# R v HM Coroner for Derby and South Derbyshire ex parte Hart

QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)

164 JP 429

**HEARING-DATES:** 7 April 2000

7 April 2000

**CATCHWORDS:**

Coroners law -- purpose of inquest -- disallowance of questions -- verdict of unlawful killing.

**HEADNOTE:**

The deceased, a man of substantial means, was found dead in his car in a garage with a hose connected to an exhaust pipe going into the car window. There were matters in connection with this event which led the police to suspect that he may have died by murder or manslaughter. In the event, no charges having been advanced, the coroner had to hold an inquest. The inquest, held with a jury, and with leading counsel for the police taking an active part, had some perceived features of a trial. The coroner was required to rule on many procedural and other points. The applicant applied to quash the inquisition on numerous grounds, and also on amended grounds, to have the verdict of the jury quashed, arguing that the verdict of unlawful killing should not have been left to them to consider because (1) there was insufficient evidence to satisfy a properly directed jury that the deceased was killed unlawfully and (2) the coroner ought to have drawn the jury's attention to the need to consider, on the evidence, whether the deceased's death followed assisted suicide or murder.

Held: There was no conflict between the coroner's duties according to the Coroners Act 1988 and Coroners Rules 1984, and dicta in decided cases, which would materially constrain the questions at this inquest. In the course of an inquest questions must be put to a witness, and each must be ruled on by the coroner under r.22. A global approach would be unwise. In considering what verdicts to leave to a jury, the coroner should be guided by the well-known Galbraith principle. It is not an abuse of the process of an inquest for counsel for the chief constable to ask questions robustly, provided they are concerned with the requirements of r 36(1). On the facts of the case it was neither improper for the coroner to communicate with the Crown Prosecution Service, nor to bring up the subject of immunity from prosecution for a particular witness. On the facts of the case it was proper for the coroner to leave a verdict of "unlawful killing" to the jury. However, to have laid emphasis upon one single piece of evidence, namely, that the applicant had informed the police at one point that he was present when he believed that the deceased was committing suicide and to have left a verdict of assisted suicide

open to the jury, would have tended to distort the evidence and confuse the jury.

**COUNSEL:**

Mr Kallipetis QC, Mr Richard Perkoff and Mr Pascal Bates for the applicant; Mr Burnett QC and Nr Nicholas Moss for the first respondent; Mr A Marron QC and Mr J Robinson for the Chief Constable of Derbyshire.

**PANEL:** Newman J

**JUDGMENTBY-1:** NEWMAN J

**JUDGMENT-1:**

NEWMAN J: The applicant, John Henry Hart Jnr, being an interested person at inquest proceedings, applies to quash the inquisition and verdict of unlawful killing brought in after an inquest, which was held by the coroner for Derby and South Derbyshire, Mr Peter Gerard Ashworth, with a jury, after a hearing lasting many days. A verdict was reached on July 8, 1998.

Facts

At about 10 pm in the evening of September 30, 1996 the police arrived and gained entry to the garage of premises at 97a Heanor Road, the home of the deceased, Lawrence Dabbs. He was found sitting in the driver's seat of his car with a seat-belt attached, with a hose connected to the exhaust pipe of the car, which led into the front offside window of the vehicle. The applicant had raised the alarm, calling the police at 9.45 pm, but he had not gained entry to the garage or the house by the time the police arrived. He was at the scene, together with his fiancee, now his wife, Helen Hart.

On September 14, 1996 the deceased's will was read. Those present included the applicant, a relation of the deceased, Morris Dabbs, and a police constable, PC Bailey. The will had been executed on August 19, 1996 by the deceased and according to its terms the applicant became the principal beneficiary of an estate valued between £1.5 to £2m. On September 14, 1996 PC Bailey, who, in addition to being present at the reading of the will, was also an officer who had attended the scene of death, reported to the coroner that the death was being treated as a suicide.

On September 18 the inquest was opened and the body was released for cremation. The funeral took place on September 20. By a letter dated September 28 Mr Bruce Timms, the husband of the deceased's sister, wrote to the chief constable complaining of the conduct of the police in connection with the investigation and inquiry into the circumstances of the deceased's death, and requesting that the police reopen the investigation.

On October 11, 1996 two detective constables, Messrs Edwards and Minter, informed the coroner that although the preliminary view still held by their Detective Inspector had been that the deceased met his death by suicide, they wished this to be investigated further.

On October 23 and 24 the applicant was interviewed by the police. This was his first interview. Among others, in addition to the applicant, his wife Helen Hart, then Donna Hunt, his father, John Henry Hart, and one Coral Bailey were

also interviewed. On October 23 the police took a witness statement from a former acquaintance of the applicant, a Patricia Durham-Hall.

On October 28 there were further police interviews of the applicant and Helen Hart. On December 5, Detective Superintendent Ashby gave the coroner a preliminary report into the police investigation. By January 15, 1997 the police had obtained taped interviews of the applicant running to approximately nine-and-a-half hours in length. On that date the applicant and Coral Bailey were charged with conspiracy to pervert the course of justice. The particulars giving rise to that charge being the alleged circumstances in connection with the will, and the submission of the will to probate. On January 31 the applicant was charged with another person with false accounting. That arose, it was alleged, out of a false invoice for work done, which had been submitted to the deceased's estate.

On February 28, 1997 a conference was held at the Derby office of the Crown Prosecution Service (CPS) which the Derbyshire police attended. Details as to what occurred at that meeting and at other meetings, which it is material for this court to recite, appear from an affidavit of Andrew Kenneth Crookes sworn on September 23, 1999 (after leave had been granted to apply for judicial review by Burton J). At the material time Mr Crookes was Prosecution Team Leader for East Derbyshire, and he was the reviewing lawyer responsible for the file of evidence submitted by the Derbyshire Constabulary in respect of the death of Lawrence Stanley Dabbs. At the date of this meeting the CPS had not formally decided whether or not any prosecution should be brought against any person for the offence of murder or manslaughter in connection with the death of the deceased. A decision on the grounds that there was insufficient evidence to prosecute any person was not made, or at least was not communicated to the Derbyshire police until April 9, 1997.

The affidavit of Mr Crookes, at para 6(i), does not purport to set out what took place at that conference by way of discussion between the Crown Prosecution Service and the police who were represented by Detective Superintendent Ashby. The affidavit confines itself to the following:

"[Mr Ashby] indicated that the police had held a meeting with Peter Joyce QC. The reason for that meeting was to request Peter Joyce QC to represent the police at the coroner's inquest. The police represented Peter Joyce's view that this was 'a case he would love to run'. The police had arranged to see the coroner on March 5, 1997. The police had already spoken to the coroner and attributed to him the comment, 'if the evidence stands up then he would instruct the jury to bring in a verdict of unlawful killing'."

The affidavit of Mr Crookes also recites in para 4:

"At a conference held on April 14, 1997 the senior investigating officer, DS Ashby, made it clear that the police were very disappointed by the review decision and that there was some anxiety regarding potential legal action against Derbyshire Constabulary."

That is a reference to the CPS's decision not to prosecute anyone in connection with the death of Mr Dabbs.

Having regard to the margin of time between the meeting on February 28 and the conference referred to on April 14, 1997, at first impression, and it may well be only a matter of first impression, it seems curious that at the meeting

on February 28 those present would appear to have been considering events at an inquest, which inquest according to the state of affairs which then existed, would not take place if a prosecution was to be proceeded with. This is but one example of the difficulties of dealing with evidence such as this on affidavit and there are others to which I shall come.

Some contention has been joined over the reported view of Mr Joyce that it was a case he would love to run. There is an issue as to whether or not this observation was being made in connection with the proposal that he should represent the police at the inquest or whether it was simply an observation that he made as counsel, in the general round of discussion, having regard to the possibility that then existed, that a decision would be made that somebody would be prosecuted.

It is important and convenient if at this stage, I interrupt my chronology to say that Mr Ashworth, the coroner, denies so far as this account is concerned, ever having said anything to the effect that "if the evidence stands up then he would instruct the jury to bring in a verdict of unlawful killing." On the evidence as it is before me, I have no hesitation in concluding that he did not say what he is reported to have said. Apart from the confusion and uncertainty as to the context in which these comments were being made, as has been pointed out, one would have thought that anyone present at the meeting, who had thought about the matter, would have realized that it was not for the coroner to instruct a jury to bring in any particular verdict. I return to the chronology.

On March 5, 1997 the coroner met with the Derbyshire police, namely DS Ashby, and he was provided with the police report into the death of Mr Dabbs. On March 19, 1997 Mr Crookes recalls receiving a telephone call from the coroner. He has exhibited his contemporaneous note of that conversation to his affidavit. The body of the affidavit recites as follows:

"He asked for the call to be 'off the record'. He offered a brief explanation as to how the body came to be released for the early cremation. He explained that there was family pressure for a funeral and the pathologist had no knowledge that the matter was anything other than a suicide. He further explained that if no charge was brought for murder an inquest had to be held. He informed the Crown Prosecution Service that Peter Joyce QC was to represent the chief constable as an interested party at the inquest. He was, at this early stage, taking an option to book a week at Derby Crown Court for that inquest. He asked that he be kept informed of any CPS decision and explained that he would like to meet me before the decision was finalized. Mr Ashworth repeated verbatim the earlier comments of the police, namely that Peter Joyce QC would love to run it."

Although it may be considered semantic, having regard to the importance that is being placed upon this affidavit, one is bound to comment that he did not, according to what had been said earlier repeat verbatim the reported words of Mr Joyce. The verbatim report would have been that Peter Joyce's view was that this "was a case he would love to run", which raises if it is to be analysed, a question as to what was meant by the "case" he would love to run. I interpose for convenience that the coroner's affidavit, sworn in reply, discloses that he has some recollection of the discussion, and states that he has no reason to suppose the account given is inaccurate. Leading counsel, Mr Burnett QC, informed the court, on instructions from the coroner, that he had no clear recollection whether he had understood Mr Joyce's comment to be in connection

with a trial or the inquest. I shall revert later in a little more detail to the coroner's position.

Mr Crookes next recalls a further telephone call from the coroner on April 7, 1997. Again he exhibits his note in respect of that conversation. As to that he says in his affidavit:

"He indicated he had read the police report and had listed for himself all the circumstantial evidence. He indicated that he was worried about how far he could go at the inquest into the question of motive, which was really unnecessary in the coroner's court, which is concerned with when, where and how Mr Dabbs had died. He felt there was enough to put to the jury a verdict of unlawful killing. He stated that the coroner's court would not have to determine which individual was responsible."

The note also recalls, but the body of the affidavit does not refer to it, what would appear to have been a question: "Should conspiracy go in advance of inquest?" I take this to be a reference to the charges, to which I have already referred, which had been levelled but not then proceeded with in connection with the will and possibly the alleged false invoice. So far as the coroner is concerned, again he has some recollection of this conversation but does not doubt the accuracy of Mr Crookes' note and as occasion requires I shall return later to his position.

As I have already indicated, the record would appear to show that it was on April 9, a few days before the 14th when disappointment was expressed by the Derbyshire Constabulary on being informed of the CPS decision not to prosecute. That this was the case appears from a press release, dated March 5, 1999, where the CPS record as follows:

"On April 9, 1997 the Crown Prosecution Service advised the Derbyshire Constabulary that there was insufficient evidence to prosecute any person in respect of the death of Lawrence Dabbs. This advice was accepted by the police."

As Mr Crookes' affidavit records, plainly they had accepted the position, but by April 14 they had expressed how very disappointed they were and had also expressed some anxiety regarding their own position so far as potential legal action was concerned. On May 8, 1997 the coroner was visited by DS Ashby, who informed him of the CPS decision and sought his requirements for the resumed inquest proceedings.

Mr Crookes records that a few days later, on May 12, 1997, there was a another meeting, a short meeting, between the CPS and the Derbyshire police and, on that occasion, DS Ashby, as well as the force solicitor, Sherie O'Dwyer, attended. Mr Crookes does not state the purpose of the meeting but records the following part of it:

"Sherie O'Dwyer raised the matter of the inquest and made a request to CPS, purportedly on behalf of the coroner, as to whether CPS would be prepared to provide Helen Hunt with a letter of immunity against prosecution. It was anticipated that John Hart Jnr would not answer any questions which would incriminate himself and to stop Helen Hunt adopting the same approach, CPS could provide her with a letter of immunity, promising no prosecution no matter what she said at the inquest. I advised that such a course of action was not appropriate and the matter was not raised again."

The coroner is, of course, not in a position to comment about what took place at that meeting, but he has confirmed by his affidavit that he had raised with the police the question of possible immunity for Donna Hart, as he says: "Because of the importance of her evidence." I shall need to return to this.

On May 13, 1997 (one may surmise that this might have been on the agenda for May 12) the CPS served notice of discontinuance of all current charges against the applicant. They had by that date been listed for committal proceedings on May 19, 1997.

On June 3, 1997 Mr Crookes records receiving another telephone call from the coroner in which the coroner asked that the conversation be "between you and me and the gatepost." The coroner went on to say that he would notify Mr Crookes of the date when the inquest would be held in due course, although an August date at Derby Crown Court looked likely. The conversation would appear to have proceeded in general terms with the coroner saying he assumed the CPS were only saying that they could not prove that a specific individual killed Mr Dabbs.

The coroner made it clear that he was not intent on reading what he described as 2,000 pages of statements but was relying on the account the police were going to give him and he confirmed the police were actively putting together a file for the inquest.

The affidavit concludes in the material paragraph, in these terms:

"The coroner asked me to confirm that despite certain charges being discontinued proceedings could still be revived if further evidence was drawn to our attention in due course."

Mr Ashworth does not dispute the substance of that reported conversation. But I shall have occasion to refer to his explanations on these matters when I deal with the argument.

In July 1997 the coroner received a request for information from Mr John Hart Snr as well as from a firm of solicitors, Messrs Goldkorn, Davies Mathias, solicitors acting for the Hart family. He informed the solicitors that he would sit with a jury and that he would, in advance of the inquest, probably have a pre-inquest review. He sought a response to a question as to whether the solicitors regarded John Hart Jnr to be an interested party within the coroner's rules. That was promptly responded to by a letter dated August 1, from the solicitors, in which they stated they did consider their client to be a properly interested party for two reasons: (1) because he was the major beneficiary of the deceased's estate under his will; and (2) because he had been interviewed by the police. They confirmed they would wish to attend the inquest and to examine witnesses on behalf of their client. They also indicated that they would wish to attend the pre-inquest review.

The coroner responded by agreeing that John Hart Jnr was an interested party within the Rules and added an enquiry as to whether it was John Hart Jnr's intention to give full evidence; reminding the solicitors of the protection provided by r 22 of the Coroners Rules 1984, to which I shall come. The solicitors replied that at that stage they were not able to tell the extent to which he would avail himself of the protection in accordance with the rules.

Some months later, after no doubt the coroner had given consideration to the material he had, he wrote a letter dated February 27, 1998. He sent out notices

relating to the inquest designed to assist preparation for the pre-inquest review, by indicating what he would be dealing with at the pre-inquest review, which in turn would assist the parties in making their representations. He dealt with the following:

(1) witnesses to be called at the inquest;

(2) documentary evidence of witness evidence to be admitted and read respectively at the inquest;

(3) witnesses whom he does not intend to call;

(4) proposed exhibits for the inquest;

(5) unused exhibits.

He concluded the letter by saying:

"As you can see I am making full disclosure in advance for everyone's assistance and with regard to the delays I am sure from the enclosed notices just how much work this inquest is entailing."

Goldkorn, Davies Mathias responded by a letter dated March 9, 1998 and drew the coroner's attention to a number of general principles which it was submitted were relevant. I do not intend to recite them all but particularly note, having regard to the argument on this application, the following. Attention was drawn to the case of R v Poplar Coroners' Court ex parte Thomas [1993] 2 WLR, [(1993) 157 JP 286], where Dillon LJ stated:

". . . it is not the function of a coroner's inquest to provide a forum for attempts to gather evidence for pending or future criminal or civil proceedings."

Reference was also made to Jervis on Coroners, 11th edn, para 12.67, where the editor states:

"Witness whose evidence is in favour of any suspected person must be examined equally with witnesses whose evidence may be adverse."

In another submission made in the letter the following was stated:

"In exercising the right to examine a witness regard must be had to the inquisitorial nature of the proceedings: it is an inquest, it is not a trial."

Reference was made to a dictum of Griffiths J, in a case to which I shall come, to the following effect:

"It is quite true that the coroner may allow interested parties to examine a witness called by the coroner. But that must be for the purpose of assisting in establishing the matters which the inquest is directed to determine. It is not intended by r 16 [now r 20] to widen the coroner's inquest into adversarial fields of conflict."

It was also submitted that a number of witnesses were not relevant, in particular Christopher Jackson, whose evidence related to the financial dealings of the deceased with the Hart family, to whom I shall have occasion to return.

Pre-Inquest Review No 1 -- March 12, 1998

There is a memorandum of the meeting prepared by Mr Goldkorn. The note records that so far as verdicts were concerned Mr Ashworth stated that in his view:

"The verdicts which the jury should be asked to consider were: firstly, unlawful killing; but if they failed to reach a verdict on that then to consider, secondly, suicide. If they failed to reach a verdict on that then, thirdly, an open verdict. There was general agreement as to that course. Mr Ashworth proposed that he would draft in advance his direction to the jury for all interested parties to consider." (This quotation is unchecked due to the unavailability of documents.)

There were representatives for the Harts, Mr Goldkorn; the Dabbs family, Mr Stenson; and the Derbyshire Constabulary, Mr Robinson and Mr Lord. It appears the coroner gave those present the benefit of an analysis he had made from the reports and evidence he had had to consider and he identified some of the issues of fact which he considered arose. He included as issues, for example, the gloves and glove marks, the seat belt, the smoke alarm, and the battery. Also, the two collapses and admissions to hospital of the deceased shortly before his death and what was said about them. He identified the period of time that John Hart Jnr had waited before calling the police. He drew attention to the evidence of the building of a house or bungalow on land not owned by the deceased (that is a reference to the home of the deceased). He drew attention to the deceased wanting to go back to Boston in Lincolnshire.

He drew attention to the two connotations arising from that, namely whether he wanted to return to where his roots were, or whether he wanted to move out of the influence of the Hart family. He referred to where the will was drawn up; asking, was it drawn up at the house or another address and was it drawn up as Coral Bailey had stated? He drew attention to evidence that John Hart Jnr said he did not know the contents of the will and to evidence that on other occasions he had said he did know. He observed that this was of limited value but he nevertheless indicated that it was of some value.

He referred to gifts of the deceased made to the Hart family or others well before the death, which he suggested should not be brought into evidence. He referred to Christopher Jackson as a witness who would be called, but qualifies the extent of his evidence:

"However it is only the evidence which is of gifts which are reasonably proximate to the death that will be admitted and not gifts that are too remote."

In relation to other evidence the coroner commented that he had to engage in a balancing act and that he would have to see in respect of some of the evidence whether the probative value of the witness outweighed the prejudicial effect. I have summarised some of the many topics which were included for the discussion in the course of this pre-inquest review. I shall make my observations later.

The coroner wrote on April 17, 1998 drawing up his decision on the points that have been raised and he ended by confirming that there would be another pre-inquest review. To that I now return.

Pre-Inquest Review No 2 -- May 28, 1998

Representation was as before. Again, taking matters from the note of Mr Goldkorn:

"Mr Ashworth opened his remarks by stating that this was by far the most difficult case he had had. He wants assistance from the advocates and at the conclusion of his summing up on the facts he will ask advocates to remind him of any points that he may have missed."

The coroner indicated that his legal direction to the jury would be sent to the interested parties before it was delivered. He also gave notice that he considered John Hart Snr and Coral Bailey were interested parties and he was going to invite them to the coroner's court and allow them to see the same material.

Shortly before this meeting on the 8th the coroner had received a letter, dated May 5, from John Hart Jnr. The letter was addressed to him for the purpose of enabling him to consider:

". . . certain issues and questions have to be addressed by yourself and possibly by more senior authorities with regard to the inquest's intended constitution and legality."

It made reference to various judicial review applications and so far as the coroner's stated intention to leave to the jury a verdict of unlawful killing, John Hart Jnr wrote as follows:

". . . it is impossible for there to be a safe verdict of unlawful killing."

The letter proceeded, in what one is bound to describe as intemperate terms, to refer to the conduct of the Chief Constable of Derbyshire, Dabbs' family and the coroner himself. The letter concluded:

". . . it is not the forum of a coroners court to be hijacked by a vindictive and embarrassed police force in an attempt to extricate themselves from an unholy mess of their own creation. It is clear that the Derbyshire Constabulary in the absence of any official prosecuting authority are doing nothing less than attempting to stage their own murder trial without the necessary authority and with what appears to be your complicity.

In conclusion, I have made the decision that my only recourse is to apply immediately under r 53 of the Supreme Court Practice for Judicial Review concerning the constitution and legality of the proposed inquest to begin on June 8, 1998. I have forwarded a copy of this letter to representing solicitors and await your official response."

I understand from the material before me that John Hart Jnr has a law degree and he is described as a mature legal student (I add that in order to explain his apparent familiarity with legal proceedings).

Reverting to the coroner's preparation for the trial, he gave notice of the way in which he would inform the jury about his initial involvement and the performance of his duties as a coroner, including his contacts with the police. According to the note of Mr Goldkorn, he made the following comment:

"The coroner then commented at this stage that he was not prepared to allow the inquest to degenerate into character assassination and he would not allow

cross-examination to bring it down to a criminal trial. Counsel for the police, so far as he is concerned, are in the equivalent position of amicus curiae."

Continuing with the second pre-inquest review: as to legal issues, the coroner informed those present that by law he had to put unlawful killing first, as a potential verdict. If, however, at the conclusion of the evidence and before the summing-up anybody wanted to submit that there was no evidence which would enable him to safely leave that verdict to the jury, they could do so. A submission of that nature would be made of course in the absence of the jury.

He then informed those present of the exhibits which would be made available to the jury, and in the list which was provided he included all exhibits referred to in Constable Jackson's statement. The coroner had to respond to the letter, part of which I have quoted, received from Mr John Hart Jnr and he did so on May 8. He rejected allegations of bias and stated that his intention was to proceed with the inquest. He concluded as follows:

"Finally, may I say that the Inquest is, as the name implies, an inquiry and not a criminal trial and I shall endeavour to ensure that it does not become such but is conducted in the manner of an inquiry."

In a letter dated May 15, the coroner communicated to Messrs Goldkorn, Davies Mathias and gave his considered view on the position so far as the notes of interviews were concerned and added:

". . . if Mr Hart Junior gives full evidence and does not seek the protection of r 22 of the Coroners Rules then provided that what he says is not inconsistent with his interview in a material way then there would be no reason for the notes of interview to be placed before the jury."

He stated that he thought this was:

". . . a reasonable and fair procedure to adopt in that it does not seek to treat these witnesses in any different way to any other witness so long as they are consistent in what they say compared with what they have said in the past."

On May 22, 1998 the coroner received a letter from another firm of solicitors acting on behalf of John Hart Jnr, the firm of Messrs Travers Smith Braithwaite. It is apparent from the letter that they had only recently been instructed and, as a result, did not have a grasp of the position. It is not necessary to refer to the detail of the letter. Suffice it to say it raised a number of questions, requiring the coroner to state his views on a number of detailed issues. Further, it included a schedule of witnesses whose evidence it was suggested was irrelevant; perhaps it matters not very much, but DC Jackson was not listed irrelevant.

Despite what must have been the considerable pressures of time upon the coroner, he responded in detail, by letter dated May 27, 1998. Although he did not respond to every inquiry which had been raised, it has to be noted that he was not simply receiving inquiries by correspondence from solicitors acting on behalf of John Hart -- namely now, Messrs Goldkorn, Davies & Mathias, Travers Smith Braithwaite -- but also from John Hart Jnr himself. A letter dated May 30, 1998 is such an example.

In relation to evidence as to money transferred between the deceased and John Hart Jnr, Mr Hart Jnr had this to say:

"Further, if money transferred between myself and Lawrence is to be a live issue then in the interests of justice the money and gifts given to members of the Dabbs family must be presented to the court for its consideration also. To that end I will need all financial records of the Dabbs family members to identify money and gift transferrals."

As to witnesses whose evidence would be directed to motive, Mr Hart Jnr had this to say:

"If, as it appears, possible motives are to be introduced into this inquest then reference to the motives of the Dabbs family and police actions will have to be raised if there is to be any semblance of a fair hearing. Moreover, this, if correct, would be contrary to the fundamental principle of a coroner's court which is a court of record. Indeed, you have stated in correspondence to Travers Smith Braithwaite that you are under a 'duty to ensure that the relevant facts relating to the death of Mr Dabbs are fully, fairly and fearlessly investigated.' Clearly, you may 'fearlessly' investigate matters but unless there is a balanced view given to possible motives etc then 'fearlessness' becomes victimization."

The coroner replied pointing out that a lot of work and consideration had gone into the preparation for the inquest, and he had been concerned with ensuring that the hearing was as open and as fair as possible. In my judgment, perfectly fairly, he pointed out that the raising of issues in the way in which Mr Hart was raising them was not helpful, and pointed out, again in my judgment fairly, that they could well have been raised by his own solicitor, who had been present at the pre-inquest review.

Nevertheless, he went on to respond to the points which had been raised and, in response to the question of transfers of money he recorded:

"It was is not my intention to raise the issue of monies transferred between yourself and Mr Dabbs prior to his death."

Mr John Hart Jnr responded on June 2 to this effect:

"I note that it is your intention not to raise the issue of monies transferred between myself and Mr Dabbs prior to his death. However, I note that DC Jackson is to give evidence concerning 'the financial dealings between Mr Dabbs and the Hart family'."

The letter concluded by making reference to the judicial review proceedings which he had instituted against the officers of police in respect of the charges which had been levelled against him, and to the libel action which he had commenced against a relative, namely Mr Timms, who had written to the police shortly after the death of the deceased. He concluded as follows:

"The point being that any subsequent proceedings should not deter adequate investigation but there is no mention here, or anywhere else, that I can find that an inquest may disregard legal actions in higher courts than itself and with impunity disregard its jurisdiction. Please confirm that you do indeed have the legal right to raise these issues and hear evidence relating to these matters even though higher courts are already seized of these matters. I would appreciate the relevant statutory or common law ruling on the matter as I intend to raise this, unless dealt with prior to the inquest, as a point of law."

The coroner responded by a letter dated June 9 and, as to the transfer of monies, he said:

"I confirm that it is not my intention to raise the issue of monies transferred between yourself and Mr Dabbs prior to his death. I do not presently intend to allow DS Jackson to give any evidence in that respect."

He rejected, in my judgment correctly, the other matters to which I have referred, which had been suggested as a bar to the continuation of the inquest. The inquest resumed on June 8, 1998.

The Grounds for Review

On March 29, 1999 Burton J granted leave to move for judicial review on two grounds. The Form 86A was substantially amended in the course of hearing to excise a number of grounds which had been raised. The grounds permitted were:

(1) That on an objective assessment of the evidence given at the inquest there was insufficient evidence to satisfy a jury properly directed that the deceased was killed unlawfully. It was therefore submitted that the jury should not have been invited to consider such a verdict. It is not in dispute that having regard to R v Inner South London Coroner ex parte Douglas-Williams [1999] 1 All ER 344, [(1998) 162 JP 751] that the relevant test to be adopted in this regard is the well-known test in R v Galbraith [1981] 1 WLR 1039, [(1981) 145 JP 406];

(2) that having regard to the evidence at the inquest detailed legal directions should have been given to the jury on the distinction between murder and aiding and abetting suicide. In effect, that the coroner should have drawn the jurors' attention to the need to consider on the evidence whether the applicant had assisted in the suicide of the deceased.

As I have already recited, after the grant of leave on these grounds the affidavit of Mr Crookes was disclosed. On the commencement of the hearing before me, Mr Kallipetis QC, who appeared for the applicant, made an application to further amend the Form 86A grounds in the light of that affidavit. Suffice it to say that in the light of observations from the court made in the course of argument, Mr Kallipetis reflected upon the very wide nature of the proposed amendments then before the court and in the light of suggestions from the court limited his amendment. While, of course, there were still matters of contention, the amendment in its proposed form and so limited did not give rise to arguments in principle from Mr Burnett QC, for the coroner or from others.

It will be convenient to set out a summary first, but it will be necessary to come back to the precise terms of some points:

(1) that the coroner was aware that the Derbyshire police intended to use the inquest for a "forbidden purpose" namely as a "stepping stone" to a prosecution of the applicant and that he wrongly permitted the Derbyshire police to exercise their right to examine witnesses for that purpose;

(2) that knowing of that purpose the coroner should have taken over a greater part of the examination of witnesses so as to minimise or reduce the risk that the inquisitorial process would be abused;

(3) that he wrongly permitted the police to widen the scope of the inquest

into "adversarial fields of conflict" in two particular ways by allowing the police to introduce DS Jackson's schedule of transfers of money and, secondly, in allowing the persistent cross-examination of Helen Hart on subjects concerning which she had made it plain she wished to raise her privilege against self-incrimination.

In general support of these grounds reliance was placed upon the contact which the coroner had had with the Crown Prosecution Service and in particular that he had raised, as a possibility, immunity being granted to Helen Hart by the prosecuting authority. At this stage it may be convenient for me to record that the court had the benefit of hearing from leading counsel, James Hunt QC, for the CPS. Having regard to the material set out in the affidavit of Mr Crookes it was thought that the CPS should intervene in the proceedings for the purpose of assisting the court so far as it was able to do so.

In considering whether to grant leave to Mr Kallipetis to reamend, I had in mind that the applicant had on more than one occasion and, my recital to date includes them, drawn the attention of the coroner to the distinction between a murder trial and an inquest and to the potential for the inquest to turn into a murder trial, unless it was controlled. I have already recorded the assurances that the coroner gave when those matters were put to him. I had in mind at the time the application was made that, at the conclusion of the inquest and in support of the application for judicial review, as it was first formulated to Burton J, many complaints were raised against the conduct of the inquest by the coroner, but it was not said on the application before Burton J that the coroner had wrongfully permitted the inquest to turn into an adversarial contest. Nevertheless, I concluded it would have been wrong to have prevented the applicant from relying upon the affidavit of Mr Crookes, and wrong to prevent counsel from advancing any points which could properly be advanced upon the basis of any interpretation of those facts. Thus, one might say, under a different guise, or at least upon a limited and different factual basis, this court is concerned with an allegation against the coroner that he was complicit in an abuse of the inquest proceedings. It has not been suggested that he was deliberately and knowingly complicit in an abuse. It is important to emphasize that the nature of the complaint or allegation is that the facts to which he was complicit, properly viewed, were an abuse of the proceedings.

Even put in that way, it is plainly a serious allegation to make against a coroner. It is a matter which has caused evident concern to the CPS, otherwise they would not have been represented in this court and I concluded that it was in the interest of justice that the court grasp the issues, so far as it could. I turn now to the law.

The Law

Section 8 of the Coroners Act 1988, in its material part, provides:

"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 subs (3) below, without a jury."

Subsection 4 provides:

"If it appears to a coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is any reason for summoning a jury, he may proceed to summon a jury in the manner required by subs (2) above."

Section 11 is headed:

"Proceedings at Inquest

(2) The coroner shall, at the first sitting of the inquest, examine on oath concerning the death all persons who tender evidence as to the facts of the death and all persons having knowledge of those facts whom he considers it expedient to examine."

Subsection 5:

"An inquisition --

(a) shall be in writing under the hand of the coroner and, in the case of an inquest held with a jury, under the hands of the jurors who concur in the verdict;

(b) shall set out, so far as such particulars have been proved-

(i) who the deceased was; and

(ii) how, when and where the deceased came by his death . . .

(6) At a coroner's inquest into the death of a person who came by his death by murder, manslaughter or infanticide, the purpose of the proceedings shall not include the finding of any person guilty of the murder, manslaughter or infanticide; and accordingly a coroner's inquisition shall in no case charge a person with any of those offences."

I pass to s 16, which I shall not set out in extenso. It is concerned to set out the circumstances in which there shall be an adjournment of an inquest; circumstances include where the Director of Public Prosecutions informs the coroner that some person has been charged before an examining justice with an offence (whether or not involving the death of a person other than the deceased) alleged to have been committed in circumstances connected with the death of the deceased, not being an offence within para (a) above and is requested by the Director to adjourn the inquest.

The reference to subpara (a) is a reference to circumstances where the clerk of the magistrates' court under s 17(1) of the Act informs the coroner that someone has been charged before the magistrates' court with "(i) the murder, manslaughter or infanticide of the deceased."

Subsection 7 of s 16 provides:

"Where a coroner resumes an inquest which has been adjourned in compliance with subs 1 (above) --

(a) the finding of the inquest as to the cause of death must not be inconsistent with the outcome of the relevant criminal proceedings . . ."

Section 13 of the 1988 Act confers power on the Lord Chancellor to make rules for the regulation and practice and procedure at inquests and the current rules governing inquests are contained in the Coroners Rules 1984 No 552. Rule 20(1) provides:

"Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who satisfies the coroner that he is within para (2) shall be entitled to examine any witness at an inquest either in person or by [an authorized advocate as defined by s 119(1) of the Courts and Legal Services Act 1990]:

Provided that --

(a) the chief officer of police, unless interested otherwise than in that capacity, shall only be entitled to examine a witness by [such an advocate];

(b) the coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question."

Subsection 2:

"Each of the following persons shall have the rights conferred by para (1):

(a) a parent, child, or spouse and any person representative of the deceased;

(b) any beneficiary under a policy of insurance issued on the life of the deceased;

(c) the insurer who issued such a policy of insurance;

(d) any person whose act or omission or that of his agent or servant may in the opinion of the coroner have caused or contributed to, the death of the deceased;

(e) any person appointed by a trade union to which the deceased at the time of his death belonged, if the death of the deceased may have been caused by an injury received in the course of his employment or by an industrial disease;

(f) an inspector appointed by, or a representative of, an enforcing authority, or any person appointed by a government department to attend the inquest;

(g) the chief officer of police;

(h) any other person who, in the opinion of the coroner, is a properly interested person."

Rule 21 provides for the examination of witnesses in this way:

"Unless the coroner otherwise determines, a witness at an inquest shall be examined first by the coroner and, if the witness is represented at the inquest,

lastly by his representative."

Then Rule 22:

Self-incrimination:

"(1) No witness at an inquest shall be obliged to answer any question tending to incriminate himself.

(2) Where it appears to the coroner that a witness has been asked such a question, the coroner shall inform the witness that he may refuse to answer."

I pass over to r 26 which is a request by the chief officer of police for an adjournment. Rule 27 refers to a request by the Director of Public Prosecutions for an adjournment. Rule 28 provides for circumstances where the coroner should adjourn; for example, if during the course of an inquest evidence is given from which it appears to the coroner that the death of the deceased is likely to be due to an offence, and so forth.

Rule 36 reflects the statutory purpose of an inquest:

"The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely --

(a) who the deceased was;

(b) how, when and where the deceased came by his death;

(c) . . .

(2) Neither the coroner nor the jury shall express any opinion on any other matters."

Rule 42, finally, so far as reference to the rules are concerned, concerns verdicts:

"No verdict shall be framed in such a way as to appear to determine any question of --

(a) criminal liability on the part of a named person, or

(b) civil liability."

The court's attention has been drawn to number of authorities. I note the following: R v HM Coroner for North Humberside ex parte Jamieson [1995] 1 QB 1, [(1994) 158 JP 1011]; R v Inner South London Coroner ex parte Epsom Health Care National Health Service Trust (1994) 158 JP 973; R v Coroner for Poplar ex parte Thomas [1993] QB 610, [(1993) 157 JP 286]; R v Coroner for Hammersmith ex parte Peach [1980] 1 QB 211; R v Devine ex parte Walton [1930] 2 KB 29; re An Inquest into Calvi deceased (1983) DC (Transcript); R v Turnbull ex parte Kenyon (1984) DC (Transcript); R v The Inner South London Coroner ex parte Douglas-Williams [1999] 1 All ER 344, [(1998) 162 JP 751]; R v Lincoln Coroner ex parte Hay (1999) 163 JP 666; R v HM Coroner for Southern District Greater London ex parte Driscoll (1995) 159 JP 45.

In addition to the above cases, the court's attention has been drawn to very limited, but nevertheless helpful references, from the lengthy report of the

Brodrick Committee and to the Home Office Guidance by way of a response to Recommendation 42 of the Stephen Lawrence Inquiry.

Applying the law to the facts I conclude as follows:

1. The coroner had reasonable cause to suspect that Lawrence Dabbs had died a violent, unnatural or sudden death for which the cause was unknown.

2. Although he was not bound to summon a jury, it was a fit and proper exercise of his discretion to do so.

3. The CPS having decided that there was no realistic prospect of conviction of the applicant, or indeed anyone else, of murder or manslaughter, the coroner was bound to continue with the inquest.

4. The circumstances surrounding the death of Lawrence Dabbs were such that the coroner was bound to conclude, in accordance with r.2 1 of Coroners Rules, that the following were interested persons with an entitlement to examine any witness at the inquest:

(a) the family of the deceased;

(b) the applicant;

(c) Helen Hart;

(d) John Hart Snr; and

(e) the chief officer of police.

It may be pertinent to note at this stage what Kennedy LJ had to say in ex parte Driscoll (1995) 159 JP 45 about the role of interested persons, which was the issue raised in that case. From p 56F:

"For my part I think that he may be assisted by Mr Owen's submission in reply that a properly interested person must establish more than idle curiosity. The mere fact of being a witness will rarely be enough. What must be shown is that the person has a genuine desire to participate more than by the mere giving of relevant evidence in the determination of how, when and where the deceased came by his death. He or she may well have a view he wants to put to the witnesses, but there is no harm in that. Properly controlled it should assist inquisitorial function."

As to the chief officer of police, his entitlement was not based upon subpara (d) of r 21, but upon (g). According to the Rules he was bound to be represented by counsel or solicitor. In the event he was represented by Mr Aidan Marron QC. Unusual as it might be to instruct a QC, it is a matter for the chief constable and not the coroner whether leading or junior counsel is to be instructed on behalf of an interested party.

In my judgment, it is plain that insofar as the Rules have accorded the chief officer of police an entitlement to appear, subject of course to the coroner's discretion, the purpose must be to enable him to pursue, by counsel, any duty or function forming part of his office as chief officer of police or chief constable. It is not an occasion to pass upon all the functions of a chief officer of police but an important one is to enforce the law of the land. Lord

Denning, in the well-known case of R v Commissioners of Police of the Metropolis ex part Blackburn [1968] 2 QB 118 at 135, put it thus:

". . . I have no hesitation in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the Police Act, 1964, the Secretary of State can call upon him to give a report [which are entirely in the interest of efficiency]. I hold it to be the duty of the Commissioner of Police in the Metropolis, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought. But in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

Manifestly, the court is not concerned with the power to bring prosecutions (now historic) but the police, it is recognized, have a duty to supply a coroner with all the material, which is in their possession, which concerns the circumstances in which a deceased person has died. It is elementary that police have a duty to investigate where there are grounds to believe a criminal offence may have been committed. Having investigated, they must report. It is not central, but it is to be observed that a chief constable is susceptible to judicial review, the precise basis or range of which it is not necessary to make observations. But I do observe that in this case this chief constable had some reason to feel vulnerable to review.

It follows that counsel instructed for the chief officer was at the inquest to perform the duty of the chief constable, including, in particular, those aspects of his duty which represented his interest in the investigation of crime arising out of, or in connection with, the inquiry which was about to take place. Of course it is the object of the inquiry which defines the scope of the jurisdiction and his right to examine. The object of the inquiry particularly relevant to this part of the matter is the inquiry as to how the deceased has come about his death.

The chief officer was manifestly not entitled to use the inquest for the investigation of any crime which he might have believed had been committed by anybody giving evidence at the inquest, nor any crime having only peripheral relevance to the inquiry. He was bound by the Coroners Rules and by principle, through counsel, only to examine witnesses with a view to furthering the inquiry on the relevant purpose of the inquiry: how it was that the deceased came by his death.

The applicant was an interested person, as had been submitted on his behalf and as the coroner rightly accepted, because he had been interviewed by the police in the course of their investigations and because there were grounds for believing that he had acted so as to be in some way or another party or privy to the circumstances which had brought about the death of the deceased.

In my judgment, there can be no doubt that there was a conflict of interest between the chief constable and the applicant. But the conflict was not, in

character or substance, different from the evidential conflict inevitably arising out of and in connection with the necessary factual inquiry, namely how the deceased came by his death. The applicant's conduct plainly gave rise to questions which the chief constable was entitled to put to him. I have been referred to the 11th edition of Jervis on the Office and Duties of Corners, and in particular to para 11-06. The learned editor states:

"It has been said to be generally undesirable that the police should be allowed to cross-examine a witness at all."

The authority in the footnote for that proposition is said to be the case of Webb and Catchlove (1886) 50 JP 795. It has been accepted, with respect to the learned editor, that is not a proposition which is borne out by the case cited in support. In my judgment, it is not a proposition which can be borne out by reference the Coroners Rules.

Just as the chief constable was entitled, through counsel, to examine witnesses for the proper purposes of the inquest, by parity of reasoning all interested parties were entitled to examine the applicant and witnesses. Further, and, one might say, above all, the coroner was under a duty to ask the applicant questions and he had a discretion as to whether he went first, or went last, or how he did it. All the witnesses were open to examination. Two principles controlled the examination of witnesses: (1) relevance to one of the four matters with which the inquest was concerned; and (2) any claim of privilege against self-incrimination which any witness advanced

5. I turn now to the fifth of my conclusions. Coroners' duties include:

(i) Gathering the evidence and deciding upon the witnesses to be called; including deciding whether to compel production of documents and, if so, which documents; and deciding upon the documents which are to be placed before the jury.

(ii) Communicating with the police. In this regard the court has been informed that all the Derbyshire police officers are also coroners' officers. The meetings which took place, to which I have referred in the earlier part of this judgment, when various detective constables and the Detective Superintendent came to see the coroner, were contacts which were contacts between the police authority and the coroner within the context of the police as the coroner's officers.

(iii) The coroner had a duty to adjourn the inquest if informed by the magistrates' court, the police, the CPS or the DPP that any person had been charged with murder or manslaughter.

There are issues to which I shall have to come, which raise questions as to whether there are limits, which a coroner should set, on the issues that he raises with the police and whether the facts of this case provided any basis for the coroner to have contact with the CPS.

6. Point (14) identified in the case of ex parte Jamieson (1994) 158 JP 1011, at p 1035 is in the following terms:

"It is the duty of the coroner as the public official responsible for the conduct of inquests, whether he is sitting with a jury or without, to ensure that the relevant facts are fully, fairly and fearlessly investigated. He is

bound to recognize the acute public concern rightly aroused where deaths occur in custody. He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory. But the responsibility is his. He must set the bounds of the inquiry. He must rule on procedure to be followed. His decisions like those of any other judicial officer, must be respected unless and until they are varied or overruled."

Points (3), (4), and (5) of the same judgment, at p 24, are as follows:

"(3) It is not the function of a coroner or his jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame. This principle is expressed in r 42 of the Rules of 1984. The rule does, however, treat criminal and civil liability differently: whereas a verdict must not be framed so as to appear to determine any question of criminal liability on the part of a named person, thereby legitimating a verdict of unlawful killing provided no one is named, the prohibition on returning a verdict so as to appear to determine any question of civil liability is unqualified, applying whether anyone is named or not.

(4) This prohibition in the Rules is fortified by considerations of fairness. Our law accords a defendant accused of crime or a party alleged to have committed a civil wrong certain safeguards rightly regarded as essential to the fairness of the proceedings, among them a clear statement in writing of the alleged wrongdoing, a right to call any relevant and admissible evidence and a right to address factual submissions to the tribunal of fact. These rights are not granted, and the last is expressly denied by the Rules, to a party whose conduct may be impugned by evidence given at an inquest.

(5) It may be accepted that in case of conflict the statutory duty to ascertain how the deceased came by his death must prevail over the prohibition in rule 42. But the scope for conflict is small. Rule 42 applies, and applies only, to the verdict. Plainly the coroner and the jury may explore facts bearing on criminal and civil liability. But the verdict may not appear to determine any question of criminal liability on the part of a named person nor any question of civil liability."

Given these points set out in Jamieson, the question has arisen whether there is a conflict between them and the dicta to which I now make reference.

I start with ex parte Epsom Health Care (1994) 158 JP 973. In that case the deceased was a prisoner who had taken an overdose after barricading himself in a pharmacy. There was then delay in conveying him to hospital. The coroner held an inquest, which lasted eight days. He called 39 witnesses, and the cause of death was adult respiratory distress syndrome. An issue arose as to the possible effect of his transfer to hospital by van. When the coroner summed up he left, as a possible verdict, that the cause of death was aggravated by the lack of care. The verdict was challenged and the court held that the direction was defective. It then had to consider what it should do, having quashed the inquisition. Steyn LJ stated at pp 997-8:

"My conclusion is, therefore, that it would be within our power to direct that the verdict be quashed and there be an entirely new inquest. But then I turn to the next matter, and that is, whether in the exercise of our discretion, we ought so to order. It must be remembered that here was an inquest over eight

days. Thirty-nine witnesses were heard. Issues were explored in very great detail. It yielded a minimum of evidence on any causal link between lack of care and the death. It is realistic to assume that if we direct another inquest, that similarly the evidence will be of a very limited nature.

Then I also pose to myself the question: what would be the purpose of another inquest? It is axiomatic that we are not entitled to direct an inquest as a stepping-stone to a civil claim. That is a forbidden purpose and not a matter that we can take into account in regard to the question of whether there should be an inquest or not."

Mr Kallipetis has attached great weight to the words: "It is axiomatic that we are not entitled to direct an inquest as a stepping-stone to a civil claim." He submitted that the case established a principle on which the applicant could rely, on or from which, it being "axiomatic", there was an escape for the respondent.

Next, ex parte Thomas [1993] QB 610, [(1993) 157 JP 286], I take the matter up in the judgment of Dillon LJ in the Court of Appeal. This was a case where the coroner had refused to hold an inquest and his decision was challenged. Dillon LJ at p 629G said:

"It is also as well to remember, as a check on any tendency to over-purposive construction of s 8, that r 42 of the Coroners Rules 1984 expressly provides that: 'No verdict shall be framed in such a way so as to appear to determine any question of -- (a) criminal liability on the part of a named person, or (b) civil liability;' it is not the function of a coroner's inquest to provide a forum for attempts to gather evidence for pending or future criminal or civil proceedings."

Next, ex parte Peach [1980] 1 QB 211. There were two issues in Peach, an alleged improper failure to summon a jury and another as to disclosure. In the judgment of Griffiths J, given in connection with the alleged requirement for the statements of witnesses to be disclosed, and thus in the context of whether the principles as to disclosure could be taken from adversarial proceedings, properly so-called, Griffiths J said this at p 220A:

"It is quite true that the coroner may allow interested parties to examine a witness called by the coroner. But that must be for the purpose of assisting in establishing the matters which the inquest is directed to determine. It is not intended by r 16 to widen the coroner's inquest into adversarial fields of conflict.

That being so, because this applicant is in no risk of himself being attacked or criticized, it seems to me that the general rules of natural justice, which require a person against whom some accusation is brought to have access to all the material that may be relied upon against him, have no application whatsoever. I think it would be very unfortunate if coroners' inquests were turned into a field-day for lawyers by enlarging the examination of witnesses called by a coroner beyond their proper scope."

So I revert to my question: is there a conflict between the provisions of the Act, the Coroners Rules and Point 14 to which I have drawn attention in Jamieson and the dicta which I have just identified? In my judgment, there is not:

1. The dicta appear in cases where the circumstances and matters under

consideration were quite different from those with which we are here concerned. In none of the cases was the court concerned with a coincidence of subject matter between the relevant inquiry within the reach of the inquest and the respective lines of examination which interested parties had an entitlement to pursue at the inquest.

2. Each of the dicta must be interpreted in the context of the issues being decided. In Epsom whether or not a new inquest should be ordered, where very few grounds existed for concluding that anything would be achieved by it other than providing a forum for those who had an interest in taking proceedings of a different sort. In Poplar a similar consideration, in a circumstance where the issue was whether the coroner rightly or wrongly refused to hold an inquest. Finally, in Peach an observation made in the context of an attempt, by way of argument, to import into the coroner's jurisdiction rules of discovery which are applicable in adversarial proceedings. In my judgment, none of those dicta was designed to be, and nor should they taken to be capable of circumscribing, the statutory purpose of an inquiry, which is to inquire, as was said in Jamieson, fearlessly and fully into how the deceased came about his death.

7. It is for the coroner to rule on a claim for privilege made under r 22; privilege does not prevent questions being asked. In my judgment, a coroner who adopts what could be described as a global approach to the potentiality that self-incrimination will be claimed will run the risk of not carrying out a full inquiry; see ex parte Hay (1999) 163 JP 666.

As to the suggestion that where a coroner has occasion in the course of an inquest to deal with repeated claims by a witness for the protection against self-incrimination the coroner should direct the jury, in some manner, about the meaning and effect or the law on self-incrimination. I can find no basis for such a requirement in authority or in principle. To the contrary, in a case where privilege has been repeatedly claimed, and the claim to it has sometimes been contentious, if, as here, the coroner has deftly avoided having to rule upon it by moving the questioning on so as to leave it open to be decided later should the questioner wish to pursue it, and he does not, then it may be a very complex exercise for the coroner to have to attempt to distinguish, as he might feel he had to, between a proper claim for privilege and an invalid claim for privilege. When he has not had to do it in the course of the inquest it would be undesirable to have to do it then. In my judgment, it is a matter for the coroner who has control of the proceedings, who has a sense for the need of the occasion. It is a matter for his perception of the needs of the jury, his awareness of their response to the events that are occurring in front of them. It is not as though when a claim for privilege is made it will not be perfectly obvious to the reasonably intelligent jury what is meant, namely that the law accorded somebody the right to remain silent and that the right was being exercised. I therefore see nothing in the point that, in the circumstances which occurred here in connection with evidence of Helen Hart, the coroner was bound to give a direction.

8. The duty in relation to verdicts and the position of this court in relation to what verdict should be left and any consequences of misdirections is to be gauged, in my judgment, from ex parte Douglas-Williams [1999] 1 All ER 344, [(1998) 162 JP 751].

9. This is by no means contentious. It is accepted that the relevant approach to the question, whether or not a verdict should have been left to a

jury, is a matter which is to be tested by the well-known Galbraith principles.

I have now said enough by way of conclusion on the law and to have set sufficiently the legal context to enable me to move to the argument for the applicant in a little more detail.

The Re-amended Grounds

I take paras 6, 7 and 8 of the re-amended grounds. Notwithstanding my conclusion that the dicta do not establish a forbidden purpose relevant to this case, I nevertheless should consider the allegation of abuse, shorn of its dependence upon this particular label taken from the dicta. The grounds merit slightly closer analysis.

Paragraph 8 comes down to this: in the light of knowledge on the part of the coroner that the police intended to abuse the proceedings, or more precisely knowing of the circumstances, he should have taken over the examination of the witnesses. Thus put, it is a narrow point, but the terms of the re-amendment require correction of Crookes' affidavit because it seems fair to deal with the argument upon a basis of a wide allegation of abuse but, in addition, because para 8.3 of the re-amended grounds is premised upon Crookes' affidavit. Indeed, the whole of para 8 is pleaded in the light of the matters set out in paras 5, 6 and 7, and is thus drawn by reference to the Crookes' material. The structure of the argument, as is it appears to me shorn of the so-called forbidden purpose, contains the following steps:

1. The police intended to abuse the proceedings.

2. The coroner knew of facts constituting their intention to do so.

3. He permitted them to abuse the proceeding and should have taken steps to prevent it by taking over the questioning himself.

Further, in the light of his knowledge he acted wrongly in permitting the police to widen the scope of the inquest by introducing DS Jackson's schedule and allowing persistent cross-examination of Helen Hart when she was claiming privilege against self-incrimination.

Mr Kallipetis' submission on this part of the case is, to a large extent, founded upon what has been called the concession of Mr Marron QC, made to Mr Kallipetis before the hearing and made as a form of submission to the court; namely, that he considered it to be his duty acting for the chief constable, to ask questions of witnesses, and the applicant in particular, which could provide a basis, according to the tenor of the answer, for the preferment of a charge of murder or manslaughter. The position thus expressed, Mr Kallipetis submits, established that the police intended to abuse the proceedings. Mr Kallipetis came close to, but eventually deftly avoided, submitting that perfectly proper questions addressed to a legitimate issue at an inquest, if asked for the purpose of gathering evidence for other proceedings, were impermissible questions. Indeed, I take his argument that the coroner should have taken over the questions to be a recognition in principle that the solution lay in the procedure to be adopted and not the exclusion of the substance of the questioning. I shall have to consider the legitimacy of his suggested remedy. But, in my judgment, where there is a legitimate purpose for an interested person in examining witnesses one must look at the substance of the matter and not proceed to determine the question by reference to a pejorative label or

underlying motive, if one can be found.

The chief constable, acting in the course of his duty as chief constable, and duly represented by counsel, is entitled to examine witnesses in aid of the inquisitorial process of an inquest. He enjoys the right by reason of his office and the duties attendant by his office. In doing so a chief constable may well elicit evidence which will give rise to criminal charges being brought. Equally, it has to be said, the process may elicit evidence which will provide grounds for charges not being brought. Where there are grounds to believe a criminal offence has been committed in connection with the death of a deceased, the grounds must be investigated. I am unable to see that a strongly held view by the chief constable, and which for the purpose of argument I will assume existed in this case, that charges should be brought, disqualifies him from being represented. Equally, I am unable to see how any hope he might cherish that the outcome may: (a) result in a verdict of unlawful killing; or (b) substantiate a basis for prosecution, can affect the position.

I am unable to see any legal basis for concluding that the chief constable in exercising his functions in this case can be said to have acted in abuse of his power; nor can I see how, on this score, the inquest can be said to have been abused. So far as it is said that what occurred should not have occurred and it should have been stopped by the intervention of the coroner by taking over the questioning, because what in fact occurred was unfair, the following difficulties arise. If a chief constable, or indeed any person interested, is entitled to examine witnesses under r 20, I cannot see any ground, on the facts of this case, for the coroner depriving him of that right. It may be true that in a particular inquest there may be scope for a coroner to assume a dominant role in asking questions and, as I have already pointed out, there is a discretion under Rule 21 as to the order to be adopted in examining witnesses. But, in my judgment, it cannot be said that there is a procedural requirement existing outside the rules which places this burden of questioning upon the coroner. Indeed, to take over questioning, to the exclusion of the chief constable or an interested person, could well place the coroner in a position where he has denied the interested person a right conferred by the Rules.

In the postulated circumstances I have no doubt a coroner, as I conclude this coroner to be and to have acted, would be astute to see that the questioning was limited to permissible areas. As I have carefully and elaborately recited, this coroner cannot be criticised for taking inadequate steps to prepare this inquest. In my judgment, he was meticulous and as has been pointed out, in advance of his time, so far as disclosure to interested parties was concerned. In a situation, which one recognises must have been difficult, I can commend his diligence in dealing with inquiries, which came to him from various lawyers and from all directions, engendering an atmosphere which must have made it obvious that this particular inquest was going to be a very difficult one to manage.

He was alert to the risk that an adversarial atmosphere could develop at the inquest. He gave assurances that he would guard against excess. In this regard it is not without relevance to quote from the Home Office's response to Recommendation 42 of the Stephen Lawrence inquiry. The recommendation suggested that there should be advance disclosure of evidence and documents, as a matter of right, to parties who have leave from a coroner to appear at an inquest. The guidance, or comment, of the Home Office which has been provided to me is in these terms:

"Inquests are non-adversarial. There are in law no parties to the matters, and no issues to be litigated between them . . . However, where a death occurs in controversial circumstances, it can be difficult to avoid an adversarial approach arising, particularly where the deceased was in legal custody. In such cases, disclosure of information held by the authorities in advance of the hearing will help to provide reassurance to the family of the deceased and other interested persons that a full and open police investigation has been conducted, and that they and their legal representatives will not be disadvantaged at the inquest."

The thrust of the recommendation applies with equal force to the circumstances which surrounded this inquest. In my judgment, the challenge raised to the inquest, namely that it is vitiated by unfairness, must be determined by reference to the record. At the invitation of counsel I have read much of the transcript. It is fair to say that Mr Marron was forceful and direct in the manner and content of his questions. It must have been obvious to the jury that Mr Marron was suggesting, on behalf of the chief constable, that the applicant had murdered the deceased, or that he had been guilty of a criminal conduct in connection with the circumstances surrounding the deceased's death. It was inevitable. The applicant certainly understood that to be what was being suggested. Thus, it led to the predictable heightening of the atmosphere at the inquest.

But, in my judgment, in the circumstances of this case, a fearless investigation as to how the deceased came by his death was bound to give rise to that impression being conveyed to the jury. Of course, it can be said that other counsel may have conducted the examination differently; but even if performed in a less forceful manner than Mr Marron adopted himself, then I have no doubt that the same message would have been conveyed.

This court is concerned with matters of substance and procedural unfairness. Mr Kallipetis has not submitted, nor could he, that the questioning by Mr Marron was gratuitously accusatorial. The forceful questions were directed to relevant evidential issues, which were to be inquired into and considered. Again, if Mr Marron's style or manner of questioning is under consideration then so must be the applicant's conduct when being questioned. It is unnecessary for me to recite the detail, for Mr Kallipetis rightly accepted that his client behaved very badly at the inquest and, in his words, "did himself no good". He certainly invited confrontation. Where witnesses deport themselves in proceedings in a particular way, it will inevitably affect the proceedings. In common parlance, there will be a contest between counsel and the witness and, in the broad sense of the word, there will be adversarial exchanges. But that will not render the inquest adversarial in any sense to which Griffiths J (as he then was) was referring, namely to take the inquest outside its proper bounds. The touchstone in determining whether that has occurred is whether the questions are relevant to an issue which the jury has to decide.

I have already referred to the specific complaints, which appear in para 8(3) and 1 and 2 of the reamended grounds of the application, and I shall come to those separately. But as part of the case advanced for the applicant, there was, appended to the skeleton argument, a document which was devoted to listing the relative lengths of cross-examination of the witnesses by the respective interested persons. In my judgment, matters of substance such as this are not to be tested by such an approach. However, it is fair to say that Mr Kallipetis really founded this part of his argument upon the judgment of Talbot J.

R v Devine ex parte Walton [193O] 2 KB p 29 is a helpful authority because its factual circumstances have some similarity to the character of the complaint made in this case. In that case the coroner, not uncommonly for those days, knew his jurors very well. Two days before the inquest was held the coroner, accompanied by a man named Ralph, visited a garage in order to look at a motor car, which was a relevant vehicle for the purposes of the inquest. He introduced Mr Ralph as "one of my regular jury men". The jury eventually brought in a verdict of manslaughter against the driver of the vehicle. The occasion of the visit by Mr Ralph and the coroner meant that the two of them examined the car together. They also examined the lorry. They examined the scene of the collision. Mr Ralph was the foreman of the jury at the inquest.

The submission advanced to the court was, as set out in the judgment of Talbot J, at p 36:

"In our opinion it is 'contrary to public policy' that a coroner should take, before an inquest is held, one or more persons who are to serve on the jury and privately investigate with them any of the facts of the case; and this whether or not it can be shown that there was anything in the nature of the discussion."

I need not recite any more. But the passage, which Mr Kallipetis' rightly took as the kernel of the principle at play, is this, at p 37:

"The court is not to attend to mere informalities, nor to criticize minutely the summing-up, or the nature of the evidence or of the procedure. But if the inquest has been so conducted, or the circumstances attending it are such that there is real risk that justice has not been done, a real impairment of the security which right procedure provides that justice is done and is seen to be done, the court ought not to allow the inquisition to stand."

In my judgment, having considered the transcript, as I was invited to do, I am satisfied that the latitude granted to Mr Marron on behalf of the chief constable and, to a certain extent, the family as well, gives rise to no overriding sense of unfairness or disquiet. I shall have to consider para 8(3) of the recommended grounds separately, but in conclusion:

1. I reject the starting point that Mr Marron's concession or admission to the court provides any basis for the argument advanced. And,

2. Having regard to the record I am satisfied that this inquest was conducted fairly in furtherance of an investigation of the facts as to how the deceased came by his death.

I accept the submission for the respondent that the coroner's approach to the inquest was scrupulously fair. He anticipated the suggestion made by Brooke LJ in R v Lincolnshire Coroner ex parte Hay (1999) 163 JP 666 that coroners might consider circulating provisional lists of witnesses with a short summary of the gist of the evidence. He anticipated the Home Office response to the Lawrence inquiry. He gave full disclosure of all the evidence in his possession. He was not under a legal duty to do so. The applicant had all the relevant material and was in a position to take advice and to decide for himself what course he should take in the inquest. He was advised and helped by Mr Goldkorn at the pre-inquest review stages and, as I have recorded, he made many representations himself.

There are a number of interested persons. In my judgment, is not right to

focus upon the coroner's position vis-a-vis a particular interested person. Regard must be paid to the existence of other interested persons, not least the family of the deceased. Each interest has to be taken account of by the coroner. But those considerations apart, his prime duty is to ensure that the inquest over which he presides is a fearless and thorough investigation into the circumstances attending the death of the deceased.

It remains for me to consider the respondent's position apart from the allegation against the chief officer of police. I have no doubt that the respondent was acutely aware of the disappointment in the police force that the applicant had not been charged with murder or manslaughter, or otherwise in connection with the death of the deceased. But it has not been and could not be suggested that that of itself should have caused him to exercise his discretion so as to preclude the chief constable from being represented. The duty of the coroner was to see that the hearing was conducted fairly and in accordance with the law. The protection against any abuse which may have been perceived rested with him in the conduct of the inquest.

It is said in para 6.2 of the re-amended grounds that the coroner was rightly "worried about how far he could go at the inquest into the question of motive which was really unnecessary in a coroner's court which is concerned with when, where and how the deceased had died." That is prayed in aid against him.

In my judgment, rather than holding it against him I treat it as an indication of his proper awareness of the need for him to assess and focus his attention upon the limit of the line in questioning which should be permitted at the inquest. In my judgment, as a matter of principle the degree of depth of inquiry was for the coroner and motive was plainly a matter which was relevant. I have no doubt that the prospect of presiding over this inquest generated real anxiety on his part. He had a heavy responsibility. He considered all the material supplied to him in advance of the inquest. In my judgment, he cannot be criticized for having formed the view on that material that there was likely to be enough evidence to justify leaving to the jury a verdict of unlawful killing. He revealed all these matters to those who were interested at the pre-inquest review.

In my judgment, para 6.3 of Mr Crookes' affidavit, which sets out the terms of a telephone call on April 7, to which the coroner said he had read the report and listed himself all the circumstantial evidence and had indicated how worried he was in going into the question of motive and so forth, add nothing to this case.

As to the contact made on March 19, 1997, set out in para 6(2), the off-the-record conversation, he reported upon cremation; family pressure; the funeral; that no charge was being brought; that he would have to hold the inquest; reported that he believed Mr Joyce was going to represent the chief constable and that he was going to take an early booking at Derby for the inquest. He asked also to be kept informed.

It has not been suggested that there should have been no contact whatsoever between the coroner and the CPS. The court has not been provided with evidence as to general practice of coroners or, for that matter, the CPS, in connection with inquests. It is plain from the submissions I have received that the practice and experience of coroners is likely to vary widely throughout England and Wales. Another, there are no guidelines. Thus the court has been left

without material indicating what the national practice may be. The court is not sufficiently informed to be able to attempt to determine the range of circumstances in which contact may take place between the coroner and CPS, nor to determine what circumstances, in a whole range of many which must arise, whether such contact may be desirable or necessary. This court is in no position to lay down or even make observations in connection with the practice which should be adopted. Thus, I must approach this case feeling bound to confine myself to consideration of the quality and priority of the individual occasions of contact deposed to by Mr Crookes and the coroner, and to take, as my legal backdrop for that consideration, the principle to which Mr Kallipetis has drawn my attention, as expressed by Talbot J in the case to which I have referred.

The conversation of March 19 appears to me to be an occasion where, on the one hand, information was conveyed, information of no particular significance, but nevertheless information in connection with the inquest, and where, on the other hand, a request for information or a plea for information was made, having regard to the possibility that the inquest might have to be adjourned at the request of the Director of Public Prosecutions or the prosecuting authority.

I cannot see that it was necessary, but it may have been desirable, for the coroner to inform the CPS that he was at an early stage of taking the option to book a week at Derby Crown Court. Be that as it may, I am satisfied that, desirable or not, it was harmless.

The range of the argument and the tenor of Crookes' affidavit has caused me to be alert to unexpressed inferences to which the argument could give rise. If it was to be suggested that it is not individual content but to the cumulative effect of all the material in the Crookes' affidavit to which attention should be paid, to determine whether there is a risk that the coroner showed an interest, in common with the police in encouraging the CPS to charge the applicant, I have no hesitation in rejecting this suggestion, carrying, as it does, an imputation of bias. I accept the evidence of the coroner and the explanation he has given in his affidavit for raising these matters.

Against the background of what must have been his genuine concern about the inquest, it does not seem to have been unreasonable for him to want to know what chance, if any there was, that the DPP might request an adjournment. It should not be forgotten that knowing of the stance of the police, he had some reason not to assume that the position was fixed in stone, it may have been better had he chosen to suffer in silence, but the fact that it was raised does not in my judgment amount to a substantial irregularity or misconduct, impairing the appearance of fairness which, in my judgment, manifestly appears from the record.

I attach no weight to the reference to Mr Joyce's desire "to run it". In the absence of reliable evidence as to what he meant, it seems to me to be a peripheral comment, which may have been of some interest, but I cannot see how his view or the fact that coroner had reported it has any significance in this case. The reference being made cannot, in any event, bear any suggestion that what the coroner was seeking to do was to influence the CPS to charge the applicant. I emphasise Mr Kallipetis did not suggest that it did, nor did he suggest that in raising the possibility of the CPS granting immunity the coroner acted with such a motive.

Mr Hunt was able to assist the court to the extent only that he was instructed that an inquiry by a coroner as to whether immunity was to be granted to a witness was unprecedented in Derbyshire and Nottinghamshire. It was plain to me from the position adopted by Mr Hunt, in his short address to the court, that it was this aspect of the case which was the most likely explanation for his presence on behalf of the CPS.

The coroner has given his account in his affidavit:

". . . I had indeed raised with the police the question of the possible immunity for John Hart's wife, Donna (not Helen) because of the importance of her evidence."

Mr Burnett has submitted on his behalf that the coroner considered it was pertinent to raise the question of immunity because it might enable the statutory questions to be more fully considered. Having regard to the law as I have set it out, it is proper for a coroner to have regard to the effective management of the inquest and this will involve him in consideration of the evidence which he should marshal for the jury's attention.

It would appear that the coroner took the view that if both the applicant and his wife claimed privilege against self-incrimination, basing himself on his detailed knowledge of the case and the facts, consideration of the statutory questions would be significantly affected. He obviously had in mind that this was a case in which it was likely to be necessary to leave a verdict of unlawful killing to the jury. The affidavit of Mr Crookes puts the matter in this way:

"Sherie O'Dwyer raised the matter of the inquest and made a request to CPS, purportedly on behalf of the coroner, as to whether CPS would be prepared to provide . . . immunity."

I regard the quality of this evidence as fragile. The quality of the evidence must be tested by the fact that it is the officers' account to the CPS which is recorded. It is the officers' report of what has been said at a meeting. I regard the word "purportedly" as legalistic and not particularly helpful when a factual situation requires close consideration. It begs the question as to what was said. What was said will determine whether or not it was said on behalf of the coroner. There is no note in relation to this meeting. I understand why; it was a privileged occasion. But, in fairness to the coroner, the matter must be considered in some detail.

There could be a material distinction between a coroner making a request for immunity to be offered to a witness and raising the possibility that consideration be given to a witness being granted immunity. As I said earlier, I am not sufficiently informed of the range of issues which can arise to enable me to assess why a coroner would need to make a request; namely, for the coroner to see it as appropriate to the discharge of his duty to ask.

Having regard to the evidence, I consider it would be most unwise to venture any observations of a general nature. I shall confine myself as I indicated earlier, to the evidence. On the coroner's version of events he considered it to be within his proper domain, or area for consideration, because he had the duty to investigate the facts fearlessly and he thought the grant of immunity to Helen Hart might assist that end. Applying public law principles, the connection between the event in question and the query raised is rational enough; applying the test of the appearance of fairness, it seems to me, the

determination of that must depend not simply upon the raising of the question, but all the evidence. It is not just the act in question but all the evidence which must be considered in order to consider an allegation of unfairness.

As far as the appearance of fairness is concerned, I am satisfied that on a reading of all the material which it is relevant to consider, in particular the content of the transcripts, the summing-up and the preparations for this inquest, that the allegation that by acting as he did, and raising the question of immunity, he tainted the verdict of unlawful killing with unfairness, cannot be made out. As I indicated earlier, the approach to overall fairness in this inquest must be tested by the interests of all the interested persons and the public interest.

In conclusion on this aspect of the case, I ask two questions: firstly, what purpose could the coroner have thought would be served by raising the possibility of immunity? Secondly, whatever the purpose, viewed objectively did the raising of the question of immunity vitiate the process because justice cannot be seen to have been done? As to the first, I accept his evidence that he was concerned about the future course of the inquest and the quality of the inquiry which he would be able to conduct. He, of course, has an inquisitorial role and the gathering of the evidence is for him. One might take this case as illustrating how the taking of a claim to the privilege against self-incrimination can give rise to concern at an inquest. Indeed, in this case it has been submitted by way of complaint that the way in which he handled the claim for privilege of the very witness in respect of whom the question of immunity was raised gave rise to a discrete ground of complaint.

No improper motive can, in my judgment, be imputed to him, but the inquiry not being one which, as far as I can see, was necessary or essential to the fulfilment of his duty and encroaching as it did on the discretionary power resting peculiarly with the Director of Public Prosecutions or the prosecuting authority, there is a case for saying that his better judgment may have been swayed by his concern and anxiety about the impending inquest. Before I turn to the second question, which in substance I have already answered, I should deal with the specific allegations made under para 8(3), namely the Jackson schedule, and the cross-examination of Helen Hart.

As I have illustrated from my recital of the facts there is a little history attached to DS Jackson's schedule. The coroner initially decided to limit the evidence of gifts, including gifts by way of money, from the deceased to the Hart family, to those which were proximate to the death of the deceased and not too remote from it. Payments of money to Mrs Valerie Hart (Mrs Hart Snr) which appeared on the Jackson schedule were not, in the main, proximate to the date, but nor were they gifts. It was not suggested by anyone that they were gifts. It appears to have been common ground that they were connected with a land transaction which had led the deceased to build his home on land owned by the Harts. The relevance of that transaction, because of a number of questions which called for an answer in connection with it, has not been an issue. I cannot see how the admission of the schedule on this score was anything other but relevant and helpful and, as I shall recite, was put in in order to assist inquiries in connection with the land transaction. More recent payments shown on the schedule were to John Hart Jnr. According to the terms of the original ruling, if they were gifts they were proximate; if they were not gifts, they were outside the exclusion contained in the ruling. But that does not take account of what the coroner stated in his letters to the applicant to which I

have referred, in particular his letter of June 1, 1998 and his letter shortly thereafter. What was said in these letters was contrary to the ruling he had given, but the inconsistency, insofar as it was made plain, was certainly picked up on by John Hart Jnr in his response. But then again, on June 3 the coroner did repeat the inconsistency, or a position inconsistent with the ruling, or at least arguably so. I conclude, arguably, because it is possible a distinction was being drawn between monies transferred and gifts. At this stage the apparent confusion is difficult to unravel with any confidence.

Turning to the circumstances of the admission of the schedule. The coroner called DS Jackson, who was not asked about the schedule. The schedule was introduced when Mr Marron cross-examined. As it happened, out of proper performance of what she conceived to be her duty, junior counsel for the applicant, I believe on her first day at the inquest, objected to questions directed to the officer, which he was apparently unable to answer by his independent recollection, which led him to refer to the existence of schedules. Thus, one might say unwittingly, the door was opened to the introduction of the schedule in order to assist the line of questioning, to which there was not and could be no objection. As I see it, the coroner can hardly be criticised for allowing relevant questions to be answered by reference to the schedule, which was by far the most satisfactory way of the questions being answered.

Nevertheless, there had been confusion and something was said by the coroner in correspondence, which was inconsistent with a ruling, and which he appears to have forgotten by the time the inquest was being held. But I am satisfied that if testing the position by asking whether it was such a procedural irregularity that it vitiates the process, or by asking whether or not it amounted to misconduct, the answer is that it is nowhere near the required threshold for satisfying either legal test.

Cross-examination of Helen Hart

I have already stated the principle and the difficulties which are inherent in it, as will appear from ex parte Hay (1999) 163 JP 666. In my judgment, he cannot be criticised in his approach. The true position in law is, that it is not the question but the answer which is privileged. If a coroner takes a global approach to deal with what is likely to appear as a rather fractured piece of evidence, or series of questions forming part of the evidence, he is liable to run into difficulty.

Mr Kallipetis also submits that there should have been a direction; as I have already indicated, there are good reasons for that not always being appropriate. In my judgment, in any event, it is a question for the coroner, which does not give rise to any material irregularity to found a challenge.

I come back to answer my second question, namely, having regard to the test to be taken from the judgment of Talbot J: is there anything in the character of the conduct on the part of the coroner, which has been disclosed in this case, which is sufficient to vitiate this inquest and verdict because of an appearance of unfairness? In my judgment, the particular event upon which much was set, namely the raising of the question of immunity, viewed apart from the conclusion I have already expressed, is so far removed from the inquest itself, so far removed and in advance of the fair and detailed preparations for the inquest and the holding of the inquest, that it would be fanciful to suggest that it had any impact on the proceedings. In my judgment, it is incapable of colouring or

tainting the inquest in the manner suggested.

The Alternative Case of Assisted Suicide

Mr Kallipetis submitted that the jury should have been directed to consider whether the applicant had assisted the deceased to commit suicide. It is not a question, as it was sometimes advanced, of leaving a verdict of assisted suicide to the jury. It is a question as to whether the conduct, which had been presented, or which was before the jury, was capable of supporting a verdict of unlawful killing, or whether the conduct of the applicant was explicable because, contrary to the evidence of the applicant, he had acted by assisting in suicide.

The principal example taken from the evidence by Mr Kallipetis is sufficient to develop the argument, namely the delay on the part of the applicant in taking action, when, having called the police, on his own evidence he was present at the garage having reason to believe that the deceased may have been committing suicide. If this was the only piece of evidence in these proceedings, or if this was the principal piece of evidence in the proceedings which was material for the jury to consider when considering unlawful killing, Mr Kallipetis' submission might have had more force. But the extent of the material for the jury's consideration on this issue was vast.

In my judgment, for the coroner to have selected that piece of evidence for particular attention, in connection with the possibility that the applicant, contrary to his own evidence, had acted either to assist or simply to let the deceased die, would have been likely to distort the evidence or confuse the jury. It is not the task of the coroner to direct the jury on the facts in such a way as to draw any possible factual construct from the evidence to their attention. He was bound to direct the jury to consider all the evidence and their conclusion must be reached having regard to all the evidence.

The jury's view of this part of the case was a matter for them. Further, in my judgment, it is equally as significant as a point that, had the coroner embarked on a direction on the concept of assisted suicide, he would have been bound to set the limits, which the law sets down for the application of assisted suicide. He would have been bound to draw the line between assisted suicide and manslaughter. One asks: how he could do this on the evidence that he had? There was no evidence to enable him to do so. There was much more evidence for the jury to consider on this score than simply the time taken by way of delay outside the garage.

Faced as he was with the applicant's denial and with the morass of material which the jury had to consider, in my judgment his approach was impeccable. He summed up to the jury in these terms:

"Members of the jury, there is evidence before you which tends to suggest that Mr Dabbs killed himself and there is evidence that he did not commit suicide but was unlawfully killed. On the evidence which you have heard, the following verdicts are open to you. First, that the deceased was unlawfully killed and secondly, that the deceased killed himself. If you are not satisfied that either of those verdicts is made out on the evidence you have heard, then you should return an open verdict.

In considering your verdicts, I remind you that you must consider only the evidence which you have heard and read or seen here in court and, of course,

taking into account the site visit. It is a matter for you to decide upon the reliability of any witness you have heard and, where there are differences between the evidence of witnesses, to decide who is correct and who is wrong; who is telling the truth and who is lying. But, members of the jury, I would ask you to remember that people lie for a multitude of reasons and the fact that people may have lied about events does not necessarily mean they have been guilty of any wrongdoing. For example, it may be to show off or to conceal shabby behaviour. And so, if you consider that any witness has lied in the course of this inquest, I would ask you to think carefully about the nature of the lie before relying on it in support of one or other of the verdicts I have mentioned. In particular, you should consider whether the lie was deliberate, whether it was capable of innocent explanation and whether relevant to the issue you have to decide.

I would ask you first to consider the question of unlawful killing. You will know that unlawful killing is a term which covers both murder and manslaughter. For the purposes of your consideration today, you need not be concerned with the distinction between them, because if it be the case that the deceased did not himself connect up the hose pipe to his car exhaust and did not voluntarily place himself in the car and start the engine, then whoever was responsible for those acts would be guilty of murder."

Then he continued:

"If you are satisfied beyond reasonable doubt, that is to say satisfied so that you are sure, that someone else did those acts with the intention of killing Mr Dabbs or doing him really serious injury and that he died as a result them, you will return a verdict of unlawful killing.

If you are not so satisfied, then I would ask you next to consider the question of suicide. Did the deceased kill himself? If you are satisfied beyond reasonable doubt, that is to say satisfied so that you are sure, the deceased killed himself and intended to do so, then you return that verdict.

If, having considered both suicide and unlawful killing as verdicts, you may conclude that the evidence does not prove either of them beyond reasonable doubt -- and no other level of certainty will do if you are to return either of those verdicts. If that is the case, you should return an open verdict, which means that there is insufficient evidence for you to be satisfied so that you are sure of the other verdicts."

If the jury were not sure that someone else was responsible for his death because the deceased may have committed suicide, or the jury thought it possible that he did, they would not have brought in a verdict of unlawful killing. They were not prevented from considering this by reason of an absence of directions upon assisted suicide. In a case where there was so much other evidence, including the jury's view on the credibility of witnesses to which the coroner rightly drew their attention, with all that evidence to assist them on their proper verdict it was, in my judgment, artificial to suggest that a failure to mention assisted suicide has affected the validity of the verdict they did bring in.

Mr Kallipetis relied heavily on one juror's questions about euthanasia as showing how they were interested in considering suicide. In my judgment, they were bound to be interested in euthanasia; as it happens, the matter had been raised, not least because the deceased, on some of the evidence, had talked

about it. But, in my judgment, the fact that they were interested in euthanasia is a source of confirmation that the jury must have properly and carefully considered suicide as a verdict. I am satisfied there is nothing in this point.

Improperly Leaving Unlawful Killing; the Galbraith test

Despite Mr Kallipetis' careful argument, I regard this submission as untenable. Mr Kallipetis concentrated on aspects of the case, for example the suggestion that the deceased may have been stupefied by drugs at the time of death, which view of the facts he submitted was critical for the jury's consideration and critical to their conclusion as to whether he committed suicide or not. If not stupefied, how could he be in the car without any signs of force being used upon him?

He submitted that the medical evidence, based on a post-mortem analysis, was inconclusive. Among three experts, one of them was the "doyen", and two others whose evidence, he submitted, provided insufficient support for any conclusion of stupefied action. There was only some limited support for the deceased being in a state short of stupefied action.

In my judgment, the point which I take by way of example (in connection with the others which were advanced) has to be seen as a jury point. I do not mean that as a criticism of the argument but it is, par excellence, a jury point. The expert evidence was not unanimous, but there was evidence for the jury to consider. But, in my judgment, more fundamentally, although it was important for the jury to consider how the deceased came to be in the car without the apparent use of force, it was not the only issue for the jury to consider.

As I have said, the jury had to consider all the evidence. They had to consider matters of credibility. It was for the jury to decide how much weight to attach to this point and how much weight to attach to the other evidence they had heard and how much weight they attached to the evidence they heard on this point. The same observation has to be made in connection with all the points raised under this head. Mr Kallipetis accepted that the summing-up carefully put both sides of the evidence point by point, a balance sheet: the points for and the points against. That was the proper approach.

Having considered the matter I have concluded that I should not add fuel to the consideration of these events by reciting in detail the prominent features of the evidence which are capable of being characterized as evidence capable of supporting a verdict of unlawful killing. Among other things, there are other proceedings in which these matters will be canvassed. In my judgment, it is unnecessary for me to do so. It is unnecessary to elaborate on the quality of the material.

In the skeleton for both sides the range has been fully addressed, it has been identified under these heads, and I shall only refer to the heads so that the record contains at least an indication of the matters to which I have directed my attention. The evidence can be divided into:

(1) evidence of motive;

(2) evidence at the scene;

(3) the post-mortem levels of Carbamazepine;

(4) the circumstances in which the deceased's will was created;

(5) the circumstances in which the will was signed;

(6) the deceased's previous collapses and admissions to hospital;

(7) events after the death;

(8) lies and dishonesty by the applicant; and

(9) the applicant's own evidence.

In my judgment, that is a comprehensive and accurate description of the material which the jury had to consider. Having considered it, I am satisfied that, had the coroner not left the verdict of unlawful killing to the jury, he would have usurped the function of the jury.

In those circumstances this application for judicial review fails. The application is refused.

**SOLICITORS:**

Goldkorn, Davies Mathias; Solicitors and County Secretary for Derbyshire City Council; Solicitor for the Chief Constable of Derbyshire.