

# OPUS 2

## INTERNATIONAL

London Bridge Inquests

Day 1

April 12, 2019

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1 Friday, 12 April 2019  
 2 (10.05 am)  
 3 Pre-Inquest Review  
 4 MR HOUGH: Sir, this is a procedural hearing in these  
 5 inquests into the deaths arising from the London Bridge  
 6 terror attack of 3 June 2017.  
 7 May I begin by dealing with representation.  
 8 I appear with Aaron Moss as counsel to the Inquest,  
 9 instructed by Sian Jones of BDB Pitmans, solicitors to  
 10 the inquest.  
 11 Ms Victoria Ailes appears for the families of six of  
 12 the victims of the attack: Alexandre Pigéard,  
 13 Christine Archibald, James McMullan, Kirsty Boden,  
 14 Sara Zelenak and Sébastien Bélanger.  
 15 Piers Taylor appears for the family of  
 16 Xavier Thomas.  
 17 The family of Ignacio Echeverria are not represented  
 18 but are being kept informed about the inquests.  
 19 Mr Andrew Radcliffe QC and Adam Morgan appear for  
 20 Zahrah Rehman, widow of Khuram Butt.  
 21 Mr Richard Horwell QC and Matthew Butt appear for  
 22 the Commissioner of Police for the Metropolis.  
 23 Ms Fiona Barton QC appears for the Commissioner of  
 24 the City of London Police.  
 25 Sir James Eadie QC and Mr Neil Sheldon QC appear for

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1 the Secretary of State for the Home Department who  
 2 represents the security service. I hope I have included  
 3 everyone.  
 4 Sir, as you know, there have been three pre-inquest  
 5 review hearings which have dealt with most procedural  
 6 issues. The inquests are due to start on 7 May at  
 7 the Central Criminal Court for around 10 weeks. The  
 8 hearings have been fully timetabled and the  
 9 preparations, including a large disclosure exercise, are  
 10 almost complete.  
 11 Today's hearing has been arranged to address two  
 12 particular subjects. First, a claim for public interest  
 13 immunity, PII, made by the Home Secretary. Secondly,  
 14 applications by four witnesses for anonymity and special  
 15 measures. We are going to begin with an open hearing  
 16 with all present, addressing both topics. After that,  
 17 you, sir, will rise and the court will thereafter go  
 18 into closed session to hear some further submissions on  
 19 the PII claim.  
 20 We have circulated open submissions in writing on  
 21 both topics, and copies can be provided to the media and  
 22 will go on the website later.  
 23 What I propose is that we deal with the applications  
 24 for anonymity and special measures first, then you hear  
 25 from me and others in open concerning the PII claim.

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1 Would that be convenient?  
 2 THE CHIEF CORONER: Very much so, thank you.  
 3 MR HOUGH: So the anonymity applications. There are  
 4 applications by, or rather, for, four individuals who  
 5 are all currently expected to give evidence:  
 6 Witness L who is the security service's current head of  
 7 international counter-terrorism, policy, strategy and  
 8 capability; Witness M, a senior investigating officer in  
 9 SO15, the Metropolitan Police Counter-Terrorism Command  
 10 and D4 and AY37, two authorised firearms officers of  
 11 the Metropolitan Police who were involved in  
 12 the confrontation with the attackers.  
 13 These applications have been circulated to  
 14 interested persons and also provided to media  
 15 organisations and no objection has been made by anyone.  
 16 From page 13 to 15 of our submissions we set out  
 17 the legal principles to be applied in terms which we  
 18 believe are uncontroversial. They reflect principles  
 19 set out in your earlier ruling on other anonymity  
 20 applications. From page 16 to page 20 we set out what  
 21 the applications are and why they are justified.  
 22 In briefest summary, we invite you to allow  
 23 the applications under common law powers which involve  
 24 balancing the factors for and against the orders sought.  
 25 In each case, for the reasons given in our document,

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1 the refusal of the orders would give the individual  
 2 concerned real and understandable concerns about  
 3 reprisals against themselves and their families.  
 4 Refusal of the orders will also, to varying degrees,  
 5 restrict these individuals' abilities to do important  
 6 public work now and in the future.  
 7 On the other hand, granting the orders will not  
 8 impair the quality or rigour of the investigation in  
 9 these inquests, and furthermore, the names and  
 10 identities of the witnesses are not of any particular  
 11 importance to the evidence that they will be giving.  
 12 So while recognising that the orders will have an  
 13 effect upon open justice and reporting of the inquest  
 14 hearing, we submit that the case for making them is  
 15 clear.  
 16 So I'll make further submissions in reply if any  
 17 representations are made by others, but as I have said  
 18 I suggest that you hear from others on these  
 19 applications, and if possible, that you resolve them  
 20 today.  
 21 THE CHIEF CORONER: Yes. Does anyone wish to say anything  
 22 in relation to any of the applications that are made?  
 23 MS AILES: No, thank you.  
 24 THE CHIEF CORONER: Mr Hough, I'm going to take that that  
 25 no one has any points to raise, and it seems to me that

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1 for the reasons that are set out in your document, I am  
2 content to make the orders as sought.

3 MR HOUGH: Thank you, sir.

4 Moving on then to the PII claim. Can I say this by  
5 way of introduction: in accordance with your previous  
6 rulings, these inquests will be considering the personal  
7 history and background of the attackers and their  
8 preparations for the attack. They'll also be addressing  
9 what was known to the authorities about them, and  
10 whether their activities gave any warning signs. That's  
11 set out in paragraph 4 of our submissions by reference  
12 to the indicative scope you approved at the second  
13 hearing.

14 As is now well known, one of the attackers,  
15 Khuram Butt, had been investigated by the police and the  
16 security service. He was the subject of an MI5 priority  
17 investigation between mid-2015 and the time of  
18 the attack. That investigation had been open because of  
19 intelligence that he aspired to carry out an attack in  
20 the UK.

21 Over two years, the security service gathered  
22 intelligence about him, but did not identify  
23 the activity leading up to the attack, which was  
24 apparently well hidden.

25 It is also known that one of the other attackers,

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1 Youssef Zaghba, was the subject of an inquiry to  
2 the security service in mid-2016.

3 The third attacker, Rachid Redouane, was not  
4 investigated by police or security service.

5 A certain amount of information about the security  
6 service's work has been put into the public domain  
7 through the report of Lord Anderson QC, his independent  
8 assessment of the MI5 and police internal reviews on  
9 the London and Manchester attacks in 2017. There has  
10 also been a report to the Intelligence and Security  
11 Committee at Parliament, published in redacted form.

12 THE CHIEF CORONER: Can I just pause just there, Mr Hough,  
13 just to make clear that I have read those documents --  
14 I've re-read them in the course of the preparation for  
15 this hearing.

16 MR HOUGH: Thank you, sir.

17 As any reader of those reports would expect, and  
18 would glean from them, the security service and  
19 the police hold documents which raise security  
20 sensitivities, thus these applications.

21 The process we've adopted is as follows: from an  
22 early stage in the preparation for these inquests, the  
23 inquest team have been in communication with the  
24 security service and police to discuss the handling of  
25 potentially sensitive documents and information.

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1 In the interests of openness we've updated  
2 interested persons on our approach at previous hearings,  
3 and our approach is set out at paragraph 8 of our  
4 document, but I'll explain it now for the benefit of  
5 everyone in court and everyone reading the transcript.

6 First of all, Mr Moss, Ms Jones and I, all of whom  
7 are developed vetted, engaged in a comprehensive  
8 exercise of reviewing the documents. We read  
9 the post-attack reviews of police and security services,  
10 we read the operational improvement reports. We then  
11 reviewed all the documents referred to in those  
12 documents. All three of us have been involved at every  
13 stage and have reviewed the documents independently.

14 We held a number of meetings with the security  
15 service and its lawyers to discuss the material during  
16 which we posed further questions and requested  
17 additional documents. Without exception, our questions  
18 were answered and our requests complied with. During  
19 those meetings, we identified by topics information  
20 which appeared in the documents but not in the Anderson  
21 Report and which was potentially relevant to  
22 the inquest. We also identified documents which we  
23 considered would qualify as relevant evidence. These  
24 were mainly documents containing information in  
25 the topic areas we had indicated.

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1 The security service then produced a draft statement  
2 of Witness L, the senior officer I referred to earlier.  
3 The statement attested to the facts in the Anderson  
4 Report and added further information addressing points  
5 we'd raised to the extent the service considered  
6 possible.

7 There were further discussions between ourselves and  
8 the service, as a result of which, changes were made to  
9 the draft statement providing some more information.

10 The final version was signed on 4 March and  
11 disclosed to interested persons on 6 March. Between  
12 paragraphs 94 and 147 it details the service's  
13 investigations into the attackers and what is now known  
14 about them, and, sir, I understand you have read that as  
15 well.

16 THE CHIEF CORONER: Again, I have, Mr Hough, I have read it  
17 more than once and looked at the detail of it, and of  
18 course, as everyone will know, I had the benefit of  
19 hearing from Witness L in the course of the Westminster  
20 Bridge inquests and I know the way in which he sought,  
21 where he felt he could, to answer all of the questions  
22 that were posed of him by the families in the course of  
23 those inquests.

24 MR HOUGH: Yes.

25 The position of the service was that the statement

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1 provided as much information as properly could be  
 2 provided. It objected to providing the underlying  
 3 investigation documents on national security grounds.  
 4 Because the position was and is that there are documents  
 5 which are relevant to the inquests, but which  
 6 the service considers cannot be disclosed in  
 7 the interests of national security, the next step was  
 8 for a PII claim to be made. That has been done,  
 9 supported by a ministerial certificate and a closed  
 10 schedule.

11 I should stress that our approach throughout has  
 12 been to identify all information and documents which  
 13 could be relevant to the inquests and which did not  
 14 appear in the published reports. Some of the material  
 15 identified has been of much more limited relevance than  
 16 others.

17 In our meetings with the service, we've tried to put  
 18 ourselves in the position of the bereaved families and  
 19 other interested persons and we've taken a broad view of  
 20 relevance. As those representing the service will no  
 21 doubt agree, our approach at every stage has been  
 22 rigorous and challenging.

23 Before I briefly outline the PII claim and the legal  
 24 principles, I should stress a point we make at  
 25 paragraph 9 of our submissions. Whatever the outcome of

1 today's hearing, the process I've summarised will mean  
 2 that the inquests receive evidence on an unprecedented  
 3 scale about active MI5 investigations. Also,  
 4 Witness L will give evidence over two days and he can be  
 5 questioned about the service's work. As in  
 6 the Westminster Bridge inquest, the court intends  
 7 adopting a procedure for him to be notified of topic  
 8 areas in advance so that he can prepare and be able to  
 9 give as much information in open as possible.

10 There will also be evidence from Witness M on  
 11 counter-terrorist police investigations into  
 12 Khuram Butt.

13 Let me then turn to the PII claim. In order to  
 14 address some questions which have been raised in the  
 15 submissions of interested persons, let me say a little  
 16 about the claim and how it will be addressed.

17 The claim is made in respect of documents which are  
 18 identified in the application papers. The documents  
 19 have been carefully categorised by reference to  
 20 the topic areas we identified, and also by reference to  
 21 the national security objections taken. The documents  
 22 in the claim include police documents containing  
 23 information for which the service has a responsibility.

24 The Secretary of State's closed submissions address  
 25 the topics in order, saying what the security interests

1 are, and what the relevance of the material is.  
 2 The sensitive schedule to the PII certificate elaborates  
 3 on what the interests are and how disclosure could, in  
 4 practice, hamper the work of the service and/or  
 5 otherwise imperil national security interests.

6 You, sir, and we, have been provided with bundles  
 7 containing the submissions, the schedule and all  
 8 the underlying documents. We've provided substantial  
 9 closed submissions in which we've raised points which  
 10 you might wish to put to counsel for the Secretary of  
 11 State in testing each aspect of this claim, and counsel  
 12 for the Secretary of State has responded with detailed  
 13 and helpful written closed submissions in reply. Nobody  
 14 is taking this claim lightly and the underlying  
 15 documents have been and will be considered in detail.  
 16 We anticipate, sir, that you will produce open and  
 17 closed rulings on the claim after today.

18 THE CHIEF CORONER: Yes. Can I -- again, just to interrupt  
 19 you there, Mr Hough, really for those representing  
 20 the families in court and the families themselves, can  
 21 I simply make clear that which you have set out: not  
 22 only am I extremely grateful to everyone for the time  
 23 which has been taken to undertake the thorough review of  
 24 the material in the inquest's team and the assistance  
 25 that has been provided to them, make clear that

1 the relevant evidential material identified by the  
 2 inquest team, the three that you've identified in  
 3 the team, has come to me, I've been provided with it,  
 4 and perhaps most importantly, Mr Hough, for me to stress  
 5 I've been provided with the time to look through it, to  
 6 look at the schedule, and also to look at the closed  
 7 submissions.

8 Can I again put on record, please, my thanks  
 9 particularly for the response which I received yesterday  
 10 to a number of observations that were made in the closed  
 11 submissions that came from Sir James Eadie and his team,  
 12 extremely helpful to have that, but it will be  
 13 necessary, in the course of the closed hearing, to look  
 14 at some of the underlying material, just so that I can  
 15 be clear on a couple of questions which have been  
 16 flagged in the course of my review of that material.

17 MR HOUGH: Thank you, sir.

18 Turning to the legal principles, I can deal with  
 19 those briefly because they are well established and  
 20 uncontroversial, and we note that in particular  
 21 paragraphs 11 to 16 of our document have been agreed by  
 22 all involved, but I'm acutely aware that the transcript  
 23 of this hearing may be read by members of the families  
 24 and by individuals coming from different systems.

25 THE CHIEF CORONER: Yes, as I've mentioned more than once,

1 Mr Hough, the coronial system in this country has its  
2 good bits, its bad bits, but it has some idiosyncrasies,  
3 and perhaps it's important that those are explained in  
4 the course of this hearing.

5 MR HOUGH: Yes.

6 First of all, where a court considers that evidence  
7 is relevant and an objection is taken on PII grounds, it  
8 must ask four questions identified by Lord Justice  
9 Thomas in the Binyam Mohamed case, referred to at  
10 paragraph 15 of our submissions: is there a public  
11 interest in disclosure? Would disclosure bring about a  
12 serious risk of harm to an important public interest?  
13 Can the risk be protected against by other means or more  
14 limited disclosure? And if there is no adequate  
15 alternative, where does the balance of the public  
16 interest lie between the interest in disclosure and  
17 the interest in withholding disclosure?

18 In the Litvinenko case, referred to at paragraph 17  
19 of our submissions, Lord Justice Golding made nine  
20 points from paragraph 53. I know you have that  
21 judgment, sir --

22 THE CHIEF CORONER: I do.

23 MR HOUGH: -- which I can summarise as follows. First, even  
24 where national security is at stake, it's for the court  
25 and not the government to decide whether PII precludes

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1 disclosure. Secondly, the context matters. Not all PII  
2 claims are based on national security, and those that  
3 are based on national security raise particular  
4 considerations.

5 Third, the Minister must provide evidence of any  
6 claimed risk to national security.

7 Fourth, if there is such evidence and disclosure  
8 would have a sufficiently grave effect on national  
9 security, there will usually be no disclosure.

10 If the claimed damage is not plainly substantial  
11 enough to avoid the need to balance it against  
12 the countervailing interest in the administration of  
13 justice, then the balancing exercise I have referred to  
14 must be carried out.

15 Fifth, when carrying out such a balancing exercise,  
16 the court should normally accept the Minister's view on  
17 the nature and extent of the damage to national security  
18 unless there are cogent or solid reasons to reject it.

19 Sixth, the Secretary of State knows more about  
20 national security than the coroner, while the coroner  
21 knows more about the administration of justice than  
22 the Secretary of State.

23 Seventh, a real and significant risk of damage to  
24 national security will generally but not invariably  
25 preclude disclosure, the decision is for the court.

14

1 Eighth, if a coroner rejects a claim, it must be  
2 based on a conclusion that the interest in disclosure  
3 outweighs the national security interest claimed.

4 Ninth, the court must give reasons for any decision.

5 I should add one comment about  
6 Lord Justice Golding's sixth principle. In saying that  
7 the court knows more about the administration of justice  
8 than the Minister, we submit that the key point being  
9 made was this: the court knows best, or can conclude  
10 best what the relevance of the material is and what  
11 the effect of its disclosure would be on  
12 the proceedings.

13 Finally on the law, we would stress three points in  
14 our document which we know are important to  
15 the families. First, as we say at paragraph 16 by  
16 reference to the Amin case, an inquest serves  
17 the important public interest of ensuring that the full  
18 facts are brought to light, culpable conduct exposed,  
19 dangerous practices rectified and lessons learned.

20 Secondly, as we say at paragraph 20, the principle  
21 that justice should be done in the open applies to  
22 inquests, and favours the disclosure and deployment of  
23 relevant evidence.

24 Thirdly, as we also say at paragraph 20,  
25 the independent judgment of the court is key. Even on

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1 important issues of security the court exercises that  
2 judgment and does not merely salute a ministerial flag.

3 Let me then turn to the application of  
4 the principles in this case. The documents which are  
5 the subject of this claim contain evidence which would  
6 be relevant to the inquest. As I have said, the degree  
7 of relevance varies. As the Secretary of State  
8 accepts, if the claim succeeds there will be some  
9 limitation on the inquiry. At each stage, the balancing  
10 exercise will have to take into account the interest on  
11 which the claim is based, the degree of relevance of  
12 the material, and the effect on the inquiry of it being  
13 withheld having regard to the evidence which the inquest  
14 will hear in any event.

15 In response to the written submissions made by  
16 the families, I should stress that nobody is  
17 underestimating the importance and value of these  
18 inquests. We fully acknowledge that they serve a public  
19 interest in bringing facts to light, including what was  
20 known to the authorities about the attackers before  
21 3 June 2017. We also acknowledge that they may help  
22 the government and the service to learn lessons for  
23 the future.

24 We would make three qualifying points. First, as  
25 a matter of principle, a PII claim such as this can

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1 concern matters of life and death. If documents were  
2 disclosed which reduced the effectiveness of the service  
3 by helping terrorists to avoid detection, we would all  
4 be less safe. If any officers or any human sources were  
5 compromised, they could face terrible dangers.

6 Secondly, while recognising the importance of these  
7 inquests, we must also acknowledge that the work  
8 the service did in this case has been investigated by  
9 Lord Anderson and the ISC who have been able to consider  
10 all the secret material and address operational  
11 processes which could realistically never be reviewed in  
12 an inquest. Those other enquiries must be relevant when  
13 considering the point that there is an important public  
14 interest in lessons being learned.

15 Thirdly, as I've said, the inquest will receive  
16 evidence of the service's investigations and  
17 Witness L will no doubt face challenging questions come  
18 what may.

19 In paragraph 23 of our document we comment on some  
20 of the national security interests identified by the  
21 Secretary of State. One of the identified interests is  
22 avoiding damage to capabilities and operations. In this  
23 regard, the families say that there are some  
24 investigative techniques which are well known, including  
25 listening devices, cameras and telephone monitoring.

17

1 The suggestion is that the existence of these techniques  
2 is not particularly sensitive.

3 In response, we would just say this in open: that  
4 there is all the difference in the world between  
5 revealing the existence of a technique, and revealing  
6 whether and how it was deployed in a given case with  
7 detail about the capability and any limitations of  
8 the technique. As you will be aware, sir, care is taken  
9 in terrorist trials in the criminal jurisdiction about  
10 revealing such matters.

11 Also, there may be a strong interest in protecting  
12 the product of an investigation because of its effect on  
13 other continuing investigations. We would also note  
14 the families don't question the significance of  
15 the other public interests identified by the Secretary  
16 of State, ie, first of all, the risk of harm to any  
17 individuals providing information to the police and  
18 security services. Second, the risk of damage to  
19 liaison relationships and other dealings with foreign  
20 sources. Thirdly, the risk of providing information  
21 useful to terrorists and other criminals.

22 A particular point raised by the families in their  
23 submissions is the value of the contemporaneous  
24 investigation documents. Their point is that such  
25 documents are particularly valuable in testing

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1 the judgments of those on the ground at the time. We'd  
2 make five points in response to their submissions on  
3 this topic. First, we agree that absent any valid legal  
4 objection, relevant investigation documents held by  
5 the service would be disclosable. We also agree that  
6 the judgment on the public interest balancing exercise  
7 is for the court, and we acknowledge that  
8 contemporaneous documents may be of particular value to  
9 an advocate seeking to test a witness such as Witness L.

10 However, we don't accept the suggestion that it must  
11 be straightforward for the service to disclose large  
12 numbers of investigation documents from a recent active  
13 investigation, redacted where necessary. Investigation  
14 documents by their nature may reveal information about  
15 intelligence and its sources and about any other  
16 subjects of investigation. Moreover, documents may  
17 reveal investigative procedures in a way which helps  
18 terrorists. Gisting material enables the service to  
19 communicate facts without taking those risks.

20 In that connection may I say a word or two about a  
21 reference to the 7/7 inquests, and the fact that some  
22 contemporaneous investigation documents were disclosed  
23 in those. There are significant differences between  
24 that case and this. In particular, I understand that  
25 before the 7/7 inquests, there had been the trial of

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1 the fertiliser bomb plotters, Operation Crevice. One of  
2 those involved in the 7/7 attacks was peripherally  
3 involved in the investigation into Operation Crevice.

4 The trial resulted in the disclosure of material  
5 about the fertiliser plot and the background to it.  
6 That material could be released into the inquests  
7 without causing security risks. Here there are  
8 categories of documents containing relevant information  
9 which could not be disclosed, or at least, could not be  
10 disclosed with any content at all, without revealing  
11 provenance and sources in a harmful way.

12 Thirdly, and specifically, we don't accept  
13 the suggestion that documents providing assessments of  
14 the risk posed by Khuram Butt can raise no sensitivity.  
15 Quite apart from the fact that such documents may  
16 contain operation information that remains sensitive,  
17 they may reveal exactly how subjects are assessed and so  
18 what conduct may trigger particular levels of inquiry or  
19 investigation.

20 Neither, fourthly, do we accept that a gist is  
21 inherently of less evidential value than a redacted  
22 document. In some situations, a gist may be able to  
23 convey more information than a redacted document could  
24 do.

25 Finally, we'd make the point that there is

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1 independent assurance in this case that the information  
2 provided by gist is not misleading because we have seen  
3 all the material and you, sir, have seen all  
4 the documents that are the subject of the PII claim.

5 Next, I should deal with points made by the families  
6 regarding what they may particularly want to explore  
7 with Witness L. In particular, I'm referring to  
8 paragraphs 20 and following of Ms Ailes' submissions.

9 The point is made that the attackers met in public  
10 in the days leading up to the attack and on  
11 the afternoon of the attack, they collected the hired  
12 van from B&Q. The suggestion is that had the service  
13 been monitoring them, it might have identified  
14 concerning behaviour and taken action. Without in any  
15 way pre-judging what the evidence may show, we'd just  
16 make three points in this regard. First, Witness L says  
17 there was extensive coverage of Butt for two years which  
18 never revealed attack-planning, paragraph 131 of his  
19 statement. As a result, Butt was not under live  
20 monitoring at the time of the attack, paragraph 132.  
21 And we can say that the documents are consistent with  
22 that evidence.

23 Secondly, even now, with all post-attack  
24 investigations, there is no evidence of anyone other  
25 than the attackers knowing the date, place or method of

1 the attack, see Witness L's statement at paragraph 147,  
2 and again, the documents we have seen bear that out.

3 Thirdly, even now, after all the investigations,  
4 there is no evidence that any of the activity clearly  
5 showing attack preparations took place in public or in  
6 Butt's home address. The substantial evidence we do  
7 have suggests that that activity, such as  
8 the preparation of the weapons and the mock suicide  
9 belts, probably took place elsewhere, for example, at  
10 Redouane's address.

11 Now, we don't for a moment suggest that Witness L's  
12 evidence should not be tested and questions asked about  
13 what the service could and should have done, but the  
14 significance of evidence has to be seen in proper  
15 context.

16 Finally, sir, let me address briefly the topic we  
17 cover at paragraphs 27 to 29 our document. We have  
18 given careful consideration at every stage as to whether  
19 you could properly perform your functions as coroner if  
20 the material for which PII is now claimed is not  
21 disclosed. If you took the view that the PII claim was  
22 justified but that it prevented you discharging your  
23 functions, the proper course would be for you to request  
24 that a public inquiry be established, so allowing  
25 evidence to be taken in closed session.

1 In our respectful submission, sir, proper inquests  
2 may clearly still be held if the PII claim is allowed in  
3 full. Our reasons are given at paragraph 29 of our  
4 document and we can elaborate on them in closed session.

5 We'd simply stress one point now. The one case in  
6 which a coroner felt unable to discharge his duties  
7 without PII material was the Litvinenko case. In that  
8 case, the secret material was directly relevant to how  
9 the attack was carried out and by whom. The absence of  
10 the material made it impossible, as the judge concluded,  
11 to carry out a proper inquiry into how the deceased  
12 person died. We are not in that territory here. There  
13 will be a very full inquiry into how the attacks took  
14 place and into the background and preparations of  
15 the attackers.

16 Sir, that's what I propose to say on the PII claim  
17 at this stage.

18 THE CHIEF CORONER: Thank you, Mr Hough. That was extremely  
19 helpful.

20 Sir James, I'm looking at you because it seemed to  
21 me that it might be sensible for you to make any  
22 observations you wish to make first of all. I've  
23 obviously got and read the very helpful submissions from  
24 the families, but I would come to them after I've heard  
25 from you. I think that's probably the best way to

1 approach it.

2 SIR JAMES EADIE: I'm grateful. I'm very content with that  
3 course. I wanted to make a few very short points in  
4 relation to the principles, then three even shorter  
5 points in relation to the application of those  
6 principles to the facts, and then I wanted to respond  
7 finally and briefly to the points made by the families  
8 in relation to the provision of documents.

9 THE CHIEF CORONER: Thank you.

10 SIR JAMES EADIE: So far as the principles are concerned, as  
11 you are aware, and there doesn't appear to be any  
12 dispute between us and counsel for the inquest in  
13 relation to any of these principles, but we are  
14 considering, and you will need to consider, essentially  
15 two things. Firstly whether there exists a real risk of  
16 serious damage to the public interest if there is  
17 disclosure. That's the nature of the test that has been  
18 hammered out in the case law over the years. And  
19 secondly, and balancing against that first  
20 consideration, the true or relative importance of  
21 the material, assuming -- which is the gateway into  
22 PII -- that the material is relevant and crosses that  
23 lower threshold in the first place. So those are  
24 the two things on which you will be focused.

25 THE CHIEF CORONER: Yes.

1 SIR JAMES EADIE: So far as national security is concerned,  
 2 the public interest in question here is the protection  
 3 of national security, and that is an extremely powerful  
 4 consideration as the courts have regularly acknowledged,  
 5 and there is a reason for that. If there is a real risk  
 6 of serious damage to national security, the effect is  
 7 likely to be to endanger the public, for example, by  
 8 exposing into the light of day things which properly  
 9 should be kept secret and thus alerting those who are  
 10 intent on doing the public harm, to ways round  
 11 the system, to make that system of attempted protection  
 12 less effective. And it's unsurprising perhaps, that  
 13 this principle should be in play in a context involving  
 14 questions about the roles and the action of the security  
 15 and intelligence agencies whose work is necessarily, and  
 16 for good reason, secret.

17 It's equally unsurprising, we submit, that  
 18 the courts have been both firm and clear about what  
 19 the consequence should be for a court or an inquest  
 20 considering a PII claim if the court or inquest is  
 21 satisfied that there is indeed, on the evidence, a real  
 22 risk of serious damage to national security. And we  
 23 cite in our open submissions at paragraph 9, the House  
 24 of Lords case in Conway, the flavour being given by  
 25 Lord Morris, and we cite in paragraph 14 of our open

25

1 submissions from the Wiley case, but both are to  
 2 the same effect, and that is that if there is, on  
 3 the evidence, a real risk of serious damage to national  
 4 security, it's almost inconceivable that a court or  
 5 inquest would then order disclosure of the material,  
 6 thereby creating a risk to public protection. That's  
 7 the first point to emphasise in relation to national  
 8 security.

9 The second point to emphasise is that the courts  
 10 have been equally clear and equally firm about how  
 11 the court or a coroner should approach the question as  
 12 to whether there is or is not a real risk of serious  
 13 damage to national security. And the answer to that is  
 14 based in the fact, as the courts have consistently  
 15 stressed, courts and coroners considering that issue,  
 16 that national security existence issue, have got to have  
 17 regard to two particular factors. The first of them is  
 18 that ministers who sign PII certificates of the kind  
 19 that you have here, have access to expertise and  
 20 experience in making that sort of judgment about whether  
 21 or not such a real risk exists that the courts or an  
 22 inquest simply do not share. And that is relevant  
 23 because one is dealing, when judging that question, is  
 24 there or is there not a risk of that kind, one is  
 25 dealing with judgment calls, effectively, about

26

1 the existence, the nature and the extent of damage to,  
 2 for example, the ability of the agencies to seek to  
 3 protect the public if material is released into  
 4 the public domain.

5 THE CHIEF CORONER: What the authorities make clear is that  
 6 they're ideally placed to do so because of their  
 7 accumulated knowledge and experience outside the --  
 8 necessarily the particular issue that might be troubling  
 9 a court on that --

10 SIR JAMES EADIE: Exactly so.

11 THE CHIEF CORONER: As Mr Hough rather suggested, it's  
 12 the relevance to the matters under investigation in  
 13 the case or the inquest, as here, where the court in  
 14 a sense perhaps has more of an eye than necessarily  
 15 the Minister may have at that stage.

16 SIR JAMES EADIE: Exactly so, and no one disagrees with  
 17 that, as it were, imbalance of expertise and experience.

18 THE CHIEF CORONER: Yes.

19 SIR JAMES EADIE: It's effectively for the government acting  
 20 on expert advice. That's the first criteria that I've  
 21 just mentioned.

22 The second one, of course, is a rather more  
 23 highfalutin constitutional one, which is that if things  
 24 go wrong with the protection of the public, it should  
 25 properly be the politicians and, in effect,

27

1 the government that carries the can. It's a feature of  
 2 the separation of powers which is of some importance and  
 3 that also a factor that has led to the imbalance in  
 4 favour, if you will, of the executive at this stage,  
 5 national security, and those two features are linked,  
 6 but they both lead, in effect, to the same conclusion,  
 7 which is that the court will, absent something wholly  
 8 exceptional, respect the judgment about that particular  
 9 question whether or not there is a real risk of serious  
 10 damage, they will respect the judgment of the executive  
 11 absent something pretty exceptional, for example, an  
 12 obvious error or some wholly irrational approach. But  
 13 no one is suggesting we're in that territory here, so we  
 14 proceed on the basis that those are the principles that  
 15 govern national security.

16 I come to the second of the features I mentioned at  
 17 the outset which you've just referred to, which is  
 18 the relative importance. And here, of course,  
 19 the authorities have recognised that the greater  
 20 expertise and built up institutional experience lies  
 21 with courts or an inquest.

22 However, having said that, it is important to bear  
 23 in mind that the courts have approached the overall  
 24 issue in cases involving national security by reaching  
 25 the conclusion of principle that it would take something

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1 wholly exceptional for a court or an inquest to order  
2 disclosure where they are satisfied about the first  
3 limb. So even bearing in mind the extra experience and  
4 expertise that a court or an inquest brings to bear,  
5 that fundamental conclusion of the courts in these sorts  
6 of cases needs to be borne in mind.

7 But if you get to the stage of considering this  
8 second element, then PII focuses in effect on the  
9 interests of the judicial process -- the court or  
10 inquest -- being able to decide issues on the basis of  
11 all the evidence that might bear on the issues it is  
12 considering. And that often comes down to a balance,  
13 particularly in the context where national security is  
14 not involved, having regard to the relative importance  
15 of that material.

16 I point up only one particular feature of this side  
17 of the scales. In ordinary proceedings in court where  
18 a PII claim is made based on the potential damage to  
19 the public interest in a case to which the government is  
20 a party -- which is most often where it arises, it can  
21 arise in private litigation, but it most often arises  
22 when the government is a party to private litigation or  
23 to judicial review -- in the old days, that used to lead  
24 in effect to an election so that if the court or  
25 tribunal upheld or refused to uphold the claim for

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1 PII and ordered the disclosure of the material, it  
2 didn't necessarily follow in those sorts of cases that  
3 the material had to be disclosed.  
4 THE CHIEF CORONER: The best example I'm familiar with is  
5 obviously in the criminal context in which material  
6 might lead to the case being stayed --  
7 SIR JAMES EADIE: Exactly.  
8 THE CHIEF CORONER: -- rather than actually being disclosed.  
9 SIR JAMES EADIE: Exactly. And the same applies in civil  
10 proceedings, or used to apply in civil proceedings to  
11 which the government was a party. The government could,  
12 however unpalatably, decide to abandon the defence of  
13 the litigation, and it was that set of features and  
14 the difficulties that flowed from that in the series or  
15 the increasing series of cases that were being brought  
16 against the government in this sort of field, it was  
17 that sort of issue that led to all those cases in  
18 the Supreme Court about whether or not, absent  
19 a statutory process, the court's common law powers could  
20 expand to allow for a closed material procedure.  
21 Answer, said the Supreme Court, no, so you've gone  
22 straight back into election territory of the kind I've  
23 just described, and the product of that, solving  
24 the dilemma, in effect, was the passage of the Justice  
25 and Security Act 2013 which allows for a closed material

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1 process.

2 The difference, of course, between that and PII is  
3 that in a closed material procedure, the court can  
4 actively consider that material, whereas  
5 the PII doctrine is an exclusionary one. If  
6 PII applies, the material, the information, cannot be  
7 considered by the decision-maker.

8 Now that of course applies into the inquest world  
9 because you have something similar going on in relation  
10 to the inquest world. In the inquest world, as my  
11 learned friend has already pointed out, if PII operates,  
12 then there is a question for a coroner which is: can  
13 I properly and fairly and fully continue to perform my  
14 function knowing that I will not have access to at least  
15 some part of material which by definition may be  
16 relevant to my functions, and it is that dilemma which  
17 leads in certain circumstances to the need for a coroner  
18 who is otherwise convinced about, for example,  
19 the existence of a real risk of serious damage to  
20 national security, to consider as the coroner had to do  
21 in the Litvinenko case whether or not to invite  
22 the government to set up a public inquiry, and the  
23 reason that that option arises is because in a public  
24 inquiry under the 2005 Act, there is under section 19,  
25 potential for a closed material procedure.

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1 THE CHIEF CORONER: Yes.

2 SIR JAMES EADIE: And that's the dilemma. But again, we're  
3 not in that territory here.

4 THE CHIEF CORONER: No.

5 SIR JAMES EADIE: Because -- I say we're not in that  
6 territory, you will have to decide whether we're in that  
7 territory, but the view from counsel to the inquest,  
8 entirely properly, we submit, is that we're not in that  
9 territory because the inquest can properly proceed.

10 So those are the principles. Can I make three short  
11 points in relation to the application of them here in  
12 open. First, there is, in this case, a considered  
13 assessment of the Minister on advice that there is  
14 a real risk of serious damage to national security for  
15 reasons which are more fully set out in the closed  
16 material, for obvious reasons, and that, we respectfully  
17 submit, is a considered assessment which you should  
18 uphold. You should uphold it, amongst other things,  
19 because there is no exceptionality which would cause  
20 you, or should cause you, applying the appropriate  
21 degree of respect, to disagree with it. On  
22 the contrary, the categories of damage, helpfully  
23 explained, and I won't go over them again, by Mr Hough,  
24 are well established and there is a cogent and detailed  
25 explanation as to how those basic principles are engaged

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1 --

2 THE CHIEF CORONER: Yes.

3 SIR JAMES EADIE: -- in closed.

4 THE CHIEF CORONER: As I indicated a little bit earlier on,

5 Sir James, I'm grateful for the care which has obviously

6 gone into the preparation of those materials which were

7 provided to me, because, as you say, there's a very

8 careful assessment made on that material for the items

9 that are referred to.

10 SIR JAMES EADIE: Well, I'm grateful for that indication.

11 That means I can make the second point very, very

12 quickly. The second point was going to be: that

13 conclusion has been reached by the Minister, having

14 considered with the greatest care, and with

15 the assistance of counsel for the inquest, whether that

16 real risk could be obviated and if so, to what extent,

17 by providing summaries, or in the jargon, gisting.

18 THE CHIEF CORONER: Gisting, yes.

19 SIR JAMES EADIE: So that's the second point.

20 The third point is that in any event, if one gets

21 in, in truth, to any significant form of balancing, and

22 as I've indicated in principle, there may be real

23 questions about the extent to which one needs to go

24 there if the prior conclusion is that that real risk

25 analysis has been done fully and fairly and is accepted

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1 but, if you do get to that stage and if you're into any

2 form of balancing, it is absolutely key that counsel to

3 the inquest has, we respectfully submit, correctly and

4 expressly acknowledged, I think it was paragraph 29 of

5 the open submissions that he has made, that the inquest

6 can proceed and that the coroner can properly and fairly

7 and fully perform the functions if PII is upheld in

8 full.

9 THE CHIEF CORONER: Yes.

10 SIR JAMES EADIE: What that means is that you don't have to

11 consider the public inquiry option in that case, because

12 the case for disclosure and the case for taking, if one

13 wants to put it in those terms, the case for taking any

14 risk with national security is not made out.

15 THE CHIEF CORONER: No. Mr Hough very correctly, in his

16 document, sets out the clear distinction between a case

17 such as this and the Litvinenko situation where he says

18 in the written submissions quite clearly there was

19 the trigger there for the case to become a public

20 inquiry.

21 SIR JAMES EADIE: Because they simply couldn't do it

22 properly.

23 THE CHIEF CORONER: Because otherwise you couldn't have

24 the investigation that I know the families are very keen

25 that we conduct with these inquests. That simply

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1 couldn't have happened with Litvinenko because of

2 the nature of the material and the core issue to which

3 it went.

4 SIR JAMES EADIE: Sir, if I may respectfully agree with

5 that, but also from the families' perspective, it's

6 something of a poisoned chalice if the inquest does get

7 to the point of asking for a public inquiry, because

8 the only reason for doing that is to allow the Tribunal,

9 in effect, to go into closed where the families can't

10 see the testing. So there is an enormous premium, from

11 the perspective of the families, in that conclusion

12 about being able properly to fulfil your function in

13 open being made.

14 So if we get to balancing, the third short

15 submission is that it admits of a very clear answer here

16 because of the combination of two things: firstly,

17 the real risk of serious damage to national security,

18 and secondly, the acknowledgement that that open process

19 can properly be undertaken to conclusion.

20 The final topic I wanted to deal with in open,

21 if I may, very briefly, is the question of documents

22 rather than information --

23 THE CHIEF CORONER: Yes.

24 SIR JAMES EADIE: -- and witness statements rather than

25 the disclosure of no doubt heavily redacted underlying

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1 documents. If I may respectfully say so, I agree

2 entirely with all of the points that Mr Hough has just

3 made helpfully in relation to that, but just so

4 the families can understand where we're coming from in

5 relation to that, the position I submit is

6 this: firstly -- perhaps five points. Firstly, given

7 the degree to which sensitive material is evidently

8 engaged in a context like this and the degree to which

9 it is engaged is evident both from the general context

10 and from the witness statement of Witness L, but given

11 that degree, the most careful consideration has been

12 given in fact to trying to ensure that as much as

13 possible can be put into open. That has been

14 the driving feature of the process that led to

15 the production of the Witness L statement.

16 THE CHIEF CORONER: It's a comment I made earlier on,

17 Sir James: I have the benefit of having heard from

18 Witness L in the course of the Westminster inquests and

19 so the care with which he sought, where he felt he

20 could, to answer all of the proper questions that

21 Mr Patterson in particular put to him in relation to his

22 statement, and the way in which -- as I say, certainly

23 a view I formed was that he was trying where he possibly

24 could to give a full answer to the question within

25 the confines, quite clearly, that he had to operate.

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1 SIR JAMES EADIE: Well, I'm very grateful for that and  
 2 I hope that that provides some additional support if  
 3 that degree of co-operation is replicated, which I'm  
 4 confident it will be, that goes to support that first  
 5 point.

6 THE CHIEF CORONER: It seems to me it probably will be  
 7 replicated, and I know that Mr Patterson made  
 8 the comment himself at the end of those inquests that  
 9 actually the families there did have a feeling that  
 10 actually their questions had been answered.

11 Now, obviously I can't say what will happen, because  
 12 we've yet to hear the evidence from the witness, but as  
 13 I say, I'm confident in the way that he approached  
 14 the questions posed of him there that he's likely to  
 15 take a similar stance here and answer all of  
 16 the questions that he properly can which are posed,  
 17 quite rightly, as I say, by the families in respect of  
 18 those matters that they wish to have answers to.

19 SIR JAMES EADIE: Well, I'm very grateful for that  
 20 indication. As I say, the first point which I can  
 21 confidently make is that that method of coming at things  
 22 has infused the production of this statement.

23 The second point I make is that the witness  
 24 statement, as a method of doing that, in other words, as  
 25 a method of putting as much as possibly can be put

1 (inaudible) the needs of national security into open,  
 2 the witness statement as a method has positively enabled  
 3 more and important information to be disclosed both as  
 4 to the nature of the intelligence that may be relevant  
 5 and as to the assessments about it, and it has enabled  
 6 that to be done because this -- in this form,  
 7 information that's in witness statement form,  
 8 information can be given and summaries or gists can be  
 9 given, which would simply not be possible if  
 10 the documents were to be produced in heavily redacted  
 11 form. In particular, concerns of the kind that Mr Hough  
 12 raised about the revelation of sources and other  
 13 sensitive matters have got to be taken into account in  
 14 that endeavour.

15 And this approach also avoids the risk which might  
 16 arise -- and will be likely to arise in our context --  
 17 with the production of, as it were, snippets from  
 18 heavily redacted documents of presenting a positively  
 19 inaccurate picture of intelligence assessments or  
 20 events. So the witness statement as a method has those  
 21 positive advantages, is the second point.

22 The third point is that it is also to be noted that  
 23 a part of the exercise involving counsel to the inquest,  
 24 and indeed of the PII exercise that we'll see in closed,  
 25 has been precisely directed at ensuring that the witness

1 statement is accurate and fair, as well as being as full  
 2 as possible. So we note in that respect that not merely  
 3 has counsel to the inquest and your team been involved  
 4 in considering the relevance of the information, but  
 5 that their involvement in that process has extended to  
 6 ensuring that the statement is accurate and fair and as  
 7 full as it can be. The upshot, as counsel to  
 8 the inquest has already noted, is an unprecedented level  
 9 of disclosure of the details of MI5's work.

10 Fourthly, the position in 7/7 and the inquest that  
 11 Lady Justice Hallett conducted there was different. In  
 12 that case, as counsel for the inquest has already  
 13 indicated, the relevant documentation consisted in large  
 14 part, if not entirely, of material that had already been  
 15 the subject to disclosure in preceding criminal trials,  
 16 including the fertiliser bomb plot trial in which  
 17 Mohammad Sidique Khan had featured. So there had  
 18 already been disclosure of a number of relevant  
 19 documents in that way in redacted form.

20 But the broader point -- and this is the fifth and  
 21 final point -- the broader point, if one is looking at  
 22 a comparison with 7/7 is that the best and most  
 23 effective way of seeking to ensure that as much as  
 24 possible has been and can be disclosed into open does  
 25 not admit of a uniform answer, and once one acknowledges

1 that it becomes a context-specific question. And here,  
 2 there is at least the comfort -- and the strong comfort,  
 3 we submit -- that the most careful thought has been  
 4 given to that, not just by government agencies, but also  
 5 involving counsel to the inquest and his team, and your  
 6 team, that this is, witness statement production is  
 7 the most effective and the most proportionate way of  
 8 doing that. So those are my submissions in open.

9 THE CHIEF CORONER: Thank you very much indeed, that's very  
 10 helpful.

11 Ms Ailes, can I first of all thank you very much for  
 12 the written submissions which I have got and I have  
 13 read. Again, it's clear to me that a lot of thought and  
 14 a lot of work has gone into those written submissions  
 15 for which I'm extremely grateful, and you make a number  
 16 of observations on behalf of the families that you  
 17 represent, and again, so far as they are concerned,  
 18 balancing their concerns about issues of national  
 19 security with their desire obviously to have as much  
 20 material as they ought to have available to them, or to  
 21 you, so that in fact, proper questions can be put.

22 MS AILES: That is absolutely right, sir. The families  
 23 recognise that there is a balance to be struck and that  
 24 the only question is where it is to be struck. I was  
 25 going to start, sir, by expressing the families'

1 gratitude to your team and to you, in a number of  
2 respects. Firstly, in the care that has evidently been  
3 taken by your legal team in the analysis of  
4 the documents, documents which may or may not become  
5 evidence, that is what this hearing is to determine.  
6 But secondly, in the care that has evidently been taken  
7 both by your team and by those who represent  
8 the Secretary of State in the preparation and analysis  
9 of these applications. It is reassuring to hear more  
10 this morning, both about the nature of the documents  
11 that are the subject of these applications and also  
12 about the process that will be followed.

13 And sir, you are absolutely right, we would not  
14 expect that this would be an inquest in which every  
15 single document could be disclosed publicly, we  
16 recognise that there are likely to be sensitivities, and  
17 I absolutely say that the families argue for nothing  
18 that will put lives in danger, whether that is the lives  
19 of informants, or those who assist the authorities, or  
20 as a result of in any way imperilling  
21 the counter-terrorism efforts that are made in this  
22 country.

23 So, sir, I have, in those circumstances, really  
24 three points to make. I don't propose to read out  
25 the submissions that you already have in writing. First

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1 I'd like to make a point about the process. Secondly,  
2 I would like to address briefly the arguments in my  
3 written submissions about documents, and thirdly,  
4 I would like to say something about the public interest  
5 in favour of disclosure, acknowledging that there are  
6 undoubtedly public interests also in favour of  
7 concealment, about which much has already been said.

8 But, sir, as far as the process is concerned, I make  
9 no apology for raising the arguments that there are in  
10 favour of disclosure. The Secretary of State will be  
11 ably represented in a closed hearing to make  
12 the arguments that tend in the other direction.

13 THE CHIEF CORONER: There's no need to apologise at all. In  
14 fact, I would be -- in a sense, if the families were not  
15 represented, they are points that I would be having to  
16 test myself, it seems to me, in relation to my role, and  
17 so it's quite right that you raise these points, and  
18 they're given serious consideration.

19 MS AILES: Thank you, sir. That is exactly the submission.  
20 We ask that in our absence, in the closed hearing, you  
21 raise the arguments that we would raise were we able to  
22 consider the applications. So we're reassured by what  
23 we heard from counsel to the inquest this morning, that  
24 they have sought to put themselves in the positions of  
25 the families, and we ask you, therefore, to act as

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1 the families' advocates.

2 There is an inevitable limitation in anything that  
3 I can say this morning. I can't read the applications,  
4 I can't make factual submissions on the four legal  
5 questions, or know what the merit of any submissions  
6 that I am making today may be, but, sir, you can probe  
7 if some secrecy is necessary, is there a way in which  
8 more can be disclosed? Can a gist be improved? Are  
9 there cases in which documents can be disclosed in  
10 redacted form? We note that counsel to the inquests  
11 have raised that suggestion themselves in their written  
12 submissions, no doubt in light of the closed  
13 application, and I understand that there have been  
14 further submissions from the Secretary of State. So the  
15 submission is simply this: take those questions  
16 seriously. We do not underestimate the care that has  
17 gone into the Secretary of State's consideration of  
18 these issues, but you, sir, will have the luxury of time  
19 to submit these questions to a level of forensic  
20 scrutiny which you and your team can bring to bear this  
21 morning.

22 THE CHIEF CORONER: And again, just on that point, Ms Ailes,  
23 I can reassure the families that, because I've seen  
24 the closed submissions, those questions that you've  
25 identified, both this morning and in your written

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1 submissions, are the ones which have been flagged up by  
2 counsel to the inquest.

3 MS AILES: Thank you, sir.

4 If I may move on to the question of gists. We  
5 understand that the process that has been followed is  
6 one which is to prepare something in the form of  
7 a master gist via the statement of Witness L, and we do  
8 not contend that that may not in some circumstances be  
9 a better approach. We recognise that it may be a means  
10 by which more is known -- more can be made known than  
11 simply through disclosure of redacted documents.

12 Our essential point remains that there is always  
13 a value in the disclosure of contemporaneous documents  
14 as well. The quality of the evidence which a witness is  
15 able to give is improved, and that may be particularly  
16 the case in this situation, because Witness L is not  
17 giving evidence principally from his own or her own  
18 recollection. We understand that Witness L was not  
19 involved in the investigation so is speaking to  
20 the documents which were not of Witness L's preparation,  
21 and therefore -- and I'm grateful for confirmation that  
22 your legal team does not dispute this -- evidence will  
23 always be better if all those present in court have  
24 access to the documents that Witness L is talking about.

25 Notwithstanding that the statement may be a means of

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1 putting more information into the public domain, I do  
 2 submit that something is always lost as well in  
 3 the preparation of a gist, and sir, it may assist you if  
 4 I give one example; you will know whether it is, on  
 5 the particular facts, a good example or a bad. At  
 6 paragraph 130 of his statement, Witness L says, of  
 7 the final weeks before the attack --  
 8 THE CHIEF CORONER: Just bear with me one minute whilst  
 9 I ...  
 10 MS AILES: Paragraph 130.  
 11 THE CHIEF CORONER: Thank you.  
 12 It's page 35.  
 13 MS AILES: Thank you. What Witness L says there is:  
 14 "None of the intelligence we received in relation to  
 15 Butt in the weeks prior to the attack added anything of  
 16 significance to the intelligence picture and no  
 17 attack-planning was identified."  
 18 Now, sir, that is a fairly crucial statement in  
 19 the context of these inquests. But it is not clear to  
 20 me from reading that paragraph whether this is an  
 21 observation that is being made by  
 22 Witness L ex post facto, or whether the statement that  
 23 the intelligence added nothing of significance was  
 24 a conclusion that was drawn at the time, and a similar  
 25 observation similarly worded is made in Lord Anderson's

1 report. So it may be the case that new intelligence was  
 2 received in the weeks prior to the attack and assessed  
 3 and that it was concluded at the time that it added  
 4 nothing of significance, or it may simply be that  
 5 Witness L has looked at it since and has concluded that  
 6 it added nothing.  
 7 The families suspect that there may well be no  
 8 reason why they should not know the answer to that  
 9 question, and indeed, it may be a matter which could be  
 10 explored in evidence with Witness L in due course. But  
 11 the point at this stage is a broader one. We rather  
 12 suspect that it may not have been appreciated that  
 13 the answer to that question was unclear. As I say, this  
 14 may or may not be a good example, but if that is  
 15 the case, it exemplifies one of the dangers of gisting:  
 16 the risk that those who are familiar with the underlying  
 17 documents may overlook matters which are obvious to them  
 18 because of the documents that they have seen. That,  
 19 sir, is all that I wish to say about gisting.  
 20 Finally in relation to the public interest in  
 21 disclosure. Please, sir, do not underestimate  
 22 the intrinsic value of scrutiny of these matters in  
 23 public; from what your team has said, I anticipate that  
 24 you will not. The families recognise, as I have said,  
 25 that it is not always possible, that it is an interest

1 that might be outweighed by other factors, but it does  
 2 have real value. As I've said in my written  
 3 submissions, this is, in substance, perhaps for good  
 4 reason, an application to limit the scope of your  
 5 investigations.  
 6 It is true that there have already been reviews and  
 7 analyses which have been conducted behind closed doors,  
 8 but it is to be noted that your legal team have  
 9 identified information which is relevant to your  
 10 investigation and does not appear in Lord Anderson's  
 11 report. I note that from the Secretary of State's  
 12 submissions at paragraph 2.  
 13 It is easy for a small number of pairs of eyes to  
 14 miss things. I repeat that we do not want to imperil  
 15 counter-terrorism efforts, but we say as well that this  
 16 is the opportunity for the public to understand, and if  
 17 possible, to be reassured. An effective hearing on  
 18 these issues has the goal of preventing future deaths in  
 19 terrorist attacks, and that, we submit, is also an  
 20 important factor and we ask you to bear it in mind as  
 21 you consider the closed applications.  
 22 THE CHIEF CORONER: Ms Ailes, I'll repeat what I've said  
 23 before. I will clearly have very much in mind, as I've  
 24 tried to have throughout, the importance of ensuring  
 25 that the families have the most thorough examination

1 that they can of the events -- the tragic events which  
 2 led to the deaths.  
 3 MS AILES: Thank you, sir.  
 4 THE CHIEF CORONER: Thank you very much.  
 5 Mr Taylor, it may be sensible to turn to anything  
 6 you may wish to say on behalf of the family for  
 7 Xavier Thomas that hasn't already been touched upon.  
 8 And again, can I thank you and Mr Adamson for  
 9 the written submissions, which I've got and I have read.  
 10 MR TAYLOR: Sir, I'm grateful for that, and may I say I have  
 11 listened to the submissions of Ms Ailes, with which  
 12 I agree and would adopt. I don't wish to repeat what we  
 13 have already put in writing, there is much which is  
 14 covered by both the sets of written submissions, so  
 15 I will add nothing further than to say I'm grateful to  
 16 hear from you that you will take our interests very  
 17 seriously in mind when considering the matters in closed  
 18 session. So I've nothing further add, unless you'd like  
 19 me to address you on anything specifically.  
 20 THE CHIEF CORONER: No, thank you very much indeed,  
 21 Mr Taylor. That's very helpful.  
 22 Can I -- Mr Horwell, I'm looking at you. It's not  
 23 with an invitation to say anything unless you wished to  
 24 make by way of observation in the open part of this  
 25 hearing.

1 MR HORWELL: Sir, I'm grateful for the invitation , but  
2 I won't take it ; there's nothing to say.  
3 THE CHIEF CORONER: Can I see if anyone else wishes to say  
4 anything.

5 MS BARTON: Sir, I have no submissions on behalf of  
6 the City of London Police.

7 THE CHIEF CORONER: Thank you very much.

8 MR HOUGH: Sir, in reply, let me just make a very few points  
9 in response to Ms Ailes' helpful and well considered  
10 submissions. We appreciate and value the families'  
11 contribution to this hearing. We understand the way in  
12 which they have put their submissions, and we also  
13 understand that there must be a degree, a natural degree  
14 of human frustration in knowing that matters are being  
15 considered behind closed doors, even if one understands  
16 all the very good reasons for matters being handled in  
17 that way.

18 In response to her three points, first of all, I can  
19 assure her that we shall raise arguments to test  
20 the closed submissions of the Secretary of State and  
21 that we have done so thus far. The process will be  
22 rigorous, although of course the forensic scrutiny must  
23 be within the context of the legal principles I've  
24 sought to outline.

25 I can also say that putting ourselves in

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1 the position of the families in our discussions with  
2 the Secretary of State was a real and practical  
3 approach. We found ourselves asking questions or  
4 putting matters in the form, "Surely the families might  
5 want to look at matters in this way, or ask these  
6 follow-up questions", and that itself , in a number of  
7 instances, led to further information finding its way  
8 into the witness statement of Witness L.

9 Secondly, about documents and gists, while accepting  
10 many of the points made, we don't accept, with great  
11 respect, that a document, even if redacted, is always  
12 preferable to a gist. Taking the example which Ms Ailes  
13 gives of the statement that there was little of  
14 significant intelligence value obtained over a period of  
15 time. Original documents dealing with such a matter  
16 might just be a series of reports or file notes which  
17 were almost entirely blacked out because they would  
18 reveal intelligence sources. Instead what her clients  
19 know is that there was a degree of monitoring and  
20 intelligence gathering going on during that time, but  
21 that it didn't reveal anything of significance , and that  
22 that conclusion has been validated by an independent  
23 team, quite apart from the fact that it's also been  
24 attested to by Lord Anderson.

25 THE CHIEF CORONER: Yes.

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1 MR HOUGH: And thirdly, the points which Ms Ailes makes  
2 about the public interest. I can assure her once again  
3 that nobody on your team underestimates the value of  
4 the inquest process, or the value of public scrutiny and  
5 questioning of public authorities.

6 We should add one point, that while we certainly  
7 said that there is relevant evidence which is not in  
8 Lord Anderson's report, in fairness to the Secretary of  
9 State we should add that some relevant and valuable  
10 material which wasn't in Lord Anderson's report is in  
11 the witness statement of Witness L as a result of  
12 the process through which we've all gone.

13 That's all I propose to say in reply in opening.

14 THE CHIEF CORONER: Thank you. There were two observations

15 I was going to make, really to echo some of what you've  
16 said, Mr Hough. Obviously Lord Anderson's review, or  
17 the public report, is quite a unique exercise which was  
18 undertaken. And the second is that -- I hinted this in  
19 something I said a little earlier -- of course  
20 the coronial process is somewhat unique that we have in  
21 this country. As I have indicated, it has its good  
22 points, and some would say it has its bad points too,  
23 but compared to many other jurisdictions it is truly  
24 unique, and it is an opportunity for there to be  
25 a fact-finding exercise -- conducted in this case by me,

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1 but conducted normally by a coroner, a judge -- looking  
2 at very much the concerns for the families of those who  
3 have died to look at not only what happened, but, to  
4 pick up on one of the themes that featured in the last  
5 and Ms Ailes mentioned this morning, really to ensure  
6 where one can that there is proper prevention of future  
7 death.

8 MR HOUGH: Yes, sir.

9 THE CHIEF CORONER: Thank you very much.

10 Mr Hough, I think that probably brings to an end  
11 what we can deal with by way of the open hearing, and  
12 I will rise in a moment or two and we will sit again in  
13 closed hearing, when we will be slightly smaller in  
14 number, I suspect, in court.

15 Those not present, of course, we will meet again on  
16 7 May at the Old Bailey.

17 MR HOUGH: Sir, in advance of that, today, or very shortly,  
18 the orders concerning anonymity and special measures  
19 will be made available.

20 THE CHIEF CORONER: Yes.

21 MR HOUGH: And then, probably in advance of the start of  
22 the inquests, there will be an open ruling on  
23 the PII claim --

24 THE CHIEF CORONER: Yes.

25 MR HOUGH: -- and a closed ruling as well --

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1 THE CHIEF CORONER: Yes.  
 2 MR HOUGH: -- obviously only available to those who will  
 3 have participated in the closed hearing.  
 4 THE CHIEF CORONER: Yes. What I'm hoping we can achieve  
 5 today, Mr Hough, is for me to be in a position to  
 6 indicate in the course of the closed hearing what my  
 7 decision is, and a written ruling will follow at some  
 8 stage. It seems to me that would help everyone. And  
 9 the fruits of that will be disseminated, I've no doubt,  
 10 to others who won't be here for it but will be  
 11 interested to know what the outcome is.  
 12 MR HOUGH: Yes, sir.  
 13 THE CHIEF CORONER: Mr Radcliffe, you happen to be right in  
 14 my eye line. It's a great pleasure to see you as  
 15 always.  
 16 MR RADCLIFFE: Thank you.  
 17 THE CHIEF CORONER: But silence is one of the virtues I know  
 18 that you pay great store in, and I know that you've got  
 19 a clear interest to -- concern in this hearing. I don't  
 20 think, in fact, any of the points we've covered today  
 21 directly affect those interests.  
 22 MR RADCLIFFE: No, they don't. It became plain from  
 23 the written submissions that it was unlikely that we  
 24 would have anything to add, and the oral submissions  
 25 that have been made by my learned friends have confirmed

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1 that.  
 2 THE CHIEF CORONER: Yes.  
 3 MR RADCLIFFE: Are you likely to come back into open session  
 4 today, or I wondered if our function was over for  
 5 the day?  
 6 THE CHIEF CORONER: That was really the reason why I thought  
 7 I'd pick upon you --  
 8 MR RADCLIFFE: That's very kind.  
 9 THE CHIEF CORONER: -- to say that I wasn't intending to  
 10 come back into open session, partly because I don't want  
 11 to delay people if they've got other things they wish to  
 12 do, but also as an opportunity, if anyone wished to  
 13 raise something that isn't strictly on the agenda which  
 14 concerns matters, it can be covered in the course of  
 15 this open hearing, because as I say, I'm conscious that  
 16 we won't meet again until the first day of the inquest  
 17 on 7 May.  
 18 MR RADCLIFFE: There are masses that I have discussed with  
 19 my learned friend Mr Hough this morning.  
 20 THE CHIEF CORONER: Yes.  
 21 MR RADCLIFFE: And in particular, as far as we're concerned,  
 22 we're not funded for the first part of the hearing, but  
 23 nevertheless, the lady from whom we effectively receive  
 24 our instructions, Zahrah Rehman, is going to be giving  
 25 evidence in the course of the first hearing, other

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1 members of the family will also be giving evidence, and  
 2 background evidence, particularly from  
 3 Detective Chief Inspector Jolly,  
 4 Detective Superintendent Riggs, and in particular  
 5 witnesses M and L, will not be repeated in part 2 of  
 6 the inquest, but nevertheless they're of some  
 7 importance.

8 And in those circumstances, it would be Mr Morgan  
 9 and my intention to be present for much, if not all, of  
 10 those passages of evidence in part 1, and unless there's  
 11 objection, and of course with your permission, it may  
 12 well be that we would want to ask certain Zahrah Rehman  
 13 questions that would arise out of our instructions which  
 14 we would hope would be of assistance in establishing  
 15 the family's position. But our participation as such in  
 16 part 1 will be very limited, as opposed to simply being  
 17 in attendance.

18 THE CHIEF CORONER: Thank you, Mr Radcliffe. And I have no  
 19 doubt that Mr Hough and the team will provide you with  
 20 all assistance that you require in terms of the timing  
 21 of when witnesses are coming --

22 MR RADCLIFFE: Yes, of course.

23 THE CHIEF CORONER: -- that may concern you, and I will look  
 24 forward to seeing either you or Mr Morgan, or both of  
 25 you, on those occasions.

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1 MR RADCLIFFE: Thank you very much indeed.  
 2 THE CHIEF CORONER: Does anyone else wish to raise anything  
 3 in relation to matters concerning the inquests in  
 4 the remaining part of this open hearing? No? Mr Hough,  
 5 I think I will take that silence as a no.  
 6 What I will do is I will rise. I make it nearly  
 7 11.25. What I'm going to suggest is that we aim to  
 8 start the closed hearing in 15 minutes' time, which  
 9 I hope will provide sufficient time for the logistics  
 10 for people to depart and for us to be able to start that  
 11 hearing.  
 12 MR HOUGH: Thank you, sir.  
 13 THE CHIEF CORONER: I'll rise.  
 14 (11.23 am)  
 15 (The hearing continued in closed session)

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