

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

Hearing transcripts - 21 January 2011 - Morning session

1 Friday, 21 January 2011

2 (9.30 am)

3 Application re anonymity

4 (In open session)

5 LADY JUSTICE HALLETT: Yes, Mr Keith?

6 MR KEITH: Good morning, my Lady. My Lady, there are one or
7 two matters that I would wish to address you on if we
8 conclude the main argument listed for this morning. So
9 may I put those to the back?

10 But the main item on today's agenda, as my Lady
11 knows, is the application by the Secretary of State,
12 firstly, for an anonymity order in relation to G, to
13 which I do not understand there to be any objection, but
14 also, of course, for screening, in relation to which
15 there is no objection to screening from the press and
16 the public, as far as I understand the position, and the
17 only issue for my Lady is whether or not she should be
18 screened from the interested persons themselves.

19 LADY JUSTICE HALLETT: Before we go any further, Mr Keith,
20 I did have a new notebook. Carry on. There is a page
21 left.

22 MR KEITH: My Lady, that is all I propose to say by way of
23 introduction. Because it is, of course, the Secretary
24 of State's application, I will call upon my learned
25 friend Mr Hall to make his application.

1 LADY JUSTICE HALLETT: Can I ask, please, who is wishing to
2 make representations. Plainly, Mr Hall. Who else?
3 Mr O'Connor?

4 MR KEITH: Mr O'Connor in relation to the families, and
5 I understand he will be leading the representations on
6 behalf of all the families. There has been some
7 discussion, I understand, between them, and he has
8 instructions to be able to advance the arguments, if he
9 wishes to do so.

10 LADY JUSTICE HALLETT: There is nobody else who wishes to be
11 heard on this subject?

12 MR KEITH: No. My Lady has received one or two observations
13 from unrepresented families, by way of email, which
14 I will explain in due course so that everybody is aware
15 of them. But that is it.

16 LADY JUSTICE HALLETT: We haven't had any representations
17 from Mr Taylor or anything?

18 MR KEITH: No, but we have had them, as I'll explain perhaps
19 a little later, from Rosie Cowan, Michael Matsushita's
20 girlfriend, Kathryn Gilkison, Shelley Mather's mother,
21 and Mr Mather.

22 LADY JUSTICE HALLETT: Thank you very much, yes, Mr Hall.

23 MR HALL: My Lady, this application is the Secretary of
24 State's application for, as you know, anonymity
25 measures. In summary, the measures are anonymity as to

1 his name -- and I'm not going to take that any further,
2 in the light of what Mr Keith has already said -- and
3 screening as to his appearance from all of those
4 involved, with the sole exceptions of yourself, your
5 security-cleared staff and the legal representatives.

6 I have handed up a draft order should you be minded to
7 make it.

8 LADY JUSTICE HALLETT: Is that all legal representatives?

9 MR HALL: All.

10 LADY JUSTICE HALLETT: Because not all legal representatives
11 are security-cleared.

12 MR HALL: It's all legal representatives. The application
13 is supported by a certificate signed permanently by the
14 Secretary of State, which I believe you have had,
15 my Lady. It's been served and circulated by Mr Smith,
16 and I'm not going to repeat its contents, but since this
17 is an important public hearing, I'm going to draw
18 attention to its main features, if I may.

19 LADY JUSTICE HALLETT: Certainly.

20 MR HALL: It discloses that, first of all, Witness G is
21 a senior member of the Security Service with
22 approximately 20 years' service. As a member of the
23 Security Service, he represents an organisation which is
24 uniquely identified with countering the terrorist
25 threat, and he is therefore, as are all members of the

1 Security Service, subject to particular threat
2 personally and, as a senior member, may be an attractive
3 target to a terrorist organisation, if identified.
4 With the exception of the Director General,
5 Jonathan Evans, for whom additional security measures
6 have been put in place to protect him, and who accepted
7 the role of Director General knowing that he would be
8 identified and knowing that he would be, therefore, put
9 at additional risk, no member of the Security Service is
10 ever identified publicly and is, indeed, required to
11 keep his or her identity secret for the entirety of his
12 career and, indeed, even after retirement. They do so
13 to prevent any threat to themselves or their families.
14 The certificate discloses that threat assessments
15 have been carried out, and, in particular, that
16 disclosure of the name or the appearance in these
17 inquests of Witness G will increase the risk to him and,
18 in more detail, firstly, that as a member of the
19 Security Service, Witness G is regarded as a legitimate
20 target for attack by Northern Irish Republican terrorist
21 groups and international terrorist groups.
22 Secondly, that any combination of anonymity measures
23 less than those which have been sought would result in
24 a material increase in the threat to Witness G from both
25 of those two groups; Northern Irish Republican terrorist

1 groups and international terrorist groups. That, on the
2 mainland, this would represent in an increase in the low
3 threat band, based on current available intelligence --
4 and, of course, that may change -- and the possibility
5 of an attack from an unaffiliated individual can never
6 be discounted, and that in Northern Ireland, should he
7 move there or be posted there, the risk from
8 Northern Irish Republican terrorist groups, would
9 actually go up a category from low to moderate.
10 My Lady, can I just break off there? A material
11 increase means an increase that is not negligible or
12 de minimis. The fact that disclosing the identity or
13 appearance of a Security Service officer, this officer,
14 results in a material increase to the risk of their
15 safety is evidenced from the precautions that
16 Security Service employees routinely take in everyday
17 life. They do not reveal to anyone, save their
18 immediate family and most trusted inner circle, that
19 they work for the Service. This self-discipline, which
20 they adopt, is not easy. It's not done for fun. It's
21 done because revelation of who they are will result in
22 a material increase to their safety and the safety of
23 their families.
24 Then the certificate goes on to consider the
25 question of national security. It reveals a real

1 risk -- by which I mean neither a negligible nor
2 fanciful risk -- of damage to national security, based
3 in particular on Witness G's role between 1997 and 2000
4 in a series of highly sensitive operations that could be
5 compromised were his identity to be revealed, which
6 would cause damage to the Service by revealing
7 particular techniques, and which would potentially
8 compromise future operations.

9 In addition, the certificate reveals that, were
10 Witness G's identity to be compromised, this would
11 restrict the duties to which he might be assigned.

12 The certificate shows that he is one of a small
13 number of senior officers who are suitable to carry out
14 a senior operational role, ie a covert role, and
15 limiting Witness G's future deployment, would therefore
16 damage the ability of the Security Service, which is,
17 after all, dependent upon its human resources, those who
18 work for it, to protect the national security.

19 Finally, it reveals that disclosing Witness G's
20 identity or appearance would have a detrimental effect
21 on him personally. Having spent the entirety of his
22 career in the Service, it would be distressing for him
23 to have his career curtailed in any way and, more
24 generally, it would result in a loss of confidence
25 across the Service, in that individuals who have

1 dedicated themselves to protecting the national
2 security, and who have committed themselves to life-long
3 anonymity, would fear that their identities could not be
4 kept secret in comparable circumstances.

5 My Lady, as you have seen, the certificate gives
6 particular attention to the role of the properly
7 interested persons in these inquests, including those
8 who are, as they are quite entitled to do so, personally
9 wishing to ask questions of the witness. The Secretary
10 of State notes the importance attached by those who lost
11 loved ones, and I should add also those who are
12 seriously injured, to see as well as hear from the
13 Security Service witness, but she has concluded on
14 advice that the revelation of G's appearance or identity
15 to that group of persons, and assuming just for the
16 moment the formally designated PIPs in the region of 77,
17 that that would result in a material increase in the
18 ways already described.

19 The PIPs are, indeed, a subsection of the public at
20 large. Having been drawn together at random by the
21 murderous acts of the four bombers, and having concluded
22 that to reveal G's appearance and identity to the public
23 at large would result in a material risk, she's
24 concluded that so would revealing his identity and
25 appearance to the PIPs.

1 My Lady, in those circumstances, and having regard
2 to the nature of the evidence given by Witness G -- and
3 that's a subject I will return to towards the end of my
4 submissions -- and the fact that his evidence would be
5 heard in full, she has concluded that the revelation of
6 his identity and appearance is not of such critical
7 importance that G should be exposed to such additional
8 level of risk or that national security should be put at
9 real risk. Therefore, she applies in the certificate
10 for anonymity and screening, recognising, of course,
11 that the ultimate decision is for you.

12 My Lady, you have also had available to you certain
13 sensitive documents which have not been disclosed
14 publicly. If your Ladyship has read those, I'm not
15 going to propose --

16 LADY JUSTICE HALLETT: If there's anything of importance,
17 I'm afraid you may have to at least direct me to the
18 page, because I was only given them this morning about
19 five minutes before I came into court. It is a file we
20 are talking about?

21 MR HALL: It's a file. I won't refer to any of the
22 contents, but it's just behind --

23 LADY JUSTICE HALLETT: I say five minutes, 25 minutes before
24 I came into court.

25 MR HALL: It's behind annex 3 in the file, and it contains

1 the two threat assessments in full. Then -- mine has
2 actually disintegrated. Could I invite you to look at,
3 very briefly, the document behind the two threat
4 assessments?

5 LADY JUSTICE HALLETT: I was just going through it.
6 I was just, in fact, trying to work out which parts
7 of it to which reference could be made in open
8 proceedings.

9 MR HALL: The two threat assessments have been referred to
10 quite a lot in the certificate.

11 LADY JUSTICE HALLETT: I know.

12 MR HALL: The smaller annex gives further details of
13 Witness G's career, which could not be revealed. But
14 some glancing reference was --

15 MR KEITH: Would my Lady give me a moment? (Pause).

16 LADY JUSTICE HALLETT: Yes.

17 MR HALL: Has your Ladyship had a chance to read those,
18 however briefly?

19 LADY JUSTICE HALLETT: I have.

20 MR HALL: Mr Keith has asked whether I could take you to
21 paragraph 11 of the JTAC assessment in particular, which
22 I'm happy to do. He's also asked if I can take
23 instructions on whether any more of that paragraph could
24 be put into open, which I'll do at a convenient point,
25 if I may.

1 LADY JUSTICE HALLETT: Which tab am I?
2 MR HALL: Tab 3.
3 LADY JUSTICE HALLETT: 3?
4 MR HALL: Yes.
5 LADY JUSTICE HALLETT: There are two paragraph 11s. Yes.
6 That was exactly the kind of paragraph I was thinking
7 of. Mr Keith has reached obviously the same conclusion
8 I have.
9 There seem to be a number of paragraphs here that
10 are in no way matters that need to be kept from those
11 who wish to make -- but anyway, I think you need to take
12 instructions on that paragraph now, Mr Hall.
13 MR HALL: I'll do that. (Pause).
14 My Lady, I can read it out.
15 LADY JUSTICE HALLETT: Thank you.
16 MR HALL: "If the witness is unscreened (even if this is
17 only to the interested parties), we assess that this
18 will not increase the threat to him while he is in
19 court, due to the anticipated security measures set out
20 above. However, it would materially increase his
21 vulnerability in the future, as there is the potential
22 for the witness to be fully identified subsequently.
23 This could increase the capability of extremists to
24 target him and, therefore, increase the threat."
25 LADY JUSTICE HALLETT: Well, as it seems to me -- and tell

1 me if I'm wrong -- what we need to focus on, as far as
2 the second part of your application is concerned, is
3 what is there described as the potential for the witness
4 to be fully identified subsequently.

5 MR HALL: Yes.

6 LADY JUSTICE HALLETT: Now, if I were to refuse your
7 application, we are talking about a system whereby the
8 witness would be in this court, covert entry/exit from
9 the building, a huge building, many different entries
10 and exits, whereby, if there were any distinguishing
11 features of the witness, for example, unusual height,
12 the witness can be seated in court throughout, until
13 interested people have come or gone, or I have come or
14 gone, whatever. I wouldn't even mind if distinguishing
15 features, if they were physical, were -- if a hairstyle
16 was changed or spectacles adopted.

17 The witness would therefore be seen, on this
18 scenario, by members of bereaved families who notified
19 the inquest team in advance that they wanted to come.
20 We could consider a system of searching to ensure that
21 mobile phones are not just turned off, that they are
22 removed.

23 That would leave -- let's presuppose a malicious
24 member of a bereaved family, who wishes to identify the
25 witness to somebody who would harm them. What exactly

1 is that family member going to be able to do? They are
2 going to be able, despite any orders or undertakings
3 I give, to describe the witness.

4 MR HALL: Can I give you two examples? Firstly, a properly
5 interested person recognises Witness G on a train, for
6 example. They are both travelling on the same train
7 together, and either advertently, or -- and this is
8 a particular risk which, with respect, your Ladyship
9 hasn't considered -- inadvertently, gives away who he
10 is. Another person who regularly travels on the same
11 train as Witness G and is of either hostile intent or
12 has hostile intentions, overhears.

13 The second possibility is, if Witness G is deployed
14 in a covert role against security-hardened and hostile
15 targets. Again, a properly interested person,
16 advertently, or inadvertently, gives away either who
17 Witness G is, or that they recognise Witness G, and that
18 allows the target to become aware either that Witness G
19 is a member of the Security Service, or that he is not
20 the person he is covertly deployed as.

21 LADY JUSTICE HALLETT: So on this basis, somehow, in
22 a covert role, Witness G comes into contact with one of
23 the bereaved families?

24 MR HALL: That's the easiest way of expressing the risk, and
25 the difficulty is that, when you know somebody, you

1 can't readily put it out of your mind, and it's quite
2 possible to say, "I recognise that person", before you
3 realise why you recognise that person, and before you
4 realise you shouldn't say that you recognise that
5 person.

6 That's the risk. 77 or however many people in the
7 public, who Witness G would not normally be exposed to,
8 who could come across him, either as he travels to work
9 as he is with his family, or if he was deployed
10 operationally. That's why, for example, I described how
11 deployment of Witness G could be (inaudible), were his
12 identity, his appearance, to be revealed in this way.

13 LADY JUSTICE HALLETT: That's really what it comes to. It's
14 the risk of that happening. I'm not a great
15 mathematician, but I'm just looking at the families who
16 are interested people.

17 I think we have some figures, Mr Smith, on how many
18 of the families have actually attended. 38 family
19 members have attended hearings. 38 family members are
20 represented. 53 are not. Eight organisational -- we
21 are not concerned, I assume, with the organisational
22 interested persons, are we?

23 MR HALL: They wouldn't see the witness any more than the
24 other PIPs. Their legal representatives would.

25 LADY JUSTICE HALLETT: They can be excluded.

1 MR HALL: Yes.

2 LADY JUSTICE HALLETT: Right.

3 MR HALL: So, my Lady, can I then make five introductory
4 remarks, going quickly to the law which I know you have
5 seen in the context of the Met's application?

6 LADY JUSTICE HALLETT: The law, I'm so familiar with,
7 Mr Hall, I really don't think we need to take time with
8 that to any great extent. Can we focus on what the
9 final words are on when I should make these orders,
10 rather than flogging through the cases?

11 MR HALL: I'm not going to flog through any cases at all.
12 I'm just going to take you to two passages, and I'll
13 read them rather than asking you to turn them up.

14 LADY JUSTICE HALLETT: Thank you.

15 MR HALL: My Lady, can I make my introductory remarks, and
16 then turn to a few detailed submissions?

17 My Lady, can I first of all say that no one
18 underestimates the natural desire of those who have been
19 affected by the four bombers and their terrible acts?
20 To know whether their acts could have been prevented, to
21 see the witness, to observe the way in which the witness
22 gives evidence, to see, as it were, the whites of his
23 eyes as he explains whether the Security Service could
24 have prevented these bombings, that is understood, and
25 that is why the application is supported by

1 a certificate signed personally, considered by her with
2 real care. I understand, anecdotally, that having
3 a certificate from the Secretary of State on such an
4 issue is unusual and, if that's right, it's a further
5 mark of how seriously this is being taken.
6 Accordingly, we take nothing for granted in this
7 application, and I do not wish it to be thought that any
8 member of the Security Service expects anonymity as
9 a privilege or as of right.
10 Thirdly, that whilst there is a natural and human
11 desire to see the witness, there is a very human
12 dimension on the other side of the balance, and
13 I respectfully remind you that fairness to witnesses is
14 not a minor or incidental function of a coroner's
15 inquest, along with conducting an open and effective
16 inquest, you, my Lady, as a coroner, have a duty of
17 fairness to the witnesses you will be calling.
18 Witness G is your witness. You required a witness from
19 the Security Service, and he has stepped forward to do
20 that, and we submit that an inquest which is open and
21 effective, but nonetheless unfair to witnesses, is
22 a flawed inquest.
23 Fourthly, and crucially, we submit that, where
24 giving evidence without full anonymity will materially
25 increase the risk to the safety of a witness, it is hard

1 to conceive of circumstances in which it could ever be
2 fair to refuse anonymity measures, and if such
3 circumstances arose, it could only be because of the
4 most compelling and countervailing circumstances.

5 That's where the law is. In very, very brief, in
6 Saville 1 and in Re Officer L, as you know -- the court
7 said: where the risk is there, you have to find a very
8 compelling, countervailing circumstance.

9 LADY JUSTICE HALLETT: My comment was not intended to
10 underestimate the importance of the cases, merely that
11 I have become extraordinarily familiar with them.

12 MR HALL: My Lady, as you know, I'm going to be submitting
13 that, since there is a risk, you must consider whether
14 there are some compelling or countervailing
15 circumstances, and I'm going to submit that there aren't
16 any.

17 Finally, although it's right to start with
18 consideration of the risk to the witness personally, you
19 must have full regard to the wider public interest. The
20 Security Service, in its witness statement, which is
21 pretty full and pretty detailed, has gone to the wire in
22 disclosing as much as it safely can, and it's in
23 no one's interests to jeopardise national security by
24 forcing a dedicated Security Service officer, who has
25 got years of future service in him, into the open with

1 the risks that I have described.

2 LADY JUSTICE HALLETT: In making your submissions, could you
3 please also bear in mind that I do have interested
4 persons who are not represented?

5 MR HALL: I will, and I've got a particular passage I'm
6 going to address you with on that.

7 My Lady --

8 LADY JUSTICE HALLETT: The other matter I might raise is
9 that, looking at your draft order, at the moment it
10 would exclude, for example, Mr Hay.

11 MR HALL: No, because he's a legal representative.

12 LADY JUSTICE HALLETT: "... of the interested persons" is
13 what you have got. He is a legal representative to
14 counsel.

15 MR HALL: Can I just check what I wrote? My Lady, I think
16 there are two aspects. There's the identification, the
17 name, in paragraph 1. There the draft order refers to
18 not disclosing his name --

19 LADY JUSTICE HALLETT: I see. Security-cleared is not meant
20 to qualify counsel as well?

21 MR HAY: It is for purposes of name, paragraph 1. Then,
22 paragraph 2, which deals with screening, you will see
23 that everyone is included, including Mr Hay, for
24 screening purposes.

25 So, my Lady, the two brief passages from the law.

1 Paragraph 22 of Re Officer L:

2 "An allegation of unfairness which involves a risk
3 to the lives of witnesses is pre-eminently one that the
4 courts must consider with the most anxious scrutiny."

5 You are aware of that. And from Saville 1,

6 Lord Woolf endorsed the approach that:

7 "Once it is accepted that the fears of the witnesses
8 are based on reasonable grounds, the question is: is
9 there any compelling justification for naming the
10 witness, the evidence being that this would increase the
11 risk?"

12 Again, my Lady, I'm not going to take you to the
13 passage, but Lord Woolf had particular regard to what
14 was objectively the damage of not revealing the identity
15 of the soldiers objectively, accepting that there might
16 be a perception, but fundamentally, what, objectively,
17 is the real difficulty if a witness's identity is not
18 revealed, which involved looking at the relevance of
19 their identity, the relevance of their appearance, the
20 relevance potentially of their credibility, and the
21 passage I have in mind is at 68.4 of Saville 1.

22 So my Lady, I've got five submissions as to why,
23 including dealing with your point about the PIPs who
24 wish to cross-examine, as to why we invite you to make
25 these orders.

1 Firstly, Witness G's identity and his appearance are
2 entirely irrelevant to the questions to be answered in
3 these inquests. His evidence is of what might be
4 described as a corporate nature. He was not directly
5 involved in the matters that will be explored in
6 evidence and, applying what Lord Woolf said in
7 Saville 1, concealing his identity and appearance is
8 objectively of no great significance.

9 By contrast, being able to keep his name and
10 appearance from disclosure is of great significance to
11 him personally, and to the public interest in the ways
12 I have described. So that's the first submission
13 I make.

14 Secondly, your findings and the public perception of
15 your findings do not turn upon Witness G's credibility.
16 He does not give evidence about issues of disputed fact.
17 Rather, he will be answering questions about what could
18 and should have been done on the basis of facts that are
19 essentially undisputed. That's far removed, we say,
20 from inquests involving questions of disputed fact; for
21 example, who fired the fatal shot, where seeing the
22 demeanour of a witness as he gives evidence may be of
23 real importance. So we are far removed from that
24 situation.

25 Thirdly, the position in inquisitorial proceedings

1 is obviously different from criminal and ordinary civil
2 proceedings. You are not doing justice between parties
3 competing in an adversarial contest. Your task is to
4 ascertain, through the inquisitorial process, the truth,
5 so far as you are able, and the proper fulfilment of
6 that task does not require the revelation of his
7 appearance.

8 Can I deal then directly with the question of
9 whether, for example, Mr Taylor, who wished to
10 cross-examine personally, would be unduly hampered in
11 doing so?

12 We say that the questions that will be put in
13 relation to the issue of preventability will be
14 carefully put and will deserve a considered and a proper
15 answer, so far as is possible without damaging national
16 security. This is not a case for the cut and thrust of
17 cross-examination.

18 LADY JUSTICE HALLETT: Sorry, why is that any different for
19 Mr Taylor? Mr Taylor, to date, has asked moderate,
20 focused, sensible questions.

21 MR HALL: Precisely.

22 LADY JUSTICE HALLETT: He hasn't adopted an adversarial
23 approach, and has repeatedly said that he has no
24 intention of putting anyone's life at risk. I'm not
25 following why you make the point about cross-examination

1 in relation to Mr Taylor.

2 MR HALL: That's precisely the point. The questions that
3 will be put by any properly interested person will be
4 carefully put, and will receive a very measured and
5 careful answer. So this is not a case where questioning
6 is going to be based upon some of the cut and thrust of
7 cross-examination. It will be a case of substantive
8 questions being put, and substantive, carefully
9 considered answers.

10 So I submit that the difficulties that you might
11 have in some cases, where the questioner cannot see the
12 person he is questioning, will simply not arise here.

13 LADY JUSTICE HALLETT: But imagine Mr Taylor's position. He
14 would have to be some distance away, at the end of an
15 audio link, questioning a disembodied voice. He can't
16 even be, presumably, in court, because it wouldn't work,
17 would it?

18 MR HALL: I don't know if there are practical measures of
19 avoiding that.

20 LADY JUSTICE HALLETT: Apparently not.

21 MR HALL: I'm told that there are not. But, if conceivably
22 possible -- and it may be that ways can be found if we
23 all put our minds to it -- we can avoid him having to
24 put questions remotely.

25 But however hampered he would be, and I would ask

1 that the practical thoughts are turned to this, but
2 however hampered he would be, he has, in addition, you
3 to make sure that any questions that he puts are
4 answered effectively.

5 We simply submit that in the circumstances of this
6 inquest, with the sort of questions and answers that are
7 going to be coming, it's hard to see that, with
8 a combination of you, of the sort of evidence that's
9 being given, that he will, in fact, be unduly hampered.

10 LADY JUSTICE HALLETT: Right.

11 MR HALL: So, my Lady, against what we say is the
12 objectively limited interest, if any, in disclosing his
13 appearance or identity -- and I say the only basis for
14 concluding there may be any interest, really, is the
15 position of the cross-examiner, because, otherwise, his
16 identity, his appearance, is entirely irrelevant to the
17 inquests. His demeanour is not relevant to the
18 resolution of the questions you must answer.

19 So against the objectively limited interest, if any,
20 in disclosing his appearance, lies the material increase
21 in the threat to Witness G and the real risk of damage
22 to national security. We say, quite simply, where the
23 safety of a witness and his family and the national
24 security are in jeopardy, we quite simply say there are
25 no countervailing circumstances which have been

1 identified.

2 LADY JUSTICE HALLETT: Could you take me, please, to the
3 evidence that justifies your assertion that the failure
4 to afford the witness the protection of screens
5 materially increases the risk to him and where there is
6 an assessment of the level of that risk? In other
7 words, an assessment of the chances of his being
8 recognised by a member of a bereaved family on the
9 outside and accidentally identified.

10 MR HALL: Well, the statistical chances, there isn't any
11 evidence.

12 LADY JUSTICE HALLETT: No, an assessment. What I have is
13 both closed and open material which refers to the
14 possibility or the potential for the witness to be
15 identified. What I do not have is any assessment of the
16 level of that risk. I have it all in relation to
17 anonymity, but there's no opposition to anonymity.

18 MR HALL: If you go to tab 3 in the closed bundle --

19 LADY JUSTICE HALLETT: Right.

20 MR HALL: -- and if you turn to the Northern Irish threat
21 assessment.

22 LADY JUSTICE HALLETT: Yes.

23 MR HALL: So bearing in mind, at the moment, this is
24 a closed document. So I'll just refer by paragraph
25 number. It may be that more can be opened up.

1 But at paragraph 12, second block.

2 (Pause).

3 LADY JUSTICE HALLETT: That looks to me as if that could be
4 open. Is it not?

5 MR HALL: I would have thought so and paragraph 13 as well,
6 again referring to the combination of name and/or
7 unscreened.

8 LADY JUSTICE HALLETT: But it's all -- it's composite.
9 Nobody has taken the time to separate the two
10 possibilities: one, that I agree to anonymity, but, two,
11 that I agree to anonymity, but not to screens. That's
12 what I want to see analysed. Where do I find that
13 analysed?

14 MR HALL: With respect, that is that there. Let me take
15 instructions to see if I can, first of all, read it out,
16 and I can address you more fully. That is what it
17 means. It's not simply an "and/or" that lawyers throw
18 in. It is anything less than a combination of both.

19 LADY JUSTICE HALLETT: In which case, I think that you need
20 to take instructions, because I think Mr O'Connor and
21 any counsel that is not security vetted is entitled to
22 see it. Nothing is put at risk by this being ...

23 MR HALL: Let me take instructions. (Pause).

24 LADY JUSTICE HALLETT: I'm not sure it hasn't already been
25 disclosed anyway.

1 MR KEITH: It's virtually the same wording as the open
2 version.

3 LADY JUSTICE HALLETT: That's what I thought. Do you have
4 instructions? It is virtually the same. (Pause).

5 MR HALL: That is --

6 LADY JUSTICE HALLETT: So Mr O'Connor and Ms Gallagher know,
7 it's largely what they have been told already.

8 The phrase is:

9 "Where the witness is either named and/or
10 unscreened, the threat is assessed to be low. However,
11 the threat materially increases compared to the witness
12 being wholly screened and anonymous."

13 But I don't see there an analysis, as I say, of an
14 anonymous, unscreened witness.

15 MR HALL: If you look at the sentence beginning:

16 "For instance, if the witness was to appear
17 anonymously, but unscreened, before even a small group
18 of members of the public, a physical description could
19 be obtained."

20 That is --

21 LADY JUSTICE HALLETT: Members of the public, as opposed --
22 do you include in that interested persons?

23 MR HALL: Yes.

24 LADY JUSTICE HALLETT: "We assess that this would cause the
25 level of threat to materially increase, albeit within

1 the low threat band."

2 MR HALL: Yes. Then 13, which addresses the risk in
3 Northern Ireland that, if he were to appear in either
4 his own name and/or unscreened -- in other words,
5 anything less than a full combination -- would result in
6 a risk.

7 LADY JUSTICE HALLETT: What I don't see, Mr Hall, is
8 somebody analysing the chances of the physical
9 description being obtained and the identity being
10 revealed. There are assertions without assessments.

11 MR HALL: My Lady, I have already given you two --

12 LADY JUSTICE HALLETT: I know you have, but I don't have
13 it -- when I have seen risk assessments before, they
14 have included a full analysis of what is the likelihood,
15 where do the witnesses -- or where do the interested --
16 not the interested people, because it's not one of
17 the situations -- I have done it before -- but, where do
18 certain people live? What are the chances of however
19 many million people travel on London Transport or any
20 other kind of transport system that might affect the
21 witness?

22 I just see an assertion that, if you increase the
23 number of people who see him, that increases the threat.

24 MR HALL: Yes.

25 LADY JUSTICE HALLETT: That's it, isn't it?

1 MR HALL: Yes, and that is a material increase. I think the
2 figure I overheard your Ladyship say was 38. I don't
3 know where the properly interested persons currently
4 live, but, of course, they will, like everyone, move
5 around. Their loved ones were in London.

6 LADY JUSTICE HALLETT: An awful lot of the interested
7 persons live around the world.

8 MR HALL: But such is the nature of Witness G's job that his
9 deployment in a senior operational capacity could be
10 anywhere.

11 The fact that, for the entirety of their careers,
12 these Security Service officers discipline themselves in
13 this way that is difficult, cutting themselves off from
14 normal sorts of conversation, "What do you do?", "Well,
15 I'm going to have to be a bit vague about that", is
16 precisely because they do not want to increase their
17 risk by revealing themselves to anybody, unnecessarily.
18 It's hard to get into a debate about numbers and
19 statistics, but 38 people, who either advertently, or
20 inadvertently -- or 77 people who either advertently, or
21 inadvertently could identify him and risk revealing his
22 identity is not immaterial, even if you divide it by the
23 number of people in the world. It is not immaterial.

24 LADY JUSTICE HALLETT: I'm not being frivolous in mentioning
25 this, because I have been told of a trial in the

1 United States where CIA operatives or agents, or
2 whatever they are called, gave evidence with their
3 features in some way disguised. Has any thought been
4 given to -- you can disguise somebody's appearance, just
5 by changing their hairstyle, by adopting a pair of
6 spectacles or removing a pair of spectacles. Has any
7 thought been given to whether or not that is possible?
8 MR HALL: I don't believe so, but can I just take
9 instructions on that?
10 I'm told it would have been considered. I've got no
11 written evidence of that, but the point that's made to
12 me by those behind me is that it will be days in the
13 witness box, that -- I don't know what the position was
14 with the CIA officers, if it was a short surveillance
15 officer or something like that -- but he will be there
16 for many days. His appearance, his expressions, his
17 eyes, the way in which he speaks, those will be possible
18 to mask and, although yes, you are quite right, it would
19 reduce the risk of identification, it would not remove
20 the risk of identification.
21 LADY JUSTICE HALLETT: Right.
22 MR HALL: So my final point was that you, of course, can
23 keep -- were you to make the orders sought, you will be
24 able to keep the matter under review. It would be
25 open -- although we would strenuously resist this -- to

1 reconsider the matter, if you felt it was necessary,
2 that there were countervailing reasons for doing so, but
3 once his appearance is revealed, there is no going back.
4 Since you have indicated more than once that you
5 will not allow this inquest process to put individuals
6 at risk, or to damage national security, we do very
7 strongly invite you to grant these applications.

8 My Lady, that is my application.

9 LADY JUSTICE HALLETT: I'm just looking back to where the
10 Secretary of State has herself been advised as to the --
11 and considers the difference between the order for
12 anonymity and the keeping the appearance from properly
13 interested persons.

14 MR HALL: If you look at paragraph 27.

15 LADY JUSTICE HALLETT: This bundle -- this is one of the
16 problems I have been having. This bundle doesn't have
17 the --

18 MR HALL: The certificate in it?

19 LADY JUSTICE HALLETT: The full certificate. I'm missing
20 between paragraphs 25 and 29.

21 MR KEITH: I insist I hand in my copy. It is marked, I'm
22 afraid. 27 and 29 have been marked. (Handed).

23 MR HALL: I'm grateful.

24 LADY JUSTICE HALLETT: Thank you. The reason is because it
25 was -- no, I need to have the full copy, Mr Keith. None

1 of the rear of the pages have been copied.

2 MR KEITH: This is another version. That is a complete one,
3 but there is another unmarked one. (Handed).

4 LADY JUSTICE HALLETT: Thank you.

5 Sorry, Mr Hall, where were we?

6 MR HALL: It was 27.

7 LADY JUSTICE HALLETT: Mr Hall, did you wish to deal with
8 the point made in the written submissions in relation to
9 this paragraph 27? Thank you for reminding me of it.
10 The point being made that a low threat is an attack is
11 unlikely.

12 MR HALL: Yes.

13 LADY JUSTICE HALLETT: So the point being made is, if there
14 is a material increase in the risk of an unlikely
15 attack, do you have the material risk of real imminent
16 harm -- whatever the expressions are -- within the
17 cases? Did you want to deal with that point?

18 MR HALL: Yes, I'll deal with that.

19 Unlikely does not mean that an attack is not going
20 to happen. It's simply that based on the current
21 intelligence as to the groups in question and their
22 current capability, that an attack is unlikely.

23 But against that, you have got to look at the
24 evidence that the Security Service and its officers are
25 a -- I think it's described as an important and high

1 priority target for Northern Irish groups, which means
2 between different targets that the Northern Irish groups
3 might select, the Security Service is identified with
4 what those groups would particularly oppose, and in
5 relation to international terrorism, any
6 Security Service officer is an important or significant
7 target.

8 So yes, at the moment, the intelligence does not
9 reveal that an attack is likely but, as
10 a Security Service officer, they are considered
11 legitimate targets, and any increase is a material
12 increase, unless you can say it's negligible or
13 de minimis.

14 LADY JUSTICE HALLETT: That's not the point being made
15 against you, as I understand it. I think the question
16 was: if I was satisfied there is a material increase,
17 can that amount to, for Article 2 purposes, a real and
18 immediate risk to life?

19 MR HALL: My Lady, the Secretary is not relying upon an
20 Article 2 --

21 LADY JUSTICE HALLETT: Just relying on the fairness common
22 law?

23 MR HALL: Yes.

24 LADY JUSTICE HALLETT: Right. Sorry. Anything else,
25 Mr Hall? I have been interrupting you.

1 MR HALL: My Lady, no, unless there's anything else you
2 would like me to try and answer.

3 LADY JUSTICE HALLETT: Thank you. Mr O'Connor?

4 MR PATRICK O'CONNOR: My Lady, a very few introductory
5 points.

6 First of all, may we confirm that every single
7 bereaved family, interested person, from whom
8 instructions have been taken, have, without hesitation,
9 indicated that they do not resist the application for
10 anonymity. That is a tribute to their sense of
11 responsibility.

12 LADY JUSTICE HALLETT: I should also add, for public record,
13 Mr O'Connor, that we have been informed by the BBC that
14 they intended to make no submissions. So I have
15 received no submissions from the media. So
16 Mr Vassell-Adams is not going to be take me through
17 Scott v Scott.

18 MR PATRICK O'CONNOR: They have taken a responsible approach
19 as well.

20 Of course, it's a matter for my Lady, but that is
21 the approach of all the interested persons.

22 My Lady, secondly, on the issue of screening, we
23 have taken a survey of all the legal teams and their
24 clients. The significant majority oppose screening.
25 Several are neutral, and one, in fact, of our clients

1 has indicated that she, herself, would not want to see
2 the face of the witness. Of course, that doesn't mean
3 to say in a sense she's in favour. It is just that she
4 will arrange that she won't see the face of the witness.
5 So that's the state of play in relation to their wishes.
6 Thirdly, and finally, by way of introduction, this
7 is plainly a matter for your discretion, but an order
8 for screening requires specific and exceptional
9 justification, and that takes us to our first
10 substantive point, because the submissions that are made
11 on both sides should address themselves to the concrete
12 situation of the actual witness and of the proceedings.
13 Now, what we know about Witness G from his or her --
14 I must say for a long time I was saying "him", but we
15 don't know -- Witness G's statement about his or her
16 experience is as follows, and this is highly relevant to
17 the assessment of risk: that he or she has been a member
18 of the Security Service since 1991. Most significantly,
19 for these purposes, since late 2005 -- so for the last
20 five years -- has been the Chief of Staff for the
21 Director General, giving policy advice, and being
22 involved with the management of important strategic
23 plans of important strategic significance.
24 Now, not an unreasonable inference that Witness G
25 has plainly been in Thames House for the vast majority

1 or his or her time over the last five years and, since
2 late 2000 -- so we are now covering back ten years --
3 between late 2000 and early 2004, certainly was
4 a manager in the section dealing with international
5 terrorism, though significantly not Islamist terrorism,
6 and international terrorism, by the way, excludes
7 Northern Ireland.

8 Now, we respectfully submit, therefore, that the
9 possibility, which has been ventilated, of this witness
10 being deployed in a covert role on the Falls Road or in
11 the bandit country of south Armagh is, frankly,
12 unrealistic. This is a witness who has moved beyond
13 direct operational involvement where he may be
14 recognised by targets or those hostile to him, whilst
15 engaged in his or her work.

16 Now, it may be there is more and contrary
17 information in the closed material placed before you,
18 but we submit that, on what we know, it really doesn't
19 reflect very well on the reality of the submissions made
20 in support of this application that possibilities should
21 be conjured up which are as unreal as that.

22 Now, that's the position of Witness G and, my Lady,
23 two further aspects of his or her personal situation.
24 Again, the possibility that the witness may be
25 recognised whilst commuting has been raised. I do not

1 know if you have any material before you to show that
2 actually Witness G does commute by public transport.
3 This is the failure to engage with the individual facts
4 of the case. Does he or doesn't he? Frankly, if he
5 commutes by bicycle, or if he commutes by car -- we will
6 put aside chauffeur-driven car -- it's not right that
7 these possibilities should be placed before you in
8 theory, when actually they are contradicted by the
9 facts.

10 Next, again, submissions are made by my learned
11 friend on the basis of the witness's fear, the citation
12 from Lord Woolf, if the witness has a genuine fear,
13 et cetera. We have seen no material to show that the
14 witness actually, personally, is in fear.

15 Now, these four points all illustrate the fact that
16 this application falls short of the need to engage with
17 the specific circumstances of the specific rules and the
18 specific case.

19 May I next deal briefly with the possibility
20 which -- focus has not been placed on it, but it is
21 there in writing, and it has been mentioned by my
22 learned friend, and that is of, as it were, deliberate
23 exposure by an interested person who saw the features of
24 the witness.

25 First of all, this would take a pretty deliberate

1 effort and some ingenuity, granted the other precautions
2 that are going to be taken. Secondly, my Lady, it would
3 be a contempt of court, and all interested persons can
4 be warned of that, because you will be, we anticipate,
5 making an overarching order for the anonymity of the
6 witness, and any such steps by an interested person
7 would plainly be risking the object of the anonymity
8 order you make, and that is a powerful and extra
9 protection for the witness.

10 The interested persons have all been trusted,
11 regarding their undertakings, in the receipt of relevant
12 material. They are plainly, and understandably, not
13 comfortable with the implication that any of them cannot
14 be trusted in this regard. They are now a clearly
15 defined group of people who are actually attending, and
16 if that position were to change, my Lady can be invited
17 to review the situation. That's highly unlikely. So
18 that's all I say on deliberate.

19 Now, scenarios have been placed before you about an
20 accidental breach of anonymity.

21 Well, first of all, of course, voice was mentioned.
22 Voice, anyway, no matter what -- I presume we are not
23 going to have voice distortion. Everyone involved,
24 including all the public, are going to be entitled to
25 hear the voice of the witness. So we put that to one

1 side.

2 All the lawyers are going to see the demeanour of
3 the witness and, frankly, there are, at times, as many
4 lawyers present here as there are interested persons,
5 and they would be surely just as likely to have this
6 accidental confrontation on the commuting train.

7 But the interested persons, of course, come from all
8 over the country and, indeed, internationally. But
9 those who attend come from all over the country.

10 So we submit that, of course, it is always possible
11 to conjure up very remote and accidental possibilities.
12 But we submit that no material increase in risk actually
13 arises from the possibility to conjure them up.

14 My Lady, so far as the adoption of further
15 precautions by way of disguise is concerned, it is
16 revealed -- this is old hat to the Security Service,
17 because it's revealed in the authorised history of MI5,
18 with a forward by the current Director General,
19 Jonathan Evans, the massive Penguin book, 1,000 pages
20 long, that Stella Rimington herself, when she was an
21 operational officer, gave evidence in the witness box,
22 unscreened, at the Central Criminal Court, but wearing
23 such a good wig and spectacles that, when she became
24 Director General, photographs of her, nobody could
25 believe it was the same person. She came across as

1 somebody out of -- well, I can't think of a character on
2 television. But it was very effective, let me put it
3 that way, and that happened 20 or more years ago.
4 So it's not beyond the bounds of the ingenuity of
5 MI5, surely, to arrange that, if they deem it to be
6 necessary, and with your supervision.
7 My Lady, a quite separate point. Witness G has been
8 chosen, and we may make some brief submissions about
9 this with your leave later on. A separate issue. But
10 Witness G has been chosen as the public face of the
11 explanations by the Security Service on these very, very
12 important matters.
13 Now, the choice has been made, not to call the
14 current Director General, or even a past
15 Director General, to give this evidence. Even though --
16 this is a bit of an irony -- I think both of them, but
17 certainly the current, Jonathan Evans, gave evidence to
18 the Intelligence and Security Committee investigating
19 very much parallel questions. A different -- there's
20 been a shift of tactic, without using that pejoratively.
21 Now, of course, if actually the Director General was
22 being called, there would be no question of screening or
23 anonymity at all, because they are now public figures.
24 So there's a bit of an irony that the identifiable
25 public face is only being called behind closed doors,

1 but a face which can't be shown to anyone is being
2 called at the open hearings.
3 Now, that will be the subject of quite different
4 submissions, but we submit that is very unfortunate.
5 Now, my Lady, we would respectfully submit, finally,
6 that it is of very considerable importance, and not just
7 emotional importance, but granted these proceedings are
8 very significantly addressed to the concerns of the
9 bereaved -- wider public as well as important, but the
10 concerns of the bereaved -- for them to hear -- very
11 important for them to hear and see and fully appreciate
12 the content and the tone and the demeanour of the public
13 explanations that are being given in answer to their
14 questions.
15 It will bring home to them, if these explanations be
16 genuine, and in good faith -- I merely say that, I'm not
17 suggesting they are not in good faith -- but genuine,
18 well-founded and in good faith, how much more effective
19 would it be for the bereaved, for them to see and fully
20 appreciate the compelling quality of those explanations,
21 if they be so?
22 LADY JUSTICE HALLETT: Mr Hall's argument is that the
23 appearance of Witness G is irrelevant to the evidence
24 that's to be given. Essentially, this part of your
25 argument is -- forgive my use of the expression, Mr Hall

1 used it -- the "whites of the eyes" argument. It is
2 that there is a greater impact emotionally,
3 psychologically, to see and hear a witness. Is that
4 fair?

5 MR PATRICK O'CONNOR: My Lady, that is right. But may
6 I just divide it into two? Because I think Mr Hall was
7 addressing himself perfectly proper to one aspect of
8 that, which is assessing demeanour and therefore, as it
9 were, honest and credibility. Yes. But this is
10 slightly different.

11 The image of the face of a person giving an account
12 to another person is part of the experience, and will be
13 an indelible part of the memory, memories which will
14 remain with these families for the rest of their lives.
15 That dreadful phrase "bringing closure". Images matter,
16 and the visual impression of the witness -- and as
17 I say, one would have thought that the Security Service
18 would want the interested persons to be fully convinced
19 and fully to appreciate the quality of the explanations
20 that are given.

21 LADY JUSTICE HALLETT: It's the indelible nature of that
22 visual image that is causing those who instruct Mr Hall
23 such concern, is it not?

24 MR PATRICK O'CONNOR: I understand. I'm not suggesting --
25 I agree that a point well-made by Mr Hall is that the

1 witness will be in the witness box for such time as
2 my Lady permits and also as is called for by the nature
3 of the evidence and testing it. That's right. Our
4 submissions are more addressed to the reality of the
5 consequences from that.

6 Yes, the image of the face, but, query, subject to
7 disguise, as I have mentioned, will remain in the minds
8 of the interested persons. I agree. But the reality of
9 consequences following from that is where we question
10 whether there has been a material increase in risk.

11 There is a disadvantage, we submit, which is random
12 and arbitrary, to those interested persons who are
13 unrepresented and wish themselves to ask responsible
14 questions. So we, my Lady, respectfully submit that the
15 material placed before you is not sufficiently addressed
16 to the concrete situation of Witness G and this case;
17 that the ministerial certificate is quite unsatisfactory
18 to establish a material increase in risk. Everything is
19 low, except for -- and here I'm looking at
20 paragraph 15C -- everything is low risk, except for 15C,
21 where it rises to moderate -- well, forgive me. If
22 Witness G is actually deployed to Northern Ireland, it
23 increases within the moderate threat level. Well, the
24 reality of Witness G being deployed to Northern Ireland,
25 we submit, has not been established, and is highly

1 unlikely.

2 So that restricted disclosure of the appearance of
3 this witness to a very clearly defined, trusted and
4 responsible group of interested persons, with all the
5 precautions that have been ventilated, and more if
6 necessary by way of disguise, does not materially
7 increase the risk to the safety of this witness, and it
8 is significant, we submit, that Mr Hall does not rely on
9 any Article 2 risk to life, that this is a question of
10 fairness only.

11 I say "fairness only"; fairness is important. But
12 it is not as important as risk to life. So this is
13 a restricted application in that respect too. My Lady,
14 thank you.

15 LADY JUSTICE HALLETT: Thank you. Mr Keith, do you wish to
16 make any submissions?

17 MR KEITH: My Lady, if I may, I'll do so, shortly though.
18 May I make some observations, if I may, about the
19 test which must be applied by my Lady, and the approach
20 adopted by the Secretary of State, and take a step back
21 and just examine for one moment the overall merit of the
22 wider application for full anonymity, because that may
23 shed some light on the merits of this sub-application
24 for screening from the IPs, and put it in its proper
25 context.

1 The original application, my Lady, was to this
2 effect; that revelation of G's name or no screening at
3 all would lead to the threat of attack on G, going up
4 now from low to moderate, meaning an attack would be
5 possible, but not likely, and going up but remaining
6 within the moderate band if G were to be deployed to
7 Northern Ireland.

8 Proceeding on the basis, as we must, that a risk is
9 real if it is one that is objectively verified, and
10 immediate if it is present and continuing, then the
11 giving of evidence unscreened, or without anonymity,
12 would, it seems plain, materially increase the risk to
13 that higher level, and so the Article 2 threshold
14 explained in Officer L would have been met.

15 My Lady, that is, of course, why there was no real
16 objection or any objection to the full application.
17 If my Lady pauses to consider the balancing exercise
18 under common law in relation to the full application,
19 there would have been strong arguments, if they had been
20 deployed fully in the course of argument before you, to
21 support the full anonymity: a real material increase in
22 the risk of attack on G and G's family, a real adverse
23 effect on continuing operational effectiveness; the
24 potential compromise of operations; the uniqueness of
25 the Security Service and the hitherto well-established

1 ability of its officers to remain anonymous; adverse
2 effect on the ability of the service to recruit; the
3 adverse effect on morale, and finally, the fact that
4 these are inquisitorial proceedings, of course, and the
5 revelation of the name of G would in no real way hinder
6 the determination of my Lady to discover the truth.
7 That being so, the sole issue now, by very real
8 contrast, is, of course, not anonymisation, but whether
9 screening is additionally necessary to protect G's
10 safety or to prevent a real risk of substantial harm to
11 the public interest.
12 Is screening from the IPs really necessary to ensure
13 that the risk of an attack against G does not materially
14 increase the risk of attack, the Article 2 approach, or
15 could it be said to be really in the public interest,
16 the common law approach?
17 One might pose the question in a different way,
18 which is this: would allowing the IPs themselves to see
19 G really compromise G's identity? That phrase
20 "compromise identity" is the phrase actually used by the
21 Secretary of State in the certificate.
22 Would that step compromise the identity so as to
23 materially undermine the grant of anonymity, which
24 ex hypothesi, my Lady would already have granted, and
25 the screening from the public and the press. That is

1 the approach that we would commend to my Lady.
2 In reaching an answer to that question, my Lady
3 must, of course, be astute to ensure that the least
4 drastic measure to preserve anonymity is imposed. The
5 interests of justice would not be served, of course, if
6 the additional screening is imposed because it is merely
7 preferable or because it is better.
8 May I make some short observations then, turning to
9 the merits of the application?
10 The sole basis of the application for the additional
11 screening appears to be the risk that a physical
12 description could be obtained, because, of course, the
13 name would not be revealed to anybody. So the fear is
14 that the interested persons could sketch his appearance
15 in court, or, after court, describe G's appearance to
16 others, or recognise G such that physical appearance
17 becomes more widely known. That is why paragraph 12 in
18 the open certificate addresses the question of this
19 secondary revelation of the physical appearance of G.
20 We would respectfully advance the following points
21 for your consideration, and I hope I do not go as far as
22 express a strong view one way or the other, because that
23 would be outwith our role.
24 Sketching in court is obviously prohibited. It's
25 highly unlikely that the IPs would have the artistic

1 skill to record G's appearance by memory, and then
2 sketch it outside. But it would, of course, be open to
3 you to prohibit any such act, in any event.

4 Secondly, even if one were to agree that there were
5 such a uniqueness in G's appearance that a second-hand
6 description of G's appearance could lead to an increase
7 in the risk that the appearance becomes more widely
8 disseminated -- and that's rather a long shot to G's
9 looks, good or otherwise -- even then, a wider
10 appreciation of what G looks like is unlikely to
11 increase the risk that G's name would be revealed, and
12 it is the revelation of G's name that forms the heart of
13 the gravamen of the overall application. But it's open
14 to you, in any event, to order the IPs not to take any
15 steps that would assist in the dissemination of G's
16 physical appearance, or in any way to seek to subvert
17 the anonymity order.

18 Today, Mr Hall raises the possible scenario of
19 a random encounter on the train. It is not a matter, in
20 fact, that is addressed in the open certificate, or, as
21 my Lady will already have seen, in any of the closed
22 materials.

23 It is, we would respectfully suggest, a very remote
24 prospect indeed and, even if there were to be such an
25 encounter, and an IP were to think to him or herself,

1 "You are that senior officer in the Security Service",
2 it would not provide the interested person with the name
3 and, again, it is the name that is the dangerous factor
4 here.

5 It's even more remote a prospect that a hostile
6 third party would overhear or oversee such
7 a conversation, and then go, "I now know that you are
8 the description of the person who is the senior officer
9 in the Security Service". Such an encounter would be
10 a fleeting one and, again, would not provide the hostile
11 third party, assuming that were there one present, with
12 the means of establishing the witness's name.

13 In relation to whether or not there would be
14 a compromise of a future operation, again, that is not
15 something which is addressed in the materials before
16 my Lady, and we would suggest respectfully that it is,
17 again, a very remote likelihood indeed.

18 Turning to the IPs themselves, the Secretary of
19 State doesn't seek to argue that any particularly
20 interested person is likely, himself or herself, to
21 materially increase the risk of G being identified.

22 That being so, it's hard to see why there is any
23 particular reason why the IPs should seek to undertake
24 such a hostile act against the interests of G and the
25 Security Service.

1 The point made by Mr Hall and the Security Service,
2 quite rightly, in relation to anonymity generally, is
3 that there are no guarantees about the wider public. If
4 G is not screened, or G's name becomes openly known,
5 there will undoubtedly be people with hostile intent in
6 the wider public, all over the world. They may have
7 been involved in terrorism. They may not. They may
8 just simply have other additional hostile intent.
9 But in relation to the IPs and the absence of any
10 material to suggest that they, individually, would seek
11 to subvert the anonymity order which my Lady,
12 ex hypothesi, would have proposed, it cannot be assumed
13 that they are a subset of the wider public, which is the
14 basis upon which the Secretary of State advances her
15 argument in the open certificate. Putting it in other
16 words, as my Lady has observed, malice cannot be
17 presumed on the part of the IPs.
18 It may be, my Lady, for that reason, that the
19 overall assessment reached by the Security Service, as
20 my Lady knows openly, is that, although there is
21 asserted to be a material increase in the risk, the risk
22 would still remain in the low category.
23 If there were some belief that there would be
24 a hostile act on the part of the IPs, one would readily
25 assume that the risk would go up to moderate.

1 Ultimately, my Lady, what matters is the assessment
2 of the respective risks between screening from the
3 public and the press and, secondly, screening from the
4 IPs. As my Lady has observed, the analysis of the
5 respective risks is simply not addressed in the material
6 before you.

7 The assertion is made that there is a material risk,
8 that there is, in our respectful submission, a degree of
9 doubt about the basis for that assertion, because in the
10 closed material in paragraph 11, to which I have taken
11 my Lady and my Lady has directed to be openly read, what
12 is, in fact, relied upon is a potential, but it is an
13 ill-described potential.

14 There is a further point made in the certificate to
15 the effect that there is a risk of G being identified by
16 an IP who comes forward in the future, or rather
17 a person who comes forward in the future to be joined as
18 an IP. But the simple answer is, of course, my Lady
19 would revisit the issue if the risk were to materially
20 increase by virtue of such a person coming forward and
21 seeking to join as an IP, provided, of course, G has not
22 yet given evidence.

23 So, my Lady, approaching it in the round, and
24 reverting to the test that I adumbrated, if you conclude
25 that not screening from the IPs would not materially, in

1 the sense that there is a real and immediate risk,
2 increase the risk of an attack on G, then the
3 application would fail under Article 2, and it's notable
4 that Mr Hall doesn't seek to rely upon Article 2, and
5 that may assist my Lady in relation to the balancing
6 exercise, which I'll come to in a moment, in relation to
7 common law.

8 If -- and, of course, he declines reliance upon
9 Article 2 -- you consider that there is no real increase
10 in the risk, then the Article 2 application would have
11 to fail.

12 Turning to the balancing exercise at common law,
13 could I invite my Lady to look very briefly at a test
14 posed by Sir Sydney Kentridge in the Bloody Sunday case?
15 It's set out in the judgment of Lord Woolf in the report
16 of the proceedings before the Court of Appeal, and
17 I know my Lady has had a hard copy.

18 LADY JUSTICE HALLETT: Where? I read it because --

19 MR KEITH: I know my Lady knows it very well.

20 LADY JUSTICE HALLETT: Mr Hall sent it to me. I have read
21 it on screen.

22 MR KEITH: Could I hand in to my Lady, in hard copy again --

23 LADY JUSTICE HALLETT: Having stopped from Mr Hall going
24 unnecessarily through the authorities, what is the point
25 you want to make?

1 MR KEITH: Sir Sydney Kentridge posed the balancing exercise
2 at common law in a particularly apposite and careful
3 way, in a way that was accepted by the Divisional Court
4 and the Court of Appeal. (Handed).

5 LADY JUSTICE HALLETT: Thank you.

6 MR KEITH: Given the inquisitorial function of the
7 tribunal --

8 LADY JUSTICE HALLETT: Which paragraph?

9 MR KEITH: It's paragraph 45.

10 LADY JUSTICE HALLETT: Thank you.

11 MR KEITH: Sir Sydney Kentridge posed this question:
12 "Given the inquisitorial function of the tribunal,
13 and given its clear finding that anonymity would not
14 impede it in its fundamental task of discovering the
15 truth, could a reasonable tribunal conclude that the
16 additional degree of openness to be gained by disclosure
17 of the names of the 17 soldiers who fired shots is so
18 compelling of public interest as to justify subjecting
19 them to a significant danger to their lives?"
20 If I may be so bold as to say so, beautifully put.
21 It is a useful indicator because, in the present case,
22 my Lady, the disputed application is not for revelation
23 of G's name, but only for screening of G's physical
24 appearance from the IPs, and by contrast, the reverse
25 side of the balancing exercise, it is not said that

1 there is a significant danger to G's life if the
2 application is rejected. It is said, by contrast, that
3 there is asserted to be a material increase in risk, but
4 it remains within the low boundary and, properly
5 analysed, it is an assessment of a future potential, but
6 unqualified, risk.

7 The threat, of course, in the Bloody Sunday case was
8 considerably greater, because there was evidence that
9 the soldiers would be seen as legitimate targets for
10 attack, and it was described as a significant level of
11 threat.

12 LADY JUSTICE HALLETT: Well, let's take Sir Sydney's test
13 and apply it to the facts of this case, as I'm sure
14 Mr Hall would wish me to do.

15 MR KEITH: Yes.

16 LADY JUSTICE HALLETT: Could a reasonable tribunal conclude
17 that the additional degree of openness to be gained by
18 refusing the application for screens be so compelling
19 a public interest as to justify subjecting Witness G to
20 a significant danger? You say his argument falls down
21 because he's not said there is a significant danger.

22 MR KEITH: It's open to my Lady to conclude that there's no
23 significant danger on that side of the balancing
24 exercise and, on the reverse side, the public interest
25 and the openness. We are not dealing here with

1 a revelation of the name, but, of course, of a screening
2 measure to a restricted subset of the public: namely,
3 the IPs.

4 In answering that balance, could I simply put before
5 my Lady the pros and cons of the competing
6 considerations to which my Lady might wish to have
7 regard?

8 My Lady might wish to consider, in favour of not
9 granting the application, the following factors: one,
10 the protection already afforded by the anonymity order
11 and the screening from the press and the public; two,
12 the conclusion, if you reach it, that revelation of G's
13 physical appearance to the IPs would give rise to no
14 real increase in a risk of attack, only a modest
15 increase in the potential for future possible
16 identification; three, the intense personal interest of
17 the interested persons in these proceedings, and in
18 particular in this issue, preventability; four, the fact
19 that, if G is screened from the IPs, then the
20 unrepresented interested persons would have no ability
21 to see the witness while questioning him, and of course
22 Mr Taylor is an obvious case in point; and, five, it is
23 notable that no subjective fears appear to have been
24 expressed on part of the applicant.
25 Those factors, to which my Lady --

1 LADY JUSTICE HALLETT: Sorry, no objective --

2 MR KEITH: No subjective.

3 LADY JUSTICE HALLETT: I was going to say, it appears from

4 the witness himself or herself.

5 MR KEITH: Those factors, which would assist Mr Hall in the

6 making of an application, would seem to us, with

7 respect, to be the following: (a), the fact that this is

8 not a criminal trial, it is of course inquisitorial, and

9 Mr Hall made that point. The considerations which

10 attach to criminal proceedings, therefore, and the

11 rights of defendant have no play here.

12 Secondly, G's identity and appearance is simply not

13 in issue. They are both irrelevant.

14 Thirdly, the fact that even a modest revelation to

15 the interested persons would represent an exceptional

16 departure from all previous practice.

17 LADY JUSTICE HALLETT: Sorry, what do you mean by that?

18 MR KEITH: The point made by the Secretary of State,

19 my Lady, that it is unheard of for any Security Service

20 witness to have their physical identity or their name

21 revealed in the course of public proceedings.

22 LADY JUSTICE HALLETT: That's name.

23 MR KEITH: Yes, or physical appearance, my Lady. There may

24 be one or two very rare examples, but I'm bound to say,

25 for my part, I cannot think of any scenario in which

1 a Security Service witness has been physically seen by
2 parties in open proceedings as opposed to their legal
3 representatives.

4 MR HALL: My Lady, can I help on that? We are aware of one,
5 which was a criminal case, where the identity of the
6 particular Security Service officer was in issue, and
7 his identity was revealed, with the screen being pulled
8 back very fractionally, so the defendant in the case
9 could see, and it was put back again. So we are aware
10 of one.

11 MR PATRICK O'CONNOR: My Lady, I also cross-examined
12 a senior Security Service witness about 15, 20 years ago
13 in an Irish terrorism trial, who gave evidence, in fact,
14 perfectly openly. We were able to see him, the accused
15 was able to see him. It was before Mr Justice Alliot, and
16 that was even despite the fact that
17 Mr Ronald Thwaites was defending as well.

18 MR KEITH: I shall pass over that libellous observation.
19 My Lady, it seems clear that it would, nevertheless, be
20 a very exceptional step. The last point which I think
21 could properly be made --

22 LADY JUSTICE HALLETT: Wait a minute. Let's go back to
23 exceptional. It's exceptional to make an order for
24 anonymity.

25 MR KEITH: Not as exceptional.

1 LADY JUSTICE HALLETT: No, but we are in exceptional
2 territory generally.

3 MR KEITH: We are in particularly exceptional territory,
4 because my Lady knows that in the criminal sphere, for
5 example, there are, as it happens -- and, of course, it
6 was a point reflected upon by their Lordships in the
7 Supreme Court case, *The Guardian Media* -- there are
8 quite a few applications made. Indeed, there was
9 a celebrated remark made by Lord Rogers to the fact that
10 the dock in the Supreme Court looked like an alphabet
11 soup.

12 The fact is, quite a few anonymity applications are
13 made, and Parliament has given effect to a whole
14 structure for the making of anonymity applications, as
15 my Lady knows well, in the criminal sphere under the
16 provisions in the Criminal Justice Act 2009.

17 They are commonplace. They are not always granted,
18 and, of course, they can only be granted where the
19 interests of justice really demand that they be so
20 granted.

21 LADY JUSTICE HALLETT: Yes, but concern has been
22 expressed -- rightly, in my view -- that anonymity
23 orders were being made too frequently, and they are
24 meant to be exceptional.

25 MR KEITH: Quite so. There is a subset of that

1 exceptional, with respect, which is, in relation to
2 the Security Service, the grounds upon which the public
3 interest has prayed in aid on behalf of those making
4 application are very much stronger than would be the
5 grounds relied upon in a usual special measures
6 scenario.

7 LADY JUSTICE HALLETT: But we are exceptional because we are
8 in anonymous witness territory. We are exceptional
9 because a senior member of the Security Service is
10 giving evidence. The whole thing is exceptional.

11 MR KEITH: It is.

12 LADY JUSTICE HALLETT: So I'm not quite sure how far your
13 point goes, to say that it requires -- it's
14 an exceptional departure from previous exceptional
15 situations. We are talking in exceptional terms.

16 MR KEITH: We are, but it does seem that, maybe with
17 exception of one or two cases in which Security Service
18 witnesses have given evidence, it just simply hasn't
19 happened before that their physical appearance has been
20 known to a subset of the public for good reason, no
21 doubt.

22 But in the present case, it's open to Mr Hall to
23 make that point to you. If he thinks it's a bad point,
24 perhaps he will expressly disallow it, or my Lady will
25 reject it. But it emphasises -- I think it reflects the

1 strong public interest considerations that normally
2 attach to any application made on behalf of the
3 Security Service. It is one of the features to which
4 my Lady may have regard.

5 The last one in support of the application might be
6 this point. The heart of the Security Service
7 application is the statement that any departure from the
8 hitherto hidden world of the Security Service is likely
9 to lead to a heightened risk, and by that I mean
10 this: they are not really in a position to be able to
11 quantify the actual risk that might be posed by having
12 the IPs see G, because it's not something that's simply
13 susceptible to quantification.

14 That doesn't mean, on their part, that there is no
15 risk. It simply means it's impossible to quantify it.

16 In the way of these things, if you do allow an
17 appearance to become known, obviously there is
18 a snowballing effect. There is certainly a theoretical
19 potential of a real risk to G. What cannot be
20 quantified is the actuality of that potential risk, and
21 that doesn't mean to say that their concerns are not
22 genuinely held.

23 My Lady, it seems, with respect, that those are the
24 competing factors in the application of the balancing
25 exercise, and I don't think it would be appropriate for

1 me, my Lady, to express any views as to which are the
2 commanding factors, but my Lady will observe that the
3 list of factors against the application is rather longer
4 than those in support.

5 Could I also raise, finally, the comments made by
6 the interested persons, so that everyone is aware of
7 what they have said?

8 Mr Smith has received a number of communications
9 from Rosie Cowan, Michael Matsushita's girlfriend. She
10 has no comments.

11 Kathryn Gilkison, Shelley Mather's mother, no
12 objections. Ms Gilkison said:

13 "I believe that the person should be protected and,
14 if this enables that individual to be questioned, that
15 is all that is needed."

16 Mr Mather, for his part, said he would not wish the
17 witness to be screened from the IPs themselves.

18 Mr Taylor, on the last occasion on Friday, as my Lady
19 will recall, said these words:

20 "I'm the last person who would ever want to put the
21 security of our country at risk."

22 Mr Smith also raises, quite rightly, a practical
23 issue, which is that the layout of this room means that
24 it wouldn't be possible to screen a witness from some
25 persons in the court, but not others. The IPs would

1 have to be in an annex, and so Mr Taylor wouldn't be
2 practically able to be in court to see part of the
3 witness or to hear the witness more closely. He would
4 have to relay his questions by phone for others to put.
5 He would have to be outside with all the others.
6 My Lady, that is all that I think I can advance in
7 relation to the issue before you.

8 LADY JUSTICE HALLETT: Thank you. Mr Hall?

9 MR HALL: My Lady, the law. I don't want to go there.

10 LADY JUSTICE HALLETT: No, you can, Mr Hall. I cut you
11 short earlier only because, every time issues of this
12 nature come up, I seem to be taken through them in some
13 detail. But, if it's important, you can take me back.

14 MR HALL: All I'm going to do is to say that, in our
15 submission, you shouldn't put too much focus on the test
16 adumbrated by Sir Sydney Kentridge. The proper test for
17 the common law is at paragraph 29 of Re Officer L, which
18 I know you will have read. I have a further copy here.

19 LADY JUSTICE HALLETT: If you have to hand -- is that a copy
20 of Saville 1?

21 MR HALL: It was. I have got two copies. (Handed).

22 LADY JUSTICE HALLETT: Thank you.

23 MR HALL: Paragraph 29, where Lord Carswell refers to the
24 proper approach both ways:

25 "So in pursuit of this end, I suggest, with the

1 exercise to be carried out by the tribunal faced with
2 a request for anonymity ..."

3 That includes screens in this context:
4 "... should be the application of the common law
5 test with an excursion, if the facts require it, into
6 the territory of Article 2. Such an excursion would
7 only be necessary if the tribunal found that, viewed
8 objectively, a risk to the witness's life would be
9 created or materially increased if they gave evidence
10 without anonymity. If so, it should decide whether that
11 increased risk would amount to real and immediate risk
12 to life."

13 In other words, you only get to the Article 2
14 threshold if, not only is there a material increase, but
15 also it amounts to real and immediate risk to life:
16 "If so, it should decide whether that increase ...
17 if it would, then the tribunal would ordinarily have
18 little difficulty in determining that it would be
19 reasonable in all the circumstances to give the witness
20 a degree of anonymity. That would then conclude the
21 exercise for that anonymity would be required by
22 Article 2 and unnecessary for the tribunal to give any
23 further consideration to the matter.
24 "If there would not be a real and immediate threat
25 to the witness's life ..."

1 So you haven't gone all the way, but there is still,
2 for example, a material increase, albeit not giving rise
3 to real and immediate risk:
4 "... then Article 2 would drop out of consideration,
5 and the tribunal would continue to decide the matter as
6 one governed by common law principles."
7 So it's not right to say that risk to life only
8 comes into the Article 2 exercise. It comes into the
9 common law exercise, and it's only necessary to go to
10 the Article 2 exercise if that risk to life amounts to
11 real and immediate risk to life.
12 Now, I'm not basing my submissions on that. So we
13 don't need to go there. But under common law, as
14 a matter of fairness, you are obliged to have regard to
15 risk to life.
16 The only point that's really been made against me,
17 I think, is that you haven't got, in addition to
18 objective evidence of a material risk, evidence of what
19 Witness G himself thinks; ie the subjective evidence.
20 But it's hard to see that Witness G is going to disagree
21 with the threat assessments carried out by the
22 Security Service. So you are --
23 LADY JUSTICE HALLETT: Given that he is a policy adviser to
24 the Director General, I don't think so.
25 MR HALL: Exactly. So you are there.

1 The passage that is routinely referred to in
2 relation to common law is the passage from Saville 1,
3 where they found that there was a material increase.
4 They weren't looking at Article 2. If I can just read
5 the paragraph from paragraph 68.5:
6 "In our judgment, the right approach here, once it
7 is accepted that the fears of the soldiers are based on
8 reasonable grounds, should be to ask: is there any
9 compelling justification for naming the soldiers, the
10 evidence being that this would increase the risk?"
11 So, my Lady, I entirely accept Mr Patrick O'Connor's
12 moderate and reasonable submissions that you need
13 specific evidence to depart from the normal rules, but
14 you do have that specific evidence.
15 Mr Keith has effectively attempted to downplay it by
16 saying the chances of two people bumping into each other
17 are remote, unlikely. I agree, they are remote and
18 unlikely, but they are real and, therefore, there is an
19 increase of the risk.
20 Unless you are able to say that that risk is
21 negligible, or de minimis, that is the evidence. That
22 is the specific evidence which justifies, in fact, we
23 would say requires you to depart from the normal rule
24 that people will see witnesses who give evidence.
25 LADY JUSTICE HALLETT: Can we just analyse that? You say,

1 if there is any risk, then I'm obliged to grant all
2 protective measures. Where does the fairness to the
3 interested persons come into this balancing exercise?

4 MR HALL: You are not obliged to. That's wrongly expressed
5 by me. But you should look and see if there are any --
6 where there is a material increase, you should consider:
7 are there any compelling countervailing circumstances?

8 LADY JUSTICE HALLETT: Yes.

9 MR HALL: I agree that the bereaved being able to see the
10 witness's eyes is a countervailing factor. It's just
11 that we say it's not a compelling, countervailing factor
12 and, therefore, it wouldn't outweigh the material
13 increase in the risk to life of Witness G.

14 So you take it into account, but ask yourself, "Is
15 it compelling?", bearing in mind there is evidence of
16 risk and, if your conclusion is that it is not
17 compelling, and we say it is not in truth compelling,
18 then you should in your judgment grant the application.
19 My Lady, the last thing I was going to say is that,
20 although it has been said that, well, you know, this
21 witness is very senior, it's a load of -- it's not going
22 to happen that he is going to be deployed, no. There
23 are, in fact, senior operational roles, both in
24 Northern Ireland, and on the mainland. So the
25 possibility of him being deployed covertly is

1 potentially open, but would be curtailed should he be
2 exposed to that risk, and so it would have a detrimental
3 effect on his future deployment.

4 So there are two aspects, both a risk to him, and
5 the real risk of damage to national security.

6 My Lady, may I just turn my back a moment?

7 LADY JUSTICE HALLETT: Please do. (Pause).

8 MR HALL: I'm reminded to point out, it's not only the
9 evidence, it's also the assessment of the Secretary of
10 State personally, and that is something to which, in our
11 submission, some careful consideration should be given,
12 and shouldn't be -- I'm not suggesting it was, but it
13 shouldn't be taken lightly, if that is what her
14 assessment is, which it is.

15 LADY JUSTICE HALLETT: Thank you all very much. I usually
16 take a break for the stenographer. I think we will take
17 a break, and I'll take advantage of that break to
18 consider further the submissions, and I hope to return
19 at 11.30.

20 (11.10 am)

21 (A short break)

22 (11.36 am)

23 (Ruling removed pending approval)

24 (11.54 am)

25 MR KEITH: Thank you, my Lady. For the moment, may I simply

1 invite my Lady therefore to grant the order which
2 Mr Hall put forward, subject to an amendment of the last
3 two lines of the second paragraph, so that it reads:
4 "Witness G is to give evidence from behind a screen
5 and/or by videolink so as to be visible only to the
6 coroner, to the security-cleared staff to the inquests,
7 to Counsel to the Inquests, to the legal representatives
8 of the interested persons and the interested persons."

9 LADY JUSTICE HALLETT: Thank you.

10 MR KEITH: My Lady, may I, in the short time remaining,
11 raise two or three short points?

12 LADY JUSTICE HALLETT: Actually, I think it's better if, for
13 the time being, I don't make an order under the second
14 limb, because at the moment my plan is that I hear the
15 evidence in court, but without screens, but with closed
16 entry to court. In other words, only those in court.
17 So I think I would like you all to have an opportunity
18 to consider before I rule in accordance with limb 2.

19 MR KEITH: I take my Lady's point. It is practically
20 a different scenario, although the effect is absolutely
21 the same. Certainly we can amend it to reflect the
22 practical reality.

23 My Lady, may I raise one or two additional points,
24 if I may? I appreciate that not all the parties are
25 here today, but of course, what I say will be

1 disseminated through the transcription process.
2 The first point concerns the timetable for February
3 and the early part of March.
4 My Lady knows that the witnesses for the issues of
5 forensic evidence, Command and Control, background and
6 preventability, have now been scheduled, and if they are
7 not also on Lextranet -- I think they already are --
8 it's therefore now plain what the future course of these
9 inquests will hold.
10 May I make one or two points in relation to the
11 timetable? Concerns had been expressed by Mr Coltart in
12 particular as to the difficulties of addressing Command
13 and Control in relation to the London Ambulance Service
14 and the London Fire Brigade on account of the continuing
15 disclosure of documents, in particular from the London
16 Fire Brigade.
17 On account of those issues, and because of
18 difficulties with particular witnesses, Command and
19 Control, insofar as it affects the London Ambulance
20 Service and London Fire Brigade, has been put back to
21 the week of 28 February, after my Lady has concluded
22 preventability.
23 The first week of Command and Control, which will be
24 before background and preventability, will therefore
25 address Transport for London, British Transport Police,

1 City of London Police and the Metropolitan Police.
2 My Lady, the schedule contemplates that the evidence
3 will finish on 3 March with the evidence of the senior
4 investigating officer in operations, namely, Detective
5 Chief Superintendent McKenna, who will address one or
6 two of the residual issues that have arisen in relation
7 to the investigation of the atrocities on 7 July, but of
8 course, only those issues that my Lady will determine
9 are within the scope.

10 We trust, and we hope, that adequate time with this
11 timetable will have been given to all the parties to
12 address the many issues that are still to be determined,
13 and a great deal of time, as my Lady knows, has gone
14 into the schedule, and also by way of preparation for
15 background and forensic as well as the PI process for
16 preventability.

17 The second point concerns the legal position at the
18 conclusion of my Lady's hearing. Now that we are
19 approaching the last five weeks, we need to set aside
20 some time, and provisionally we have identified
21 3 February, or if that is too soon, 18 February, for
22 legal argument on this issue of law: namely, to what
23 extent, if at all, may the factual issues that have been
24 explored in the course of the hearing relating to the
25 responses of London Underground and the emergency

1 services, and which will be explored in relation to
2 Command and Control and preventability, in principle be
3 reflected in the inquisition form and/or any rule 43
4 report.

5 My Lady, it's an important issue because there is
6 obviously an expectation that my Lady's views on the
7 very substantial amount of evidence that has been
8 received finds reflection somewhere in the public
9 domain. But, because this is not an Article 2 inquest,
10 as my Lady ruled in the Easter of last year, the law is
11 not entirely straightforward.

12 It's plain that the parties are not entitled to
13 address you on the facts at the conclusion of the
14 hearing, or in relation to 43, rule 43. But they
15 obviously can address you in relation to verdicts. But
16 there may be a somewhat sterile debate, given the plain
17 anticipation that the only verdict which could be
18 returned would be that of unlawful killing.

19 So there needs to be some resolution as to what
20 a non-Article 2 verdict may accommodate. That is to
21 say: how far can the verdicts go?

22 So we would invite my Lady to hear legal argument on
23 the legal extent of that possible argument before the
24 interested persons address you, in fact, at the
25 conclusion of the evidence on what the verdicts should

1 actually be.

2 So may I invite my Lady to order that there be legal
3 argument, subject to other views, on this legal issue on
4 3 February, which is a sitting but non-evidence day, and
5 to that end invite my Lady to order that the interested
6 persons file by 4 pm on Thursday, 27 January, their
7 written submissions, and that your counsel respond by
8 4 pm on 1 February --

9 LADY JUSTICE HALLETT: Sorry, Mr Keith. I just -- I think
10 we are going into too much detail. I think with the
11 other people not here, I will certainly consider making
12 such a direction on Monday, but I think others really
13 need to have a chance to consider it.

14 MR KEITH: Certainly. My Lady, they will hear what I have
15 said, and they will come prepared on Monday to deal with
16 that. But I raise it now, obviously, because time needs
17 to be set aside in people's diaries, for that potential
18 argument on either 3 or 18 February.

19 LADY JUSTICE HALLETT: It is quite a complex issue. So
20 I think --

21 MR KEITH: It's not a straightforward issue at all.

22 LADY JUSTICE HALLETT: I think the sooner we grapple with
23 it, the better. But anyway, I'll hear submissions.

24 MR KEITH: My Lady, the next point concerns a discrete issue
25 arising out of the handwritten surveillance logs that

1 were, of course, prepared in February and March 2004,
2 and the present position is that, although typed
3 versions of those logs, events logs, have already been
4 disclosed by the Security Service and the
5 Metropolitan Police and West Yorkshire Police, and have
6 been uploaded into Lextranet, objection has been raised
7 as to whether or not the original handwritten logs may
8 be similarly uploaded on to Lextranet.

9 Before I express some trenchant views on the wisdom
10 of that objection, could I invite the
11 Metropolitan Police to indicate whether or not they
12 maintain it?

13 MS HUMMERSTONE: My Lady, I don't want to take up too much
14 time. In short, it is maintained. I understand, of
15 course, the frustrations that it causes, but I'm
16 instructed that the Metropolitan Police Service cannot
17 concede to the publication on Lextranet of the
18 surveillance logs, albeit in their redacted form.
19 The anxiety of the Metropolitan Police Service is
20 that this will create a precedence in future cases. But
21 the basis for their objection is to be found in
22 a national policing policy, which dictates certain
23 procedures in relation to the handling of surveillance
24 logs. It appears to refer only to criminal cases, but
25 in any event, it states that whilst, in certain

1 circumstances -- unspecified, unfortunately --
2 surveillance logs can be copied for the defence, that
3 the number of copies, and the suppliers, and the
4 recipients of those copies should be noted, in order, it
5 appears, that control can be exerted over their onward
6 distribution. Of course, that's not possible or
7 achievable if the logs are placed on Lextranet.
8 That said, I acknowledge that the surveillance logs
9 in their present form contain no sensitive detail and,
10 if your Ladyship were to order that they were placed on
11 Lextranet, then so be it. I have nothing further.
12 LADY JUSTICE HALLETT: I think you might have begun your
13 submissions, "I'm instructed to submit".
14 MS HUMMERSTONE: I tried to make that clear.
15 LADY JUSTICE HALLETT: I don't think I need to hear your
16 trenchant views, Mr Keith. I think I may have a few of
17 my own. I can see no reason whatsoever why the
18 documents should not be put on to Lextranet. There are
19 no matters of Public Interest Immunity and, as you
20 rightly pointed out, typed copies are already there.
21 MR KEITH: Thank you, my Lady.
22 The last point concerns the general issue of
23 disclosure for the purposes of preventability. May
24 I make four very short points, only one of which I think
25 will require further argument.

1 Firstly, the process of disclosure is almost
2 complete, subject to some further debate about remaining
3 audio and video recordings of the meetings in February
4 and March 2004. The extent of existing redactions from
5 the Gilbertson material -- my learned friends will know
6 to what I'm referring -- an unresolved PII claim
7 concerning the quarterly reports and part of the ELGs,
8 and a Downtempo gist, to which open reference has been
9 made in the witness statements of Messrs Parkinson and
10 G, Parkinson being a senior officer from the
11 West Yorkshire Police.

12 A great deal of material has been disclosed, and
13 certainly the vast majority of the material that will
14 ever be disclosed, given the constraints of PII.

15 My Lady knows, and I cannot emphasise enough, the amount
16 of work that has gone into this exercise.

17 I do know that my learned friend Mr Patrick O'Connor
18 has some concerns about the remaining disclosure issues,
19 and he has filed some written submissions, dated 17
20 January, with specific requests.

21 Can I invite my Lady, rather than hear argument on
22 that now, to allow Mr O'Connor and the other Mr O'Connor
23 and myself to discuss those requests? Some will not be
24 open to be dealt with by us. Some will have to be
25 passed on. Some have already been passed on to the

1 relevant authorities. Some have some force and we will
2 need to think further upon them.

3 A second concern has been expressed about whether or
4 not the IPs will have time -- particularly,
5 Mr Patrick O'Connor -- to deal with preventability,
6 given the disclosure position, and whether he has enough
7 time to prepare before the scheduled commencement of
8 that issue. But as you will now have seen from today,
9 and from what I have said, it will not now commence
10 until 21 February and, therefore, they have over a month
11 to deal with the preventability issues and, of course,
12 the vast majority has now been disclosed.

13 I have to say that the open disclosed material
14 amounts to no more than two or three bundles. That is
15 plainly susceptible to being addressed and prepared in
16 the time left to him.

17 What might be much more difficult would be the
18 preparation of the Crevice transcripts, which run to
19 some 25 bundles. But that material was made available
20 last year and, in any event, Mr O'Connor, having
21 appeared in that trial, is, I have no doubt, intimately
22 familiar with that material anyway. So we do hope that
23 there will be sufficient time for his team to digest the
24 material. But as I say, if there are specific
25 difficulties, we will raise them before my Lady next

1 week.

2 Thirdly, we have proposed a core bundle containing
3 documents that have been disclosed from the
4 Security Service, West Yorkshire Police and the
5 Metropolitan Police Service. It includes
6 gists/summaries of Babar's evidence, or Babar's reports,
7 messages, actions, and we've tried to put those
8 documents in chronological order, to assist my Lady and
9 the parties.

10 That suggested draft index is with my learned
11 friends who represent the Security Service and the
12 Metropolitan Police as well as Mr O'Connor. We would be
13 very grateful if they would respond as soon as they can
14 with their suggestions on that list, bearing in mind
15 it's not an easy bundle to prepare, and the sooner we
16 have it, the sooner counsel can get on and prepare their
17 submissions for that week.

18 Lastly, I know that my learned friend
19 Mr Patrick O'Connor wishes to raise today the issue of
20 whether or not the Witness G is a sufficient response to
21 the issues that my Lady has determined should be
22 included with scope.

23 Putting it another way, they query whether or not
24 the putting up of a single witness is a sufficient
25 response by the Security Service.

1 Before my Lady hears him --

2 LADY JUSTICE HALLETT: I'm not sure that I'm prepared to.

3 I have always said I have other commitments --

4 MR KEITH: My Lady, yes.

5 LADY JUSTICE HALLETT: -- and I especially sat early, and

6 have put aside the time so far, and I'm not sure that

7 I'm prepared to hear it today.

8 MR KEITH: Would my Lady consider this course? I raise it

9 because it's been raised by my learned friend, and

10 plainly, if this argument is to be developed, it needs

11 to be developed sooner rather than later, so that, if

12 you were to rule that there should be further witnesses

13 made available, plainly time is of the essence.

14 I'm bound to say that we have quite substantial

15 objections to any application to my Lady that the

16 Security Service be directed to put up another witness,

17 for all sorts of obvious reasons.

18 If my learned friend does wish to pursue the

19 argument, then some time will need to be put aside next

20 week for it.

21 What I had in mind was that he simply outlined today

22 so that people can reflect on his position, without

23 inviting my Lady to make any ruling today, not least

24 because of the shortness of time.

25 LADY JUSTICE HALLETT: I'm meant to be elsewhere at 12.30.

1 MR KEITH: My Lady, that is all I intended to say, and
2 I know that he can raise that in five minutes, and then
3 that is it for the day.

4 MR PATRICK O'CONNOR: My Lady, we welcome an update from my
5 learned friend Mr Andrew O'Connor on the state of play
6 about preventability disclosure. In fact, we really
7 need it. That will inform many other aspects of our
8 approach, and we will be sitting down immediately
9 my Lady rises today to do that.

10 My Lady, we will certainly respond, as soon as
11 possible, over the preventability bundle index.

12 May I just raise one issue about specific documents?

13 We have resolved surveillance logs. Photographs,
14 though, they have been subject to the same stricture --

15 MR KEITH: That's in our list of matters to discuss, if
16 I can assure my learned friend.

17 MR PATRICK O'CONNOR: I'm grateful. That's of quite
18 considerable importance. We will try to resolve that as
19 well.

20 My Lady, on the question of adequacy of Witness G,
21 I can literally do, in two or three minutes, what our
22 thoughts are at the moment.

23 There is, of course, no objection to Witness G being
24 called at all. He is a well-positioned witness to talk
25 about systems and resources.

1 However, he has absolutely no history of --
2 absolutely no involvement in any of these investigations
3 by way of operational involvement or supervision.
4 Secondly, he has, it seems, a complete absence of any
5 involvement in any kind of Islamic terrorism
6 investigations. Again, operationally or in
7 a supervisory capacity.
8 That is a very striking contrast, if we may say so,
9 with the witnesses put forward by the Metropolitan
10 Police Service -- Mr Prunty and Mr Clark -- who could
11 not be better positioned to talk about the relevant
12 issues, as well as Mr Parkinson from
13 West Yorkshire Police. Slightly different, but
14 similarly, very well qualified.
15 We simply are puzzled by the fact that, for
16 instance, an obvious witness would be the actual
17 supervising manager of the desk officers concerned in
18 2003 to 2005, of these particular investigations, who
19 had hands-on experience, and can actually answer real
20 questions beyond the documents. That supervising
21 manager will have been responsible for all the responses
22 to the Intelligence and Security Committee. No
23 question. So he or she will already have been deeply
24 and profoundly involved in an accountability exercise
25 which happened twice and lasted over some considerable

1 time.

2 The very grave danger is really as follows, entirely
3 contrary to the interests of justice, that, as soon as
4 any real probing questions are asked of this witness
5 about what happened when -- which is not actually
6 apparent and spelt out on the documents -- he or she
7 will simply say that the witness does not know.

8 The witness is plainly relying, as is said in the
9 witness statement, on conversations with those who were
10 involved, of which, presumably, we are not going to get
11 any records, and really commenting on the documents --
12 well, both open and closed.

13 Now, frankly, that is a very limited role indeed for
14 a witness on such an important issue, and we are
15 frankly -- if I say we are surprised that the
16 Security Service has adopted this position, it's not
17 quite true, because I'm afraid in an aside, in October,
18 when we were making submissions before you about closed
19 hearings, there was an exchange at the end of the day
20 with Mr Eadie, and we specifically raised the fear that
21 it would be a chosen witness who actually had no
22 experience of the relevant times and the relevant
23 operation. We feared that because that is something
24 that's happened in other cases involving MI5.
25 This has to have been a deliberate choice, and

1 I dare say that the relevant witnesses are in
2 Thames House now. They may be in a different role.
3 They may be promoted, but they are there. They have
4 already gone through a number of accountability
5 exercises, and they would be the critical witnesses, we
6 submit. So we express grave reservations about the
7 choice that has been made by the Security Service.
8 Now, about whether you have powers to direct, nobody
9 wants to go there. My Lady will absolutely not want to
10 go there, and the interested parties will not as well.
11 But if you are so persuaded, having heard the matter
12 slightly more fully, perhaps, next week, I'm quite sure
13 that the Security Service would pay very close attention
14 to any expression of concern by you along these lines.
15 LADY JUSTICE HALLETT: Thank you, Mr O'Connor.
16 MR KEITH: We hear what Mr O'Connor has to say. I have
17 expressed my views already in outline. We will reflect
18 further, and no doubt we can respond at an appropriate
19 moment.
20 LADY JUSTICE HALLETT: Mr Hall, I'm not asking you to
21 respond, unless you wish to.
22 MR HALL: My Lady, thank you. The only thing I would
23 mention is in relation to what Mr Keith said about what
24 your power is to record a non-Article 2 verdict. That
25 has big implications for Whitehall generally. It's

1 something that, for example, the MoJ would have to be
2 involved in.

3 When you set down timetables, would you please bear
4 in mind that Mr Eadie would certainly want to advise and
5 represent on that issue in particular? He is in the
6 Supreme Court, I know, until Wednesday after next, and
7 so I don't think a hearing on the 3rd would be possible
8 to accommodate him.

9 Would perhaps Mr Keith cause Mr Smith to write to
10 T Sols, setting out what's in mind, and then we can
11 respond with a spread of dates on this topic, because
12 it's quite an important one?

13 LADY JUSTICE HALLETT: I think you have an instructing
14 solicitor present, haven't you, Mr Hall. Can he or she
15 not talk to Mr Smith?

16 MR HALL: I can. It's just trying to formulate -- I didn't
17 take a very good note of precisely what Mr Keith had in
18 mind.

19 LADY JUSTICE HALLETT: It can be left to when I have left
20 court. People can discuss further.

21 Obviously I'll take into account Mr Eadie's
22 commitments, if I can. We are getting tight for time.
23 That's our trouble.

24 MR HALL: I know, but it's not an issue that stops the
25 inquests starting it, if you like. It's something that

1 comes through towards the end.

2 LADY JUSTICE HALLETT: Indeed. But it is something that
3 I think we all need to bear in mind as we look at these
4 issues, because it affects, really -- I suspect it
5 affects the questioning as well, in a sense. It's: what
6 is the end result?

7 For my part, as the person who has to produce the
8 end result, as I go through the material, it assists me
9 if I know what is my structure at the end. So the
10 sooner we do it, to my mind, the better.

11 MR KEITH: Thank you very much, my Lady. Particularly as
12 this was a non-sitting day.

13 LADY JUSTICE HALLETT: Thank you all very much. 11 o'clock
14 Monday, please.

15 (12.17 pm)

16 (The inquests adjourned until 11.00 am on Monday,
17 24 January 2011)

18

19