise to
7 different considerations of openness. The same
8 is true of civil proceedings and the same is
9 clearly true of inquest proceedings. So we
10 accept that they are strong considerations but we
11 would submit that really the matter needs to be
12 taken no further than that at this level of
13 principle.

14 My Lady, could I, for the second and third
15 points I want to make, ask you to turn to
16 paragraph 10 of the certificate?
17 You will see at paragraph 10 -- and
18 Mr Garnham has already taken you to this -- three
19 steps identified which are the conventional and
20 broad steps that any court needs to take when
21 considering a PII claim: first of all, relevance;
22 secondly, harm; thirdly, the balance.
23 May I add two factors for you to consider,
24 and they are factors which have been referred to
25 in the cases which Mr Garnham has referred to at

1 paragraph 9 -- or which are referred to at
2 paragraph 9 of the certificate. The first of
3 those two factors slots into the mix between (ii)
4 and (iii) and that is that if you are satisfied
5 that the material is relevant and, if you are
6 satisfied that disclosing it would cause harm,
7 you must then consider whether it is possible to
8 make limited disclosure of the information in
9 question without causing the harm that would be
10 caused by disclosing the material in its entirety
11 in open. There are at least two ways in which
12 that can be done.

13 The first is by gisting the material. That
14 is a process that Mr Garnham has already referred
15 to. The second is by making the material fully
16 disclosed, but by doing it in a process that is
17 less open than fully open proceedings.

18 My Lady, one matter of which we are now fully
19 informed is that under rule 17 of the
20 Coroner's Rules you have a power to conduct
21 proceedings in camera and there may be some
22 circumstances -- I put it no higher than that at
23 this stage -- whereby at least some of the harm
24 that would be caused by disclosing material that
25 has been made subject the claim of a PII would be

1 ameliorated simply by disclosing the material,
2 not in the full, normal way in public, but by
3 disclosing it within in camera proceedings.
4 So those are two different types of
5 procedures which would achieve the same end.
6 They are to be considered as part of this process
7 and we consider it very much part of our role to
8 have in mind the possibility of those two
9 things: first of all, attempting, as far as
10 possible, to gist the material so that the
11 interested persons can see it and, secondly,
12 always keeping in mind the consideration of
13 having proceedings that are less than fully
14 public, but which, as we now know, interested
15 persons can attend and see the material.
16 LADY JUSTICE HALLETT: As a last resort.
17 MR ANDREW O'CONNOR: Certainly a last resort
18 but one that is very much to be borne in mind
19 when these issues are in play.
20 My Lady, that was the first of the final two
21 points I wanted to make.
22 The second point, it may provide some sort of
23 answer to the issue raised by Ms Gallagher about
24 the observations of Silber J in the Al Rawi case
25 to the effect that disclosure or PII issues are

1 best dealt with at the end of the disclosure
2 process. My Lady, so far as Al Rawi is
3 concerned, you will know that was a case of
4 really exceptional difficulty when it came to
5 disclosure and it would be difficult to read too
6 much into an observation made in the very
7 particular factors of that case.
8 But a better answer, my Lady, may be found in
9 the case of R v H, which is one of the cases that
10 the certificate refers to at paragraph 9.
11 My Lady, I don't ask you to look at this case now
12 but, at paragraph 36 of that case, Lord Bingham
13 identified a number of steps that the court must
14 consider in analysing a PII claim, and the final
15 point he makes is that, if the answer, at the end
16 of the process, is that the PII claim is
17 essentially a good one and that the disclosure
18 cannot be made, the question the court must ask
19 itself is: does that remain the correct answer as
20 the trial unfolds, evidence is adduced and the
21 defence advanced?
22 It's important that the answer that the court
23 gives to the PII claim should not be treated as
24 final, once and for all -- should not be treated
25 as a final once and for all answer, but

1 a provisional answer which the court must keep
2 under view. My Lady, that applies no less in
3 these proceedings.

4 For reasons of convenience, you are asked to
5 determine the PII claim or hear submissions on it
6 today. Of course, that doesn't mean to say that
7 any answer you give will be a final answer. With
8 this claim, just as with any other, the matter
9 will be kept under review and the keeping of it
10 under review, again, is one of the functions that
11 we can perform as the process unfolds.

12 My Lady, those are the submissions I wish to
13 make, I'm grateful.

14 LADY JUSTICE HALLETT: Mr Garnham?

15 MR GARNHAM: There is only one matter upon
16 which I wish to make reply, my Lady and that
17 arises out of Ms Gallagher's submissions about
18 the existence of a presumption. We submit there
19 is no presumption on a PII certificate at all.
20 It's a question of properly identifying the
21 factors in the balance. Here, as Ms Gallagher
22 rightly acknowledges, the proper consideration is
23 an importance of an inquest in the Amin sense and
24 that is what you have to set against national
25 security considerations. There is no

1 presumption, we would submit, either in favour of
2 disclosure or in favour of national security.
3 It's a pure balancing exercise with those matters
4 in mind.

5 Lastly, we would respectfully agree with what
6 Mr Andrew O'Connor says about Al Rawi and that
7 the proper approach is not to put off the
8 decision, but to keep the result under review
9 whichever way it goes.

10 Thank you, my Lady.

11 LADY JUSTICE HALLETT: Thank you very much.

12 MR ANDREW O'CONNOR: My Lady, may I now
13 return to the question you asked me about other
14 matters? The position -- and perhaps I can
15 explain, as everyone in court is aware, this has
16 been a long-running and not without difficulty
17 disclosure exercise. You have now conducted more
18 than one hearing. We are confident that
19 a tranche of disclosure will be made available to
20 the interested persons by way of Lextranet in the
21 next week or so -- and I apologise I can't be any
22 more precise than that, but that is the stage we
23 have reached -- but there are a number of pieces
24 of disclosure that will be being made
25 available: some redacted documents relating to

1 the Crevice inquiries, some further material
2 relating to Mr Gilbertson, we very much hope,
3 also, what is now a very extensive gist of the
4 minutes of the ELG meetings, and I can say that
5 the current draft of that gist runs to some 60 or
6 more pages.

7 That is to be -- there will also be further
8 disclosure from the Metropolitan Police, a lot of
9 the internal documents created during the course
10 of Operation Crevice and after. So those are the
11 matters that are very much in play. Christmas
12 has been treated as something of a deadline,
13 there are meetings that will take place later on
14 today, we are very much optimistic that
15 a quantity of that material will be made on
16 Lextranet towards the end of this week and that
17 is the position.

18 LADY JUSTICE HALLETT: Mr O'Connor, I know
19 a huge amount of work has been going on behind
20 the scenes and I'm very grateful for that work,
21 which has led us to a position of being able to
22 disclose as much information as possible before
23 Christmas.

24 Right, anything else we need to deal with in
25 open session? Ms Gallagher?

1 MS GALLAGHER: My Lady, can I deal briefly
2 with a number of matters?
3 The first issue is there is a PII scheduled
4 for 10 January. This may be our error, but we
5 are not aware of a timetabling place in terms of,
6 if there is a certificate, when it is to come, if
7 there is a particular date in January by which we
8 will get submissions from the Secretary of State.
9 It would be helpful to have an indication, if
10 that occurs over the Christmas break and helpful,
11 not only for my legal team, but other legal teams
12 who are affected during the Christmas break and
13 so on.
14 That is the first matter.
15 The second matter just relates to disclosure
16 and, could I just say, I think my Lady is aware
17 that there has been interaction between the legal
18 teams for the five legal teams for the bereaved
19 families and we are grateful for all the work
20 that has been done and we are very conscious that
21 the team has done a huge amount and made Trojan
22 efforts to make information available to us.
23 We are grateful for the indication
24 Mr O'Connor has given you about Christmas being
25 treated as something of a deadline. As was

1 alluded to by Mr Patterson, January is a very
2 busy month for those of us involved in
3 Tavistock Square and, also, immediately after
4 Tavistock Square we are going to be dealing with
5 other generic issues, and we've arrangements with
6 the Legal Services Commission, we've divided
7 those issues up between us. We all have quite
8 substantial responsibilities.

9 I accept, as was said on the last occasion,
10 that Mr O'Connor, QC, does not have those
11 commitments but of course he does have other
12 commitments. We are very grateful for the
13 indication that material is going to be made
14 available in the next week or so and any
15 criticism that has been made of slippage in the
16 timetable is certainly not a criticism of your
17 inquest team, we are very conscious how much work
18 has been going on behind the scenes and the
19 documents that have been referred to will be
20 extremely helpful.

21 Reference was made to further information by
22 Mr Gilbertson. We haven't received information
23 about Mr Gilbertson, but I assume that's
24 a reference to the statements. You know there
25 was some difficulty with disclosing the

1 statements with redactions and that has led to
2 some further behind-the-scenes work.
3 Then could I just deal very, very briefly
4 with some matters that came up in submissions
5 from Mr O'Connor and also from Mr Garnham. It
6 seems, as you indicated, my Lady, there's very
7 little between the parties for the open session
8 in respect of the principles to be applied. That
9 is plainly a terminology distinction, but that
10 terminology distinction is evident from the case
11 law too and, in the criminal context, you quite
12 often see references to presumption or the golden
13 rule and so on, but in reality, it's all talking
14 about, as Mr O'Connor and Mr Garnham have said,
15 a simple application of the balancing exercise.
16 There's just two issues which Mr O'Connor
17 referred to with which we respectfully agree and
18 I just wanted to raise those.
19 Firstly, in making the reference earlier to
20 the distinction between inquest proceedings,
21 criminal proceedings and standard civil
22 proceedings, I certainly wasn't intending to
23 suggest a league table of sorts and I apologise
24 if that impression was given. I simply was
25 raising the fact that an inquest -- generally,

1 there are certain applicable principles which we
2 add into the mix and also there are particular
3 issues in this particular inquest which we add
4 into the mix and certainly they are powerful
5 factors, but we certainly weren't intending to
6 suggest there was any form of league table.
7 Secondly, we strongly agree with the
8 references made by Mr O'Connor to alternative
9 mechanisms, intermediate options, and in terms of
10 disclosure, obviously the ideal outcome from the
11 point of view of the families, if security
12 allows, is to have full disclosure, but we agree
13 with, to use your phrase, my Lady, the last
14 resort approach and, to borrow from the language
15 of the human rights world, the least restricted
16 means approach, and gisting or redaction or any
17 other more creative methods which have been used
18 in other cases, as was highlighted in the
19 materials put before the court in the judicial
20 review proceedings, my Lady, by inquest, liberty
21 and justice, we would strongly be in favour of
22 any of those alternative methods being used, if
23 at all possible, and PII being very much the last
24 resort.
25 I will just check with my solicitor if

1 there's any further. Nothing further, my Lady,
2 thank you.

3 LADY JUSTICE HALLETT: Thank you

4 Ms Gallagher, Mr Patterson, is there anything you
5 wish to raise?

6 MR PATTERSON: Nothing further, my Lady.

7 LADY JUSTICE HALLETT: Mr Garnham, is there
8 anything you wish to raise in open submissions?

9 MR GARNHAM: Only on the question of
10 timetabling, my Lady. May I suggest that is
11 dealt with initially in the closed session at the
12 end of the PII application and then arrangements
13 are made through Mr Smith to ensure that
14 Ms Gallagher is aware of what the timetabling is?

15 LADY JUSTICE HALLETT: Certainly.

16 MR ANDREW O'CONNOR: My Lady that is
17 precisely the point I was going to suggest. It
18 may be that the detail of what can or can't be
19 achieved on 10 January becomes clearer during the
20 closed hearing and Mr Smith will be able to write
21 to all persons informing them what is to take
22 place and providing material.

23 LADY JUSTICE HALLETT: Thank you. Do you
24 need me to retire to go into closed session?

25 MR ANDREW O'CONNOR: My Lady, we would be

1 grateful for you to retire. I understand there
2 is a process which takes five or ten minutes to
3 alter some of the technology for us to go into a
4 closed hearing.

5 MR GARNHAM: My Lady, it would, in fact, be
6 useful for us to have five minutes, because we
7 need to speak to West Yorkshire Police on the
8 telephone. So, my Lady, if you were to say ten
9 minutes and come back at five to, that would be
10 likely to be profitable.

11 LADY JUSTICE HALLETT: Thank you.

12 Ms Gallagher, can you send a message to
13 Mr O'Connor saying I hope he gets better soon?

14 MS GALLAGHER: Of course, my Lady. Thank
15 you.

16 (10.43 am)

17 (The open session concluded)

18