INQUESTS INTO THE DEATHS OF DIANA, PRINCESS OF WALES AND MR DODI AL FAYED

At the Royal Courts of Justice, Strand
London, WC2A 2LL

Pre-Hearing

8th January 2007

Before:

THE RT HON BARONESS BUTLER-SLOSS, GBE
Deputy Coroner of the Queen's Household and Assistant Deputy Coroner for Surrey

In the matter of the Inquest into the death of Diana, Princess of Wales

Interested Persons:

The Hon Lady Sarah McCorquodale (Executor and on behalf of the Spencer Family)
Not represented

Major Jamie Lowther-Pinkerton (On behalf of the Royal Princes)
Not represented

Mr Mohamed Al Fayed
Represented by Mr Michael Mansfield QC and Mr Patrick Roche (Instructed by Lewis Silkin LLP)

The Parents of M. Henri Paul
Represented by Mr Richard Keen QC (Instructed by Stuart Benson Solicitors)

President, The Ritz Hotel Paris
Represented by Mr Ian Croxford QC (Instructed by Barlow Lyde and Gilbert Solicitors)

Mr Trevor Rees
Represented by Mr Ian Lucas MP (Stevens Lucas Solicitors)

The Commissioner of Police of the Metropolis
Represented by Mr Edmund Lawson QC (Instructed by Ms Naz Saleh, Metropolitan Police Directorate of Legal Services)

Sir John Nutting QC and The Hon Hugo Keith appeared for the Attorney General (Instructed by the Treasury Solicitor)

Mr Ian Burnett QC appeared as Amicus
(Instructed by the Deputy Coroner of the Queen's Household)

In the matter of the death of Mr Dodi Al Fayed

Interested Persons:

Mr Mohamed Al Fayed
(As above)

The Parents of M. Henri Paul
(As above)

President, The Ritz Hotel Paris
(As above)

Mr Trevor Rees
(As above)

The Commissioner of Police of the Metropolis
(As above)

Mr Ian Burnett QC appeared as Amicus
(Instructed by the Assistant Deputy Coroner for Surrey)

Lady Butler-Sloss:

Decision and Reasons

1. As the appointed deputy coroner of the Queen's Household and assistant deputy coroner for Surrey, I held a pre-inquest meeting on Monday 8th January, 2007 in court 4 of the Royal Courts of Justice, Strand, London in respect of both inquests. I had received three written submissions, from Mr Mansfield QC and Mr Roche for Mohammed Al Fayed, Sir John Nutting QC and the Hon Hugo Keith for the Attorney-General and Mr Burnett QC instructed by me to act as *Amicus.* I also received an addendum to the submissions from Mr Mansfield and Mr Burnett. I am extremely grateful to Counsel who provided me with excellent and most helpful written submissions at short notice.

2. I heard oral submissions from Sir John Nutting, Mr Mansfield, Mr Lawson QC for the Metropolitan Police, Mr Keen QC for the parents of Henri Paul, Mr Croxford QC for the Ritz Hotel, Mr Lucas MP for Trevor Rees (formerly Rees Jones) and Mr Burnett. I am also extremely grateful to all the advocates for their help and co-operation in completing the meeting in one day.

3. Prior to hearing submissions I read out two letters. The first was from the Major Lowther-Pinkerton, Private Secretary to Prince William and Prince Harry. On their behalf, he expressed no view on the legal and procedural issues. He wrote and I quote

   "The Princes have asked me to indicate that it is their desire that the inquest should not only be open, fair and transparent, but that it should also move swiftly to a conclusion."

   A letter from Lady Sarah McCorquodale supported the letter written on behalf of the Princes.

4. The issues to be resolved were

   1. to identify the interested persons in the two inquests
   2. whether to hold two separate inquests or concurrent inquests
   3. whether I had jurisdiction to act as the deputy coroner of the Queen's Household
   4. whether I should hold the inquests with or without a jury or juries

Interested persons

5. There was no disagreement from the interested persons to my intention to treat Mohamed Al Fayed and Trevor Rees as interested persons under Coroners Rules 1984, rule 20(2)(h).

Decision 1

6. I have therefore decided that the following people are interested persons in the inquest of Diana, Princess of Wales,

Prince William and Prince Harry of Wales
Lady Sarah McCorquodale
Mohamed Al Fayed
The President, the Ritz Hotel
The parents of Henri Paul
Trevor Rees
The Commissioner of Police of the Metropolis

7. The following people are interested persons in the inquest of Dodi Al Fayed

Mohamed Al Fayed
The President, the Ritz Hotel
The parents of Henri Paul
Trevor Rees
The Commissioner of Police of the Metropolis

Concurrent Inquests

8. Mr Mansfield submitted with compelling reasons that the two inquests should be heard together. There was no disagreement and I entirely agree that a single hearing of the two inquests together is the most effective course to take. It will be necessary therefore for me in due course to transfer one inquest under the provisions of section 14 of the Coroners Act 1988 either to the Queen's Household or to Surrey subject to the issue of my jurisdiction to act as deputy coroner of the Queen's Household and my decision whether to call a jury. I deal with both those questions later in these reasons. In the light of the agreement of all interested persons it would not now be necessary for me to consider empanelling two juries.

Decision 2

9. I have decided that there should be concurrent inquests which will be heard at a single hearing.

The Jurisdiction of a Coroner

10. The jurisdiction of the coroner, his powers and duties are contained in the Coroners Act 1988 (the 1988 Act). Section 5 states

5.—(1) Subject to subsection (3) and sections 7 and 13 to 15 below, an inquest into a death shall be held only by the coroner within whose district the body lies.

(2) Subject to subsection (3) and section 13 below, a coroner shall hold inquests

only within his district.

Duty to hold an inquest

8.—(1) Where a coroner is informed that the body of a person ("the deceased") is lying within his district and there is reasonable cause to suspect that the deceased—

(a) has died a violent or an unnatural death;

(b) has died a sudden death of which the cause is unknown; or

(c) has died in prison or in such a place or in such circumstances as to require an inquest under any other Act,

then, whether the cause of death arose within his district or not, the coroner shall as soon as practicable hold an inquest into the death of the deceased either with or, subject to subsection (3) below, without a jury.

11. The Court of Appeal in *Regina v. West Yorkshire Coroner ex parte, Smith* [1982] 3 W.L.R. 920 decided that, in certain circumstances, it was necessary to hold inquests on bodies repatriated to England from abroad. The 1988 Act did not amend or reverse the decision in the *Helen Smith* case. Dr Burton, the West London Coroner, decided that section 8 applied to the deaths of Diana, Princess of Wales and Mr Al Fayed and that there should be post mortems on both bodies. He also decided to invoke the provisions of section 14 in respect of both deceased. The relevant provisions of section 14 are

14.—(1) If it appears to a coroner that, in the case of a body lying within his district, an inquest ought to be held into the death but it is expedient that the inquest should be held by some other coroner, he may request that coroner to assume jurisdiction to hold the inquest; and if that coroner agrees he, and not the coroner within whose district the body is lying, shall have jurisdiction to hold the inquest.

(4) Where jurisdiction to hold an inquest is assumed under this section, it shall not be necessary to remove the body into the district of the coroner who is to hold the inquest.

(5) Any request made or agreement given, any application for a direction and any direction under any of the foregoing provisions of this section shall be made or given in writing.

(7) On the assumption by a coroner of jurisdiction to hold an inquest under this section, the coroner—

(a) shall also assume, in relation to the body and the inquest, all the powers and duties which would belong to him if the body were lying within his district (including the power to order its exhumation under section 23 below); and

(b) may exercise those powers notwithstanding that the body remains outside his district or, having been removed into it, is removed out of it by virtue of any order of his for its examination or burial.

(8) On the assumption of the powers and duties referred to in subsection (7) above by the coroner who assumes jurisdiction to hold the inquest, the coroner within whose district the body is lying shall cease to have any powers or duties in relation to the body

or the inquest, notwithstanding that the body remains within his district or comes to be buried there.

12. Dr Burton applied the guidance set out in a Home Office circular,

No HC79/1983, the relevant passage of which is
"Because bodies are usually brought into England and Wales from abroad by air, it will not always be clear whether the death should be reported to the coroner with the relevant airport in his jurisdiction or the coroner for the area in which the remains are to be buried or cremated. Because the relatives will normally live in the latter area, where they are being buried mainly, and the funeral directors collecting the body will usually be based there, it will generally be more convenient for the coroner at the place of disposal to hold the inquest and coroners may wish to notify funeral directors in their area accordingly."

The Jurisdiction of the Coroner of the Queen's Household

13. Dr Burton was also Coroner of the Queen's Household and his jurisdiction was provided for by section 29 and Schedule 2 of the 1988 Act. Section 29 states

29.—(1) The coroner of the Queen's household shall continue to be appointed by the Lord Steward for the time being of the Queen's household.

(2) The coroner of the Queen's household shall have exclusive jurisdiction in respect of inquests into the deaths of persons whose bodies are lying—
(a) within the limits of any of the Queen's palaces; or
(b) within the limits of any other house where Her Majesty is then residing.

(3) The limits of any such palace or house shall be deemed to extend to any courts, gardens or other places within the curtilage of the palace or house but not further; and where a body is lying in any place beyond those limits, the coroner within whose district the body is lying, and not the coroner for the Queen's household, shall have jurisdiction to hold an inquest into the death.

(4) The jurors on an inquest held by the coroner of the Queen's household shall consist of officers of that household, to be returned by such officer of the Queen's household as may be directed to summon the jurors by the warrant of the coroner.

(7) The provisions of Schedule 2 to this Act shall have effect with respect to the application of this Act and the law relating to coroners to the Coroner of the Queen's household.

14. Schedule 2 states

CORONER OF THE QUEEN'S HOUSEHOLD

1. Sections 1 to 5 of this Act (except subsections (4) to (6) of section 3), sections 6 and 7 of this Act so far as relating to the appointment and functions of assistant deputy coroners and Schedule 1 to this Act shall not apply to the coroner of the Queen's household.

2. Sections 6 and 7 of this Act, so far as relating to the appointment and functions of deputy coroners, shall apply with the necessary modifications to the coroner of the Queen's household as they apply to other coroners and, in particular, with the following modifications, namely—

(a) that the appointment of a deputy to the coroner of the Queen's household shall be subject to the approval of the Lord Steward of the Queen's household; and

(b) that copies of such appointments shall be sent to and kept by him.

3. Sections 9 and 32(2) of this Act shall not apply in relation to any inquest held by the coroner of the Queen's household.

4. Section 25 of this Act shall not apply in relation to service on a jury on an inquest held by the coroner of the Queen's household but that shall not affect any entitlement to payment that might otherwise be enjoyed by a juror for service on such a jury.

5. Subject to the provisions of this Schedule and section 29 of this Act, the coroner of the Queen's household shall, within the limits laid down in subsection (3) of that section—

(a) have the same jurisdiction and powers; and

(b) be subject to the same obligations, liabilities and disqualifications; and

(c) generally be subject to the provisions of this Act and the law relating to coroners in the same manner,

As any other coroner.

The facts relating to Dr Burton's involvement in the events of the 31st August 1997

15. As I have said above, Dr Burton was the Coroner for West London and was also the Coroner of the Queen's Household. He had been a coroner for many years and was clearly very experienced. Sadly he died in 2002 and was succeeded by Mr Burgess who is the present Coroner of the Queen's Household.

16. Diana, Princess of Wales died in the early hours of the 31st August 1997. Dr Burton learned of her death and clearly realised that her body would lie in one or each of the jurisdictions of which he was the coroner. He began to plan the arrangements. We

have four documents in which he set out the steps he took on the 31st August. They are

a. the request for transfer of jurisdiction over the body of Mr Al Fayed by the West London Coroner to the Surrey Coroner under section 14 acknowledged by the Coroner for Surrey, Mr Burgess on the 31st August

31 August 1997

"I understand that the death of Mr Al Fayed was reported to the Coroner for the County of Surrey and notified to the police in that County, on the grounds that the body was to be brought to England for burial in that County,

I understand that the family wish to have a memorial service in London before the burial. The body has been brought into Fulham mortuary in my jurisdiction. In order to permit an examination of the body and to issue an order for the burial, without delay, I give this notice under section 14 of the Coroners Act 1988 requesting that you should assume jurisdiction over the body at this stage, before the body arrives within the County of Surrey."

[signed in handwriting]

John Burton

[signed in handwriting]
Received

Michael Burgess (HMC Surrey)
31 August 1997

b. The request for transfer of jurisdiction over the body of Diana Princess of Wales by the Coroner for West London to the Coroner of the Queen's Household, otherwise to himself

"The body of Diana Princess of Wales was returned to Northolt from France. The death had been notified to me as Coroner of the Queen's Household. It was thought that the funeral might be held at Windsor. This conformed with Home Office Circular 79/1983.

In order to direct a post mortem examination before the body arrived within that jurisdiction, this is a request in writing in accord via section 14 of the Coroners Act 1988, from West London to the Queen's Household."

[signed in handwriting]
John Burton

17. There is no acknowledgment of the request by himself in his other capacity but it is clear that he thereafter acted as the coroner of the Royal Household.

c. A handwritten note, dated 31st August. I have set out below the text as far as possible as it was written by Dr Burton

"Sunday 31 August 1997

Phoned palace - Lucy Dove - believed buried Windsor

Assume Household Jurisdiction ? Arrive Northholt Liase with
myself

speak Levertons. Burial

Burgess informed of Fayed by Surrey Police. Burial - Brookwood

Problem with time for funeral

If P.M at Fulham - between Heliport and Mosque.

Inspector Rees involved via Leicester. Problems in France.

Chapman to do P.M. asked to continue when

Diana arrived.

Diana to arrive later. Fulham en route to ? Levertons.

Need for P.M. + embalm

Transfer jurisdiction of Al Fayed at Fulham to Burgess to

allow him to direct P.M before body arrived in Surrey.

Chapman assumes I do P.M today El Fayed. Transfer Jurisdiction West London/Household

See family of Diana. Now to be funeral at Althorpe.

Body to Lie in St James. Body in my jurisdiction -

physically - so give Burial order."

d. A later typed and undated note expanding on the contemporaneous handwritten note

"Expanded handwritten jottings re 31 August 1997.
Sunday 31 August 1997. Heard news.
Phoned Palace. Lord Chamberlain in difficulty with switchboard. To Phone

back.
Contacted Coroners Officer Brown, to arrange mortuary, if necessary.
Phoned Palace - Lucy Dove - told body coming to England.(Position re HRH was not clear. ? family or Royal funeral.
Told thought burial at Windsor. Believed body coming to Northolt.
Levertons dealing with funeral.
Contact Levertons. Told a burial.
As I covered Northolt as West London and Windsor as Household, able to liase with myself.
Burgess informed by Surrey Police that Dodi coming to Brookwood for burial before nightfall. Arrangements for Chapman to do rapid autopsy in Surrey before burial.
Plans changed. Dodi to go to London Mosque then Brookwood. Chapman and Burgess come to Fulham mortuary to do autopsy before service.
As body not yet in Burgess jurisdiction – s.4 Transfer to provide jurisdiction.
Inspector Rees (Palace liason) contacted by Leicester Police,
He is informed there are problems in France in releasing bodies.
Chapman asked to do Diana autopsy after Dodi at Fulham.
Body of Dodi arrived and was autopsied and removed.
Diana to go to Levertons or to St James's Palace. Asked them to call at Fulham in passing.
Note - Household coroner only assumes jurisdiction when body arrives in a Palace, although the Home Office say he will take jurisdiction from place of funeral. To avoid going to Palace and coming back, s 14 transfer to Household from West London.
Dr Chapman carried out autopsy. Dr Peter Wheeler, Doctor to Princess Diana, present and identified the body.
The position of Diana after divorce and loss of HRH was sensitive.
Coffin had Royal Standard. Thought advisable to follow Home Office guideline and have Household jurisdiction and not seize body for West London.
The family of Diana attended mortuary. Thought the funeral would now be at Althorpe, but the body was to lie at St James's - Not her home – Kensington. However both were in Household jurisdiction.
Burial Order given to Funeral directors at conclusion of autopsy

18. The airport at Northolt was within Dr Burton's jurisdiction as Coroner for West London. There appears to have been some confusion in the Palace and no doubt shock at the tragic news. Dr Burton was clearly trying to make the arrangements to minimise the movement of the bodies of Diana, Princess of Wales and Mr Al Fayed. He arranged for the Fulham Mortuary to receive the bodies and for the post mortems to be carried out expeditiously. There was a change of plan for the destination of the body of Mr Al Fayed and uncertainty as to the burial plans for Diana, Princess of Wales. This was not surprising since both were young and no arrangements appear to have been put in place to deal with the death of a young member of the Royal Family.

Submissions of Mr Mansfield QC

19. Mr Mansfield made submissions both on the question of calling a jury and challenging my jurisdiction to act as the coroner of the Queen's Household.

20. He accepted that I was under no obligation to call a jury and that it was a matter for my discretion. It was desirable that I should call a jury in the exceptional situation of the deaths. It was a matter of public interest and necessary to ensure public confidence in the system. He said that his submission on this point had greater significance in the light of the publication of the Stevens Report. This Report had been commissioned by the Coroner and the terms of reference were widely drawn *[and can be found at page 4 of the Introduction to the Stevens Report]*. It was unique to have publication of such a Report in advance of the inquests. In addition the Report was not limited to factual information but included comment and opinion from the police. Although disclosure in deaths in custody cases was now favoured, see the Lawrence Report, the expression of opinion should be redacted. Publication of opinion was exceptional.

21. There was a problem in that there would be a risk of jeopardising the inquests by the prior Report which might be seen as usurping the inquests. The findings of the investigation were all set out and the ramification of that publication was that those who received the Report ie the public would see the Report as the final and official verdict and the public was under the illusion that everything was over. He was sure that was not the intention of the police but it was the effect of publication. Although Lord Stevens in his Overview stated that the Report was not prejudging the inquests there was a serious risk that it may already have done so. The Report was issued not only in an unique and exceptional way but also a somewhat undesirable procedure was adopted on the day.

22. If the objective was to have an informed public debate the public must be allowed to be the determiners and to form the jury at the end of the day. There were areas of real concern, for instance in the conclusions in chapters 3 to 9. He took the example of chapter 2 in which the thoughts and concerns of Princess Diana were investigated. Her concerns about her safety were similar to those Mohamed Al Fayed had expressed – her fear of serious injury to herself. These concerns were communicated to her solicitor, a business associate and to the police. For some reason the French authorities were not informed. The coroner would be entitled to receive statements by a deceased witness under Rule 37(5). Since it had been put into the public domain for public debate in this way, a jury was best equipped to deal with the background material set out in chapter 2.

23. Mr Mansfield drew my attention to the decision of Sullivan J in *R (Collins) v The Coroner for Inner South District of Greater London* [2004] EWHC Admin 2421

24. At paragraph 5 of his judgment the judge said

5. Turning to the concern about the deputy coroner sitting without a jury, this is not one of those cases where a jury is required by statute. The coroner has a discretion. The discretion must be exercised judicially. Putting the matter very simply, the reason why His Honour Judge Butler decided that it would be more appropriate to proceed without a jury is that at the end of an inquest that is expected to finish around about Easter-time, he will have had to consider a mass of documentation. Moreover, the documentation relates to an event that occurred over 20 years ago. Thus, this is a particularly heavy and difficult investigation. It is precisely the sort of investigation that can best be carried out by a professional judge. There is another factor which is of particular importance: at the end of an inquest conducted by a judge alone, a reasoned decision will be given. That, indeed, is the point that was made by His Honour Judge Butler when explaining why he thought it more appropriate that a jury should not be appointed. It does seem to me that, given that these events occurred so long ago, it is particularly important that any conclusion that is reached as a result of this re-opened inquest should be a fully reasoned one and that will be the outcome of the coroner sitting without a jury. I can, again, see no positive reason to set against those reasons that I have just mentioned which would suggest that a jury would be appropriate or that the deputy coroner's discretion has been exercised wrongly in any way."

25. Mr Mansfield submitted that the decision in *Collins* could readily be distinguished from the present inquests. Sullivan J considered that there was no positive reason to set against the factors he had referred to. There were strong positive reasons to have a jury, that is to say the publication of a very strong and clear report with clear conclusions for the purposes of public debate. That was an overweening position and overcame some of the practical difficulties. Looking at the practical difficulties he considered that the inquests were more likely than in the *Collins* case to be dominated by live evidence rather than by documentation. The practical problems of a video link, foreign witnesses and interpreters as well as documentation were capable of being overcome as they regularly were overcome in criminal trials.

26. Mr Mansfield submitted that a jury would be able to bring back a narrative verdict and he relied on the decision of *Longfield Care Homes* in which Mitting J said that narrative verdicts were not confined to Article 2 cases and that where the death results from more than one cause of different types a narrative verdict will often be required, as it was in that case. Mr Mansfield suggested that it was open to a jury to set out conclusions or answer a list of alternative questions and a jury was well equipped to deal with a reasoned decision. In order to balance the perception that may have arisen that a coroner commissions a report, and the express findings of the report are published and then are decided on by the coroner at the end of the day which would be an unhappy result and would not bolster public confidence in the system because of the perceptions that arose, a jury was needed to have the final say in the matter.

27. On the issue of jurisdiction Mr Mansfield reminded me that a coroner held an inquest when the body was lying in his district. The provisions of section 14, assisted by the Home Office circular, allowed him to transfer jurisdiction to the district where the body was likely to be buried. Dr Burton was under a serious misapprehension when

he made the transfer request to himself as Royal Coroner. Mr Mansfield questioned whether Dr Burton was told by the Palace that the Princess would be buried within the Royal district. He had not been notified where Princess Diana might be buried nor the part he, as Royal Coroner, was to play. He must have recognised that she was not going to be buried at Windsor. He was told by the family that she would be buried at Althorpe and there must have been a strong assumption that she would be buried there. In that case he should have made the transfer request to the Coroner of Northamptonshire and not to himself as the Coroner of the Queen's Household. On the transfer document there was neither date nor acceptance. The language of his handwritten note was in the past. On the face of it, it appears that Dr Burton made a retrospective authorisation of what had already happened in his transfer request and in doing so he was under a serious misapprehension and misassumption of what was going on. It was not expedient for him to complete the transfer and he was in error in making that decision.

28. In a later short submission Mr Mansfield explained why there had not been an earlier challenge to the decision of Dr Burton and reminded me of the reluctance of Dr Burton to recognise that his client was an interested person in the Diana, Princess of Wales proceedings. With concurrent inquests that point was now irrelevant but in 2004, after an opinion from counsel, the present coroner still did not recognise Mohamed al Fayed as an interested person so Mr Al Fayed was unable to take the issue of jurisdiction any further at the opening of the inquest in to the death of the Princess.

29. Mr Mansfield amplified his submission on the issue of apparent bias. There had to be not just the perception that there was not bias, there had to be actual independence. I was tied inextricably to the publication and the findings of the Report and the use of the findings even at the next stage. The result was that I was not independent as a fact finder after that process and the only way that can be circumvented was by the fact finder being a jury.

30. Mr Mansfield submitted in the written addendum to his submission that I could hold both inquests in Surrey and the old Kingston courts would be a suitable venue. I had the power to transfer the jurisdiction to hold the inquest of Diana, Princess of Wales. In the written addendum to his submission Mr Burnett agreed that I had the power to transfer jurisdiction in relation to the Princess's inquest.

31. Section 14(7) was invoked in order for the Coroner of the Queen's Household to have jurisdiction to deal with the body of the Princess and was also invoked to enable the Coroner for Surrey to deal with the body of Dodi Al Fayed. Once the transfer is complete the coroner to whom jurisdiction has been transferred has by section 14(7)(a) and (b) all the powers and duties as if the body was lying within his district and may exercise those powers notwithstanding that the body remains outside his district or is removed out of his district for examination or burial. There appears to be nothing in the section 14 or elsewhere in the 1988 Act to prohibit successive transfers onward by coroners who have had transfers made to them without any requirement for the body of the deceased to be physically with the district at the time of transfer. I

am therefore persuaded that I have the power to transfer the jurisdiction to hold the inquest of the Princess to Surrey if I consider it expedient to do so. Unlike the powers of the Coroner of the Queen's Household who has a discretion as to the venue for an inquest, if I transfer jurisdiction from myself as deputy Royal Coroner to myself as assistant deputy Coroner for Surrey, by section 5(2) I may only hold the concurrent inquests within the territorial district of Surrey. This provision excludes the use of Kingston county court which is situated in Greater London.

Decision 3

32. I am satisfied that I have the jurisdiction to transfer the hearing of the inquest into the death of Diana, Princess of Wales from the Royal Household to Surrey.

33. Mr Mansfield suggested that Diana, Princess of Wales was no longer a member of the Royal Family. I was informed by Sir John Nutting that the suggestion was incorrect and that the Queen had announced, in a news release on the 28th August 1996, that Diana, Princess of Wales would continue to be regarded as a member of the Royal Household.

Decision 4

34. I am satisfied that at her death, Diana Princess of Wales continued to be considered as a member of the Royal Household.

Submissions of Sir John Nutting QC

35. Sir John Nutting, in his submission, explained that he was instructed by the Attorney General to make submissions on behalf of the Queen's Household limited to affording me every assistance to ensure that any inquest or inquests should be open, fair and transparent; to providing the factual position relating to the assumption of jurisdiction by Dr Burton as the Royal Coroner on the 31st August 1997 and to assisting on the possibility of my requiring to call a jury composed of officers of the Queen's Household. He made it clear that those whom the Attorney General represented did not wish to be considered as interested persons and did not intend to take any part in the inquest of Diana, Princess of Wales beyond the present proceedings.

36. Sir John, in his written submissions, had provided the factual background to the circumstances in which Dr Burton assumed jurisdiction as the Coroner of the Queen's Household.

37. In Sir John's view, the notes made by Dr Burton assisted in explaining the decision making process. The Department of Constitutional Affairs, in a response to a Freedom of Information request stated on the 21st July 2006'that there was no evidence to support Dr Burton's understanding (that Princess Diana would be buried at Windsor). This was a conclusion upon which Mr Mansfield relied, but it did not appear that the writer of the response from the Department had seen the four documents which were now available. The handwritten and typed notes clarified the

position and showed that at the time the coroner had good reason to believe from the palace that the body of Diana, Princess of Wales would be taken to Windsor for burial. Dr Burton acted in good faith on the reasonable possibility that the Princess might be buried at Windsor. She was still regarded as a member of the Royal Family. The purpose of the transfer at that stage was to obviate the necessity of the undertakers taking the body of the Princess to St James's Palace for the Royal coroner to assume jurisdiction and then bringing it back again to the Fulham Mortuary for the post mortem.

38. Mr Burgess was appointed Coroner of the Queen's Household on the 15th February 2002 and he opened the inquest on the 6th January 2004. I was appointed as his deputy for this inquest on the 25th August 2006. Sir John pointed out that there had been no challenge to Mr Burgess or to me on the ground that there was a lack of jurisdiction to hear the inquest.

A jury of the Queen's Household.

39. Sir John then made submissions on the possibility that I might call a jury of officers of the Queen's Household. The phrase 'officer of the Queen's Household' may have its origin in a Statute of 1541 (33 Hen 8c. 12) 'an Acte for murder and malicious bloodshed within the Courte' Section III provided for an

> 'inquiry of Person slain within the King's House or where he shall abide' …[that]…… twelve or more Yeoman officers of the King and his Heirs most honourable Household'

should assist the Coroner of the Household. Section 29(4) of the 1988 Act is in almost identical terms to section 29(3) of the Coroners Act 1887. There has not however been possible to discover any interpretation of the phrase 'officer of the Household' despite research.

40. Sir John submitted that the jurisdiction of the coroner extended to anyone who might die within the territorial district of the Queen's Household, such as a contractor falling off a ladder. In two inquests held since 1988 into deaths within the precincts of the territorial district of the Queen's Household, in neither case was a jury called.

41. Sir John reminded me that clause 72 of the Coroners Bill, as drafted, proposed to abolish the role of Coroner of the Queen's Household and, therefore, the requirement for a jury from officers of the Household.

42. Sir John submitted that in the particular circumstances of this inquest the public interest would be best served by avoiding the course of summonsing a 'royal' jury to avoid any appearance of bias in consideration of the issues which such an inquest would be bound to consider. He suggested that it would be undesirable even invidious to ask a jury chosen from the Royal Household to decide such an issue although he had no doubt that such a jury would have the capacity to reach a fair and true verdict on the evidence. He drew the distinction between actual bias and the appearance of

bias and submitted that the principle that justice should not only be done but be seen to be done compelled the conclusion that there would be an appearance of bias in the particular circumstances of this case. Consequently he urged me not to decide to summon a jury of officers of the Queen's Household.

43. If however I did decide to call a jury, he submitted that the word 'officers' should be given a modern interpretation and should extend to all employees of the Queen's Household. There were at present approximately 700 full time employees and they should comprise the pool from which jurors should be drawn and I should exclude part time or honorary officers. He submitted that the qualifications of jurors drawn from the Household should be the same as those to be found in section 9 of the Act and section 1 of the Juries Act 1974. The Lord Chamberlain would be the appropriate official to issue the jury summonses and the jury should be chosen by a process of ballot.

44. There has been no suggestion from any other interested person that I should consider calling a jury of officers of the Queen's Household. Indeed everyone is opposed to that course of action. I entirely agree with Sir John that in the particular circumstances of the death of Diana, Princess of Wales it would not be appropriate to empanel a jury of officers of the Household. I also agree with him that, in another case if a jury is considered necessary, his proposals which I have set out above should be adopted.

Decision 5

45. I shall not summons a jury of officers of the Queen's Household.

Submissions of Mr Lawson QC

46. Mr Lawson made short submissions. He informed me that the Commissioner wished to be an interested person in both the inquests. Mr Lawson understood from his solicitors who had been in the New Cross inquests, that the documentation in the present inquests was actually greater than in the New Cross inquests.

47. Mr Lawson also expressed concern about the substantial public criticisms made by Mr Mansfield of the decision to publish the Stevens Report in the form in which it was published indicating or at least alleging that the Report had led to a serious risk of jury prejudice. Mr Lawson also pointed out this had been said without the appropriate notice being given and asked that in future appropriate notice should be given.

Submission of Mr Keen QC

48. Mr Keen submitted that I did not have jurisdiction to act as the deputy Royal Coroner. Section 29(2) provided that the coroner of the Queen's Household had exclusive jurisdiction in respect of inquests into the deaths of person whose bodies are lying within the limits of the Queen's Household and the body was required to be lying within the Royal premises at the time the transfer order was made. The words were

'are lying' not 'may be lying' and at the time the purported transfer was made, Dr Burton as Royal Coroner had no jurisdiction to make the transfer.

49. Mr Keen suggested that the place where Diana Princess of Wales lay before her funeral service, that is to say, the Chapel Royal, was not a place within the Queen's Household because it was situated on the other side of the road from St James's Palace and within the curtilage of Marlborough House. Consequently she never lay in a place which entitled the coroner of the Queen's Household to assume jurisdiction.

50. Both Mr Keith and I did some research during the short adjournment. Mr Burgess, the Coroner of the Queen's Household, faxed me a Memorandum which set out the territorial district of the Queen's Household which included

> "the territorial district of the Queen's Household extends to
> b. St James's Palace including Friary, The Ambassadors and Engines Courts and Stable Yard and all the residences, including Clarence House, York House, Chapel Royal and the Queen's Chapel. Marlborough House is not included."

51. In fact, Chapel Royal is situated on the same side and within St James's Palace but whichever Chapel it may be, both are within the territorial district of the Queen's Household and within the jurisdiction of the Coroner of the Queen's Household. Diana, Princess of Wales also lay at Kensington palace the night before her body was transported to Althorpe for burial.

Decision 6

52. I am satisfied therefore that after her death the Princess lay both within St James's Palace in the Chapel Royal and at Kensington Palace.

53. Mr Keen then addressed me on the question of whether I should call a jury. He prayed in aid the argument advanced by Sir John that I should not call a jury of officers of the Household because of the perception of bias and submitted that this argument applied also to the failure to call a jury of ordinary citizens. There was a possible perception that I have been associated with the findings in the Paget Report and therefore it would be difficult and perhaps impossible for me as an arbiter of fact to be seen to be dissociated from those findings. This arises from the coroner asking the Commissioner to investigate the crash, from the conclusion to which the Report came that there was no conspiracy to murder and that it was a tragic accident. That was then reflected in the specific findings in the Report. Those findings and conclusions have been publicly represented as having been published with my 'full knowledge, support and agreement' in the Press conference after the publication of the Report. Mr Keen did not consider that this perception of bias required me to withdraw from the case but it did require me to correct the apparent bias by calling a jury made up of ordinary members of the public properly directed by me to be the arbiters of fact. The perception of apparent bias could be properly addressed by my decision that the arbiters of fact in this inquisitorial process should be a jury as distinct from the coroner and this would enable the public to have confidence in the

outcome of the process. He suggested that there was no compelling reason for dispensing with a jury in these inquests.

Submissions of Mr Croxford QC

54. Mr Croxford also submitted that I did not have jurisdiction to hear the inquest of Diana, Princess of Wales. He suggested that a reading of section 29(3) and schedule 2 did not enable Dr Burton to make the transfer under section 14 because the words precluded a transfer if the relevant body had not come within the curtilage of a Royal Palace. He suggested that the office of Coroner of the Royal Household was an anachronism and the jurisdictional limit of the anachronism was confined as narrowly as possible and consequently the Dr Burton was in error in transferring jurisdiction from West London to the Royal Household.

55. Once the issue of jurisdiction was raised I had an obligation to satisfy myself that as deputy to the present Coroner of the Queen's Household I had jurisdiction to hear the inquest into the death of Diana, Princess of Wales. Mr Croxford then submitted that I ought to transfer the jurisdiction to hear the Princess's inquest to Surrey in order that I would have the power to call a jury.

56. He raised the question of bias. As deputy coroner I was enmeshed in the terms of reference set out in the Introduction to the Stevens Report. The Report was directed by the coroner. The Report went beyond a collection of evidence and made explicit and highly controversial findings as to primary facts. The impression had been given that the contents had been published was with my approval and prepared at my behest. There was a risk of bias in the coroner being involved in the reporting exercise and the press conference underlined that position. In these circumstances the fact finder would be at risk of apparent bias in the eyes of the client. This affected me personally and as the office holder. This apparent bias would be obviated by calling a jury to hear and determine those questions of fact. There was a wider test in the vast body of people interested in the outcome of the inquests and they would be assisted by a jury. This would ensure the maximum degree of confidence in the result to be achieved.

57. The last 9 to 10 years had generated intense public interest and this was an overwhelming reason to have a jury. It would not be necessary for a jury to answer questions on many issues. It would be possible to revisit a decision whether to have a jury at a later stage but it was not a good reason to decline to have a jury today.

58. He supported Mr Mansfield's submissions on the possible objections to a jury raised in *Collins.*

Submissions of Mr Lucas MP

59. Mr Lucas had specific instructions to seek to have one set of proceedings and to resolve the issues as quickly as possible. It was important to bring these matters to closure.

Submissions of Mr Burnett QC as Amicus

60. Mr Burnett suggested that there were two practical options. If the concurrent inquests were to be held with a jury, the inquests would have to be held in Surrey. If the decision was not to call a jury then the inquests might be held either in Surrey or in the Royal Household. In any of these events it would be necessary to apply the provisions of section 14 to allow both inquests to be held together.

61. Mr Burnett helpfully took me through the relevant parts of the 1988 Act. The coroner, under section 8, has a duty to hold an inquest when he is informed about a body lying in his district and the triggering criteria eg unnatural death were satisfied. In a case of repatriation of the body from abroad, the Home Office circular 79/ 1983 was issued in order to assist in simplifying the procedure on the return of the body for burial. It encouraged the coroner in whose district the deceased would be buried to be informed first and to take jurisdiction to avoid various procedural difficulties. Mr Burnett suggested that the reality was that in cases where an inquest would be necessary, section 14 was used very shortly after the arrival of the body in the district of the first coroner who would request transfer to the most suitable coroner to deal with the inquest and associated procedures. Once the necessary consent was given the effect of section 14 (3) was to enable the coroner to whom the transfer had been made to make the necessary arrangements and hear the inquest although the body was not lying in his district.

62. In considering the statutory position of the Coroner of the Queen's Household provided in section 29 and schedule 2 Mr Burnett submitted that there was no reason to conclude that the statute prohibited transfer into the Royal Household under section 14. The purpose of the 'exclusive jurisdiction' was to identify the priority of the Royal Coroner over any other coroner whose district covered the particular palace within the territorial district of the Queen's Household. Paragraph 5 of schedule 2 provided for the Royal Coroner to have the same jurisdiction, powers and duties as any other coroner, subject to exceptions which did not apply to this inquest. In particular it did not apply to section 14. It was not therefore necessary for the body of Diana Princess of Wales to be removed into the territorial district of the Queen's Household or even to lie there in order for Dr Burton as Coroner of the Queen's Household to accept the transfer of jurisdiction. Dr Burton in his capacity as coroner for West London had the jurisdiction to apply section 14 as soon as the body of the Princess arrived at Northolt.

63. Mr Burnett relied upon the factual recital provided by Sir John Nutting and submitted that the notes of Dr Burton should not be submitted to a textual analysis. Rather the documents should be looked at in the round and pragmatically. Dr Burton had a proper basis upon which to request the transfer on the basis that it was expedient to do so. It would be impossible from the notes to conclude that Dr Burton acted irrationally in exercising his statutory power.

64. Mr Burnett reminded me that if Dr Burton had acted outside his powers, I did not have the jurisdiction to treat his decision as a nullity. The request was made and

accepted and the transfer was acted on and 9 and a half years on I was not in a position to set it aside. The present coroner of the Queen's Household opened the Princess's inquest in 2004 and commissioned the investigation by the coroner's office. I was appointed in August 2006 specifically to hear this inquest.

65. Mr Burnett reminded me of the very broad discretion I had in deciding whether to call a jury. The starting point for a coroner was a hearing without a jury. Mr Keen was incorrect in suggesting that I should approach the decision on the basis of no compelling reason for dispensing with a jury. That was to misunderstand the statute. There was not only one legal answer to the question. Under section 8(4) I could decide to summon a jury at a later stage even I decided not to do so now. He submitted that I was not making the decision in an adversarial situation where I was expected to choose between competing submissions.

66. Mr Burnett submitted that *Collins* was a broadly similar type of case which might be of assistance to me in which a deputy coroner provided reasons why he felt it inappropriate to have a jury.

67. Mr Burnett reminded me of the restrictions in Rule 36 on not expressing opinions about matters outside the statutory questions. This did not preclude juries giving broader reasons by way of narrative verdicts. There was however very limited scope for their use. He referred to the decisions in *Homber, Jamieson and Middleton* to which I shall turn in my conclusions. In certain circumstances the narrative could be a bit longer but one was still looking at a sentence or two. The list of questions in the *Longfield Care Homes* case was thought to be inappropriate. The jury at the end of an inquest returned a 'verdict' but in fact it was an inquisition form in four parts in which it might be appropriate to put in a couple of sentences. The jury could not be allowed to engage in an exercise of collective drafting of an essay. It was possible to have a section 17 inquiry in place of an inquest in which case there would not be a jury.

68. Mr Burnett reminded me that in all inquests the coroner's officer, who was a policeman seconded to the coroner, usually investigated on behalf of the coroner subject to coroner's direction doing that which the coroner as an inquisitorial judicial officer asked him to do. Although the scale was different in the present inquests in essence this was what the coroner sought to do when he asked the Metropolitan Police to investigate.

69. Mr Burnett questioned how I could avoid recusing myself if I were satisfied that there was an appearance of bias and invited my attention to *Porter v Magill* **[2002 2AC 357]** and the **s**peech of Lord Hope to which I shall turn below. He suggested that it would be illogical for me to sit with a jury which, it was said, would cure the apparent bias despite my control of the proceedings, my determining the scope of the inquests including the witnesses and my summing up to the jury. There was another illogicality in the objection to publication of the Paget Report when it appeared to be generally accepted that the Report would inevitably inform questions concerning the

scope of the inquests. It did appear that the question of publication was just a matter of dates.

My Conclusions

My jurisdiction as Deputy Coroner of the Queen's Household

70. I agree with the statutory construction of section 29 and schedule 2 advanced by Mr Burnett. The 'exclusive jurisdiction' of the coroner in section 29(2) is intended to clarify the position where a person dies within a coroner's district in a place also designated as part of the territorial jurisdiction of the Queen's Household. Schedule 2 limits the powers of the Royal Coroner in certain circumstances which do not apply to these inquests. Schedule 2 states that subject to the limitations of the territorial district of the Household, the Royal Coroner has the same jurisdiction, powers and duties as any other coroner. Section 14 is not excluded by Schedule 2 and I am satisfied that a transfer request may be made to or by the Coroner of the Queen's Household. The Royal Coroner would be unable to act until the body was lying within the territorial district of the Household or until a section 14 request for transfer had been made to him and accepted by him. This position was referred to in the notes made by Dr Burton. Once the section 14 transfer had been completed there was no necessity for the body ever to lie or be buried in the territorial district of the Household see section 14(7). It seems to me therefore that it was unnecessary to prove that Diana, Princess of Wales lay at St James's Palace or Kensington Palace.

71. In relation to the first transfer by the Coroner for West London the body did have to lie within his district but not within the district of subsequent coroners. Contrary therefore to the submissions of Mr Keen and Mr Croxford, the request for transfer by the West London Coroner had to be made before the body was physically transferred to St James's Palace. If the body had been transferred before the request, Dr Burton would not have had the jurisdiction to transfer.

72. Turning to the events of the 31st August 1997, it is important to remember the context within which Dr Burton carried out his duties. There was a tragic car crash in Paris in the middle of the night and the next morning officials and family were trying to work out how to deal with the consequences. Since Dr Burton's district extended to Northolt and he was also the Coroner of the Queen's Household he was uniquely well placed to manage the necessary arrangements. He considered that section 8 applied and that it was necessary to hold inquests. It seems to me that we must also have in mind that there was considerable to-ing and thro-ing during the day and a fast moving scene. Decisions regarding both the Princess and Dodi Al Fayed were made and later changed. According to the contemporaneous note and the later typed note Dr Burton questioned whether the funeral would be a family one or a Royal funeral. He understood that the body was being brought to Northolt and he was told by Lucy Dove at Buckingham Palace that it was believed that the Princess would be buried at Windsor. As a member of the Royal Household and the mother of Prince William, the

eventual heir to the Throne, it would not be surprising if she were to be buried at Windsor.

73. I do not consider that a challenge can be made to the notes made by Dr Burton about the belief that the Princess would be buried at Windsor. Mr Mansfield in making this submission did not suggest that Dr Burton had not acted in good faith. I see no reason to question the accuracy of the notes nor that, during a telephone conversation with the Palace, Dr Burton was given that information. Dr Burton decided on that information from the Palace that the Royal Coroner should take responsibility for the administrative acts connected with burial and for the inquest. In the sequence of events it seems probable that as soon as the body arrived at Northolt he requested the section 14 transfer to himself and went through the necessary written formalities of the request. In doing so, he clearly had the Home Office circular, 79/1983 well in mind and at that time believed that the burial would be within the territorial district of the Household. He made the practical arrangements to obviate unnecessary movement of the body between St James's Palace and the Fulham mortuary. Later during the day at the post mortem, he met the family and was told that it was thought that the funeral would now be Althorpe but that the Princess would lie at St James's Palace. As I have said above, Dr Burton had probably already transferred jurisdiction under section 14 before he was told that the funeral would be at Althorpe. In the event the Princess lay at in the Chapel Royal at St James's Palace, then at Kensington Palace; the funeral was at Westminster Abbey and the burial was at Althorpe.

74. A decision based upon section 14(1) is a discretionary decision expressed in broad terms 'if it appears to a coroner…..it is expedient that the inquest should be held by some other coroner, he may request that coroner to assume jurisdiction to hold the inquest'. The exercise of this discretionary power appears never previously to have been challenged and the word 'expedient' is extremely broad in scope. There has been no suggestion that this very experienced coroner acted other than in complete good faith in the decisions he made. It was suggested by Mr Mansfield that the section 14 transfer was unlawful. As Mr Burnett submitted, it is improbable that Dr Burton acted irrationally. In my view, Dr Burton had an appropriate basis upon which to exercise his broad discretion in his acceptance of information given to him by a representative from the Palace that Diana, Princess of Wales would probably be buried at Windsor. There was no requirement at a later stage for him to make a further section 14 transfer when he was told of the plans of the family for her funeral. It was not required under the Act and the Home Office Circular was advisory not mandatory. The view of the Department of Constitutional Affairs which appears to have been given in the absence of relevant documents is irrelevant to the decision I make, although it unfortunately gave support to the challenge to the decision of Dr Burton.

75. I agree with Mr Burnett that, even if I had come to the conclusion that Dr Burton was in error in making the transfer of the inquest to the Royal Household, it would not be for me to set his decision aside. A decision that there is a lack of jurisdiction to act as deputy coroner of the Household is a matter for the Administrative Court.

Decision 7

76. I am entirely satisfied that section 14 can be properly be applied to the transfer of jurisdiction to the Queen's Household from West London and that Dr Burton was entitled to consider it expedient to transfer jurisdiction from himself as Coroner for West London to himself as Coroner of the Queen's Household. Consequently I am satisfied that I have jurisdiction to sit as the deputy Coroner of the Queen's Household.

The Issue of a Jury

77. These two inquests do not come within the group of deaths where it is mandatory for me to call a jury. I have a broad discretion and there is no guidance in the 1988 Act as to how I should exercise that discretion. Mr Keen's suggestion that I should approach the decision on the basis that there is no compelling reason for dispensing with a jury of ordinary people is quite simply the incorrect approach to the exercise of my discretion.

78. The three counsel supporting the summoning of a jury to determine the verdict in the concurrent inquests made between them 4 main points

1. intense public interest in the inquests
2. bias
3. overcoming practical difficulties
4. use of narrative verdicts

79. 1. I agree with them that the intense public interest can be said to be a strong factor in favour of a jury and it is a consideration which I should weigh in the balance in the exercise of my discretion whether to call a jury.

80. 2. I am said to have been compromised by the publication of the Stevens Report and that I have been seen to have supported not only the publication of the Report but its findings and controversial conclusions. Consequently if I sit on my own, my decisions will be flawed by the appearance of apparent bias and will not be accepted by the public. It would also seem to follow, according to some submissions, that any other person sitting as a deputy coroner of the Queen's Household would be tainted by the decision of Mr Burgess to commission the Report and by my support for its publication. The unacceptable appearance of bias will, it is said, be counterbalanced by the verdict of a fair and impartial jury.

81. On the one hand I am told that the Report should not have been published. Somewhat oddly it seems, nonetheless, to be agreed between counsel that the Report will be a necessary part of the discussions and of my decision at the next hearing in March on the scope of the inquests and the witnesses to be called. That hearing will be in public and parts of the Report would then be in the public domain.

82. It seems to me that there was the real possibility that once the Report was completed and presented to the interested persons it would have been almost impossible for it to remain confidential to the substantial, although limited, group of people through whose hands it would have passed. Given the intense interest of the Press and Media, overseas as well as in the UK, in the contents and conclusions of the Report and the lengths to which some might go to see the Report or at least parts of the Report, on the balance of probabilities selected parts and possibly the whole Report would have been leaked over the next few months and before the inquests were heard. That would have been a most unsatisfactory outcome.

83. Before I turn to my clear duty to act when a possibility of bias is raised, I should explore a little the consequences of my being seen to be biased but continuing to hear the inquests and summoning a jury. My next step will be to hear argument and then to decide the scope of the inquests. I shall, after hearing representations, decide which witnesses I shall call and which I shall omit because I do not consider them to be relevant. At the hearing of the inquests I shall call and question all the witnesses. As I understand it there is no provision in a coroner's inquest for opening or final speeches by counsel to the jury (see Rule 40). I shall give the summing up and will in that sense be the only person to make a speech to the jury. I would therefore assume that my approach and my advice to the jury would carry some weight particularly if the inquests last several weeks. If I am tainted by apparent bias, my part in the proceedings is likely to have an effect, presumably an adverse effect, upon the independence and impartiality of a jury of ordinary citizens.

84. I also, in passing, wonder how easy it would be to find a jury who did not have already strong views on the cause of the fatal crash and who would have had the opportunity to read the newspapers, watch television programmes and, if they chose, to read the Report themselves. But I do not rely on that point in my exercise of discretion.

85. If I consider that I may be biased or may have given the appearance of bias by my agreement to the publication of the Stevens Report, my clear duty is to withdraw immediately from the case, in this instance to withdraw from hearing the inquests. The decision in *Porter v McGill* [2002] 2AC 357 was helpfully cited to me by Mr Burnett but not by any other counsel. The principles in relation to bias would seem to apply as much to a deputy or assistant deputy coroner as they do to a judge. Lord Hope in his speech in *Porter v McGill* cited at paragraph 102 the decision of the Court of Appeal in *In re Medicaments and Related Classes of Goods (No 2)*[2001] 1 WLR 700 where Lord Phillips of Worth Matravers MR, giving the judgment of the court, summarised the court's conclusions, at pp 726-727:

"85. When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in R v Gough is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and in Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there

was a real possibility, or a real danger, the two being the same, that the tribunal was biased."

86. And Lord Hope continued at paragraph 103

103. I respectfully suggest that your Lordships should now approve the modest adjustment of the test in R v Gough set out in that paragraph. It expresses in clear and simple language a test which is in harmony with the objective test which the Strasbourg court applies when it is considering whether the circumstances give rise to a reasonable apprehension of bias. It removes any possible conflict with the test which is now applied in most Commonwealth countries and in Scotland. I would however delete from it the reference to "a real danger". Those words no longer serve a useful purpose here, and they are not used in the jurisprudence of the Strasbourg court. The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

87. The question is whether a fair-minded and informed observer, looking at the Overview of the Report, the Introduction and the Press Conference at the publication of the Report would conclude that there was a real possibility that I would be biased in my hearing of the inquests.

88. The Stevens Report was fulfilling a different purpose from the inquests. The specific allegation was made by Mohamed Al Fayed that there was a criminal conspiracy to murder the Princess and his son. The coroner asked the Metropolitan Police to investigate whether there was evidence to substantiate this allegation. In the Introduction to the Report at page it says

"The primary purpose of Operation Paget was to assess any credible evidence that supported the allegation of conspiracy to murder, not to re-investigate the issues looked at by the French investigation"

89. If there had been evidence to support this grave charge and the Director of Public Prosecutions had informed the coroner that a prosecution was pending, it would have been the duty of the coroner under section 16 to adjourn the inquests until after the criminal proceedings unless notified by the Director that he might resume the inquest. The Report does cover the events leading to the death of the Princess and Dodi Al Fayed as part of the investigation into the allegations of criminal conspiracy. It does not and was not intended to provide the answers to the questions which require to be answered by the verdicts at the inquests.

90. As Mr Burnett reminded me, for the coroner to ask the police to investigate the circumstances of a death and to direct the course of the investigation is a normal procedure. It is important to remember that a coroner is not a judge but a judicial officer with broad inquisitorial powers.

91. I have carefully considered whether the actions of the coroner in instituting the Operation Paget investigation and my agreement to the publication of the Report for the pragmatic reasons I have set out above, can be interpreted as an endorsement of the comments, opinions and conclusions of Operation Paget even seen in the light of the Press Conference in which I took no part.

92. In my view my agreement to publication is unlikely to be seen by the fair-minded and impartial observer as an acceptance by me of the opinions and conclusions in the Report nor as, in effect, a rubber stamping by myself of those conclusions when I come to give my reasons for my verdicts at the end of the two inquests.

93. The continuation of the inquests after the publication of the Report has already created considerable public interest. In my view many of the public will wait with interest to see the outcome of the inquests. The Media is likely to continue making comments during the hearing of the inquests when live witnesses will be giving their version of the events leading to the car crash. As the hearings progress, I do not consider that the public will regard the conclusions of the Report as the final verdict. I think they will be interested in the findings of the coroner at the end of the hearing of the evidence of the witnesses. I do not, therefore, consider that I would be giving an appearance of bias if I were to hear these inquests without a jury and myself take the responsibility of making the decision. In any event it is clear to me that if, contrary to my view, there would be an appearance of bias in my continuing to be the deputy coroner and assistant deputy coroner, for me to call a jury would not be a proper way to resolve the problem. The only way for me to act with propriety would be to withdraw from hearing the inquests. I was not asked by any of the counsel to take that step. If I were to withdraw I fear there might then be a problem for any deputy to act as Royal Coroner and conduct the inquests.

94. 3. I do consider that these inquests have certain similarities to the factors considered in *Collins*. The facts of each case are old; the documentation is considerable. Although there will not be any health and safety issues, I suspect there will be extensive and detailed technical evidence about the car, the driver, the driving, the road and the route. Having said that, I agree that the emphasis in the inquests is more likely to be on the oral evidence of witnesses to the journey and to the crash. There will probably be in excess of 30 witnesses, most of them French. That evidence will almost certainly require interpreters. I hope that the evidence of most of the French witnesses will be given by a video link from Paris. Operation Paget has created a virtual reality scene on computer which I intend to have shown on screen during the giving of evidence. I recognise that these are all practical matters with which in criminal trials juries do have to cope. Nonetheless the combination of all these points would be an added burden on the jury and it would undoubtedly be easier for a professional judge to carry out the necessary investigation. It is a factor which I believe I am entitled to take into account.

95. I expressed my concern that the inquests might be interrupted during the giving of evidence by challenges to my rulings about questions counsel might seek to put. Mr Mansfield and Mr Croxford assured me that there might be a challenge to my

decision on the scope of the inquests but counsel would abide by the eventual decision on scope and would not seek to expand it during the hearing of the inquests. I am reassured and shall not take that possibility into account.

96. More important in my view is the question whether these inquests require a reasoned decision by a coroner. I have been urged to say that narrative verdicts could be given by the jury and would provide sufficient reasons to satisfy the public. Narrative verdicts have been used on several occasions and have been approved in the Administrative Court, the Court of Appeal and in the House of Lords. The narrow approach to the narrative in box 3 of the inquisition set out by the Divisional Court in *R v The Coroner for the Western District of East Sussex ex parte Homber* [1994] JP Reports 357 has been replaced by a somewhat broader approach in *Regina v. H.M. Coroner for North Humberside and Scunthorpe ex parte Jamieson* [1994] 3 W.L.R. 82 (a death in custody case) in which Sir Thomas Bingham MR set out a number of propositions in his judgment and at number 6 he said

"(6) There can be no objection to a verdict which incorporates a brief, neutral, factual statement: "the deceased was drowned when his sailing dinghy capsized in heavy seas," "the deceased was killed when his car was run down by an express train on a level crossing," "the deceased died from crush injuries sustained when gates were opened at Hillsborough Stadium." But such verdict must be factual, expressing no judgment or opinion, and it is not the jury's function to prepare detailed factual statements."

97. This was taken a stage further in the decision of the House of Lords in *Regina (Middleton) v. West Somerset Coroner and Another* [2004] UKHL 10; [2004] 2 W.L.R. 800 a death in custody case. Lord Bingham of Cornhill in his speech said that to meet the procedural requirement of article 2 an inquest ought ordinarily to culminate in an expression, however brief, of the jury's conclusion on the disputed factual issues at the heart of the case. He continued at paragraph 35

35 Only one change is in our opinion needed: to interpret 'how' in section 11(5)(b)(ii) of the [Coroners] Act [1988] and rule 36 (1)(b) of the [Coroners] Rules [1984] in the broader sense previously rejected, namely as meaning not simply 'by what means' but 'by what means and in what circumstances'.

"36 This will not require a change of approach in some cases, where a traditional short form verdict will be quite satisfactory, but it will call for a change of approach in others: paras 30-31 above. In the latter class of case it must be for the coroner, in the exercise of his discretion, to decide how best, in the particular case, to elicit the jury's conclusion on the central issue or issues. This may be done by inviting a form of verdict expanded beyond those suggested in form 22 of Schedule 4 to the Rules. It may be done, and has (even if very rarely) been done, by inviting a narrative form of verdict in which the jury's factual conclusions are briefly summarised. It may be done by inviting the jury's answer to factual questions put by the coroner. If the coroner invites either a narrative verdict or answers to questions, he may find it helpful to direct the jury with reference to some of the matters to which a sheriff will have

regard in making his determination under section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976: where and when the death took place; the cause or causes of such death; the defects in the system which contributed to the death; and any other factors which are relevant to the circumstances of the death. It would be open to parties appearing or represented at the inquest to make submissions to the coroner on the means of eliciting the jury's factual conclusions and on any questions to be put, but the choice must be that of the coroner and his decision should not be disturbed by the courts unless strong grounds are shown.

37 The prohibition in rule 36(2) of the expression of opinion on matters not comprised within sub-rule (1) must continue to be respected. But it must be read with reference to the broader interpretation of "how" in section 11(5)(b)(ii) and rule 36(1) and does not preclude conclusions of fact as opposed to expressions of opinion. However the jury's factual conclusion is conveyed, rule 42 should not be infringed. Thus there must be no finding of criminal liability on the part of a named person. Nor must the verdict appear to determine any question of civil liability. Acts or omissions may be recorded, but expressions suggestive of civil liability, in particular "neglect " or "carelessness" and related expressions, should be avoided. Self-neglect and neglect should continue to be treated as terms of art. A verdict such as that suggested in para 45 below ("The deceased took his own life, in part because the risk of his doing so was not recognised and appropriate precautions were not taken to prevent him doing so") embodies a judgmental conclusion of a factual nature, directly relating to the circumstances of the death. It does not identify any individual nor does it address any issue of criminal or civil liability. It does not therefore infringe either rule 36(2) or rule 42.

98. The question then arises as to how a coroner should apply this broader approach to a narrative verdict? In *R (Longmore Care Homes Ltd)v The Coroner for Blackburn and others* [2004] EWHC 2467 (Admin) Mitting J applied it to an inquest on the death of an old lady in a care home. He said at paragraph 31

"31. In cases where the death results from more than one cause of different types, a narrative verdict will often be required. It is here. The jury's findings can be encapsulated by a verdict such as the following. I read out my proposed text so as then to invite counsel to amend it if they think it right. This is the draft and not the final version:

> "Mrs Hall died of bronchopneumonia resulting from dementia. Her death was probably accelerated by a short time by the effect on her pneumonia of injuries sustained when she fell through an unattended open window, which lacked an opening restrictor, in the lounge of Longfield Residential Home on 16 April 2003."

99. In *R (Clayton) v The Coroner for South Yorkshire (East District) and others* [2005] EWHC 1196 (Admin) Mitting J, sitting with Sedley LJ doubted the appropriateness of a three page questionnaire intended for a jury's narrative verdict.

100. I readily recognize that there should be in suitable cases a brief summary of the factual conclusions of the jury in a narrative form of verdict as proposed by Lord Bingham and that the coroner may derive assistance from the advocates in the formulation of the questions to be asked of the jury. Lord Bingham however used the phrase 'briefly summarised' and I cannot believe that the House of Lords had in mind that the narrative verdict should be in lengthy terms or require a detailed response to questions. I agree with Mr Burnett that a jury should not engage in the collective drafting of an essay.

101. If one stands back to consider how a jury would deal with a narrative verdict in the deaths of Diana, Princess of Wales and Dodi Al Fayed, with a number of possibilities and theories which may or may not be put to rest by the conclusions of the Stevens Report and, more important, by the evidence given at the hearing, in my view it would be an almost impossible task to ask them the limited number of questions appropriate to a narrative verdict and in that way satisfy the continuing immense public interest in the outcome of the inquests. Rules 36 and 42 are explicit in the prohibition on expressions of opinion and determination of criminal or civil liability. In particular the jury would not be able to answer questions on allegations that a person, group or organisation had been guilty of criminal activities in respect of the death of the Princess or Dodi Al Fayed. Nor indeed would I be able to do so as deputy coroner. But a narrative verdict of, say, three pages would, in my view, be seen as an inadequate response to this continuing intense interest across the world. A long dissertation by the jury would be entirely inappropriate, even taking into account the broader approach advocated by the House of Lords.

102. I see the advantages of calling a jury of ordinary citizens to make an impartial decision on the facts disclosed in the inquests. But the effect of the intense public interest can be prayed in aid both for and against the calling of a jury. The disadvantage of a jury is the need in these inquests to have a careful and fully reasoned decision reviewing all the relevant evidence and providing a clear conclusion as to by what means and in what circumstances the Princess and Dodi Al Fayed died. Such a reasoned decision can only be given by the coroner and cannot be given by a jury. This is, in my view, a stronger case than the New Cross fire inquests in support of a deputy coroner making the decision without calling a jury. Exercising my discretion and taking into account the arguments in favour of a jury, I have no doubt that these inquests require the reasoned decision of a deputy coroner in preference to giving the jury the opportunity to give a narrative verdict.

Decision 8

103. For the reasons I have given above, I do not consider that I am required to recuse myself from the case. I do not propose to summons a jury and I shall sit alone to hear the two inquests.

104. As the two inquests are to be heard together, it will be necessary for me to request myself to transfer the jurisdiction either from the Queen's Household to Surrey or from Surrey to the Queen's Household. The advantage of Surrey would have been if I

had chosen to call a jury. Since I have decided not to have a jury, there is no good reason to transfer the inquest of the Princess to Surrey. It would also be difficult to find a suitable venue. There are advantages to the transfer of the inquest of Dodi Al Fayed to the Queen's Household. The decision to hold the two inquests together is one. The lack of an obviously suitable venue in Surrey is another. It is probable that I shall be able to hear the inquests in the Royal Courts of Justice if I remain deputy Coroner to the Queen's Household. One cannot ignore practical details, one of which is an adequate sized court room. Another practical point is the likelihood at least at the beginning of the hearing of the inquests that considerable numbers of the Media will wish to attend. Arrangements can be made to accommodate them at the Royal Courts of Justice. I consider that it is expedient that I should transfer the hearing of the inquest of Dodi Al Fayed to the jurisdiction of the Queen's Household.

Decision 9

105. I shall take the necessary steps as assistant deputy Coroner to Surrey under section 14 to request the transfer of the inquest of Dodi Al Fayed from Surrey to the Royal Household. As deputy Coroner of the Queen's Household I shall consent to that transfer. I shall make the transfer before the proposed hearing in early March.

Note

106. At the meeting on the 8th January we were all agreed that the inquests should be heard as soon as all the necessary preliminaries are completed. I hope to begin the inquest hearings in early May. I suggested that we should have a hearing in early March to determine the scope of the inquests and the witnesses to be called. It will also be an opportunity for us all to see the virtual reality scene on computer created by Operation Paget. In order to keep to this schedule, it would helpful for any challenges to my decisions to be made with expedition.