A Report by
JUSTICE

Coroners Courts
in England and Wales

Chairman of Committee

Evan Stone QC

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JUSTICE

(British Section of the International Commission of Jurists)

95a Chancery Lane, London WC2A 1DT 01-405 6018

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The Committee

Erratum :

The Committee also included
Ronald Briggs,
Barrister

This report has been endorsed and approved for publication by the Council of JUSTICE

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Introduction: Scope of the Report

1
We are a committee of JUSTICE, appointed in January 1984 to enquire into Coroners courts. We have held ten meetings since that time, and invited and received comments from a wide variety of sources, including those of Coroners, central and local government, and a variety of other interested parties. We are most grateful for these expressions of opinion, which have greatly assisted our discussions. A list of commentators is included as an appendix to this report.

2
A major reason for the appointment of our committee was the increasing number of cases where Coroners had been attracting sensational, and for the most part hostile, publicity; and we consider this matter in our report. However, our terms of reference were not limited to this type of case alone, and there would in any event be dangers in concentrating on them to the exclusion of everything else. Such inquests are, up to a point, bound to attract publicity whatever modifications are made to the operation of the Coroners court. Further, reforms aimed simply at the controversial cases might easily hamper the day-to-day activities of Coroners; we are anxious not to let the handful of notorious cases assume disproportionate importance. Accordingly we have felt free to make recommendations over the entire field of the law and practice relating to Coroners courts in England and Wales.

3
Coroners courts have a long history, but the basis for the modern system can be found in the report of the Committee of Death Certification and Coroners (1971 Cmnd 4810) under the chairmanship of Norman Brodrick QC. 'The Brodrick Report' was a careful investigation of the role and functioning of the Coroners' system; it included many proposals for reform. The report was in many respects accepted by the Government of the day, and much of it was reflected in legislation. The principal innovations were the Criminal Law Act 1977, narrowing the Coroner's function to avoid determination of matters of legal liability for the death; the Coroners Act 1980, reforming the law on the Coroner's jurisdiction; and the Coroners Rules 1984, consolidating the 1953 rules and the many amendments to them. At the outset, we must say that we have no major quarrel with the Brodrick Report's conclusions, and regard it as the basic text for reformers in this area. We do not think that the time has yet come for a reconsideration of the Coroners' system in anything like the depth the Brodrick Report undertook.

4
However, there are a number of areas where the Brodrick proposals have not been implemented, and others where subsequent events call for a reconsideration of the issues involved. Accordingly, we do not in this report attempt a comprehensive survey of the Coroners' system, but will concentrate on specific issues. We have been very largely guided in this by the comments we have received; as might be expected, there is little agreement on what reforms are necessary, but there is considerable agreement on where further consideration is needed.

5
The main issues we have considered are as follows. The appointment of Coroners has recently assumed importance, largely as one aspect of political struggles over the roles of central and local government; we consider the issue of which body should wield the power of appointment and should bear general responsibility for Coroners. The questions of qualifications and training of Coroners are a perpetual source of disagreement; we consider whether higher or different qualifications should be required, and what needs to be done by way of preparing Coroners for their work. The status of the Coroner's Officer is increasingly controversial; we consider the implications of the close links between the Officers and the police, and whether it would be better for them to be severed or modified by insisting that the Officers be civilians. The extra-territorial jurisdiction of the Coroner has come to the fore since the Brodrick report was published; we consider whether Coroners should be bound to hold inquests on bodies brought in from abroad. We also consider whether there is a need for a special procedure for inquests likely to arouse significant public interest. We then consider the adequacy of the existing rules on what types of cases should automatically receive an inquest, and on when a jury should be summoned. We also consider reforms in the realms of legal aid, evidence and procedure, and on the question of what should be done in response to the verdict of an inquest.

6
An issue latent in much of what we discuss is that of the cost of the system. For the most part we avoid open discussion of this matter, though we discuss some of its aspects in relation to legal aid. We feel that we should mention the point specifically, for it must inevitably colour any discussion of the issues. A case for more resources to be at the Coroner's disposal, for example, can only be regarded as incomplete if it does not explain where the resources are to come from. Further, it is apparent that much of the heat in the controversies between some Coroners and their local authorities is generated by the fact that the local authority must pay the cost of the Coroner's activities and hence is minded to get 'value for money'. We are not, and do not claim to be, in a position to decide on the relative merits of competing claims on the scarce

resources of government. But it would be quite misleading if we suggested that the problems of training, appointment, staff and facilities could be solved by any means other than the provision of more money.

The Operation of the Inquest Procedure: A Brief Summary

7
The presence of a body within the Coroner's district imposes a duty to hold an inquest, if certain other conditions are met: there must be reasonable suspicion of violent or unnatural death, or the cause of death must be unknown, or the death must have occurred in custody. Under the modern law, it is the presence of the body that is important, not the place of death; the Coroner must act even where the death occurred abroad and the body was only brought into the district in order to bury it. The Coroner proceeds to determine the cause of death, assisted by the Coroner's Officer. The Coroner has various legal powers available, notably a power to order exhumation. Inevitably however the work will usually be done largely by relying on the reports of others, and especially of the police. Where the police intend to charge anyone with criminal liability for the death, the Coroner's inquest is adjourned to await the result of the trial. The Coroner is not allowed to determine legal liability in respect of the death, except perhaps where this prohibition would conflict with the primary duty to determine its cause.

8
The Coroner always has a discretion to summon a jury; and in some cases there is a duty to do so, notably where the death occurred in police custody, and where it occurred 'in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public' (Coroners (Amendment) Act 1926 section 13(2)). Where a jury is summoned, the Coroner sits with them and retains control of the proceedings.

9
Whether a jury sits or not, the procedure is inquisitorial. The Coroner summons witnesses and asks question of them, retaining control of the proceedings throughout. Interested parties have the right to be notified of the inquest, and may themselves ask questions of the witnesses (subject to the Coroner's power to disallow particular questions); but they may not address the court on the facts. Legal aid is not available for representation before the Coroner, even for the deceased's immediate family; nor is there any right of

access to statements in the Coroner's possession. The verdict of the inquest is not subject to appeal; it can however be questioned before the Divisional Court by way of judicial review, on various grounds, including fraud, error of law, bias, excess of jurisdiction and insufficiency of evidence.

The Appointment of Coroners

10
Appointment of Coroners is at present largely a matter for local government: appointment is by county authorities. The appointment powers formerly exercised by the metropolitan counties and the Greater London Council have now devolved to the local government district councils, though appointments are subject to the approval of the Secretary of State; where a Coroner's district includes parts of more than one local government district, the Secretary of State nominates which council is to make the appointment, though that council must consult the others affected. Deputy and Assistant Coroners are appointed by the Coroners themselves, subject to the approval of the local authority. Accordingly, each Coroner has close links with the local authority, who will not only have made the appointment but will also be responsible for funding the Coroner's activities. A power to remove Coroners is vested in the Lord Chancellor.

11
A major objection to the present arrangements is that it places the Coroner in an invidious position when a particular inquest involves wider political issues in which the local authority has an interest. Several examples could be given where in recent years Coroners have clashed with their local authorities, particularly over community policing issues. And at a less spectacular level, Coroners must by the very nature of their work frequently question the acts of local government employees, particularly workers in the emergency services. Overall we feel that close links with the local authority can only compromise the independence of the Coroner. On this ground alone we would support central appointment of Coroners and their deputies and assistants.

12
A second argument for central appointment rests on the relatively low number of appointments that are made. We are of opinion that there are too few appointments for local committees to gain experience, and that appointment by a national committee can only operate to improve the standards of Coroners generally. We believe that such a committee, with lay representation as well as

representatives from the relevant professional bodies, and reporting to the Lord Chancellor, would in time develop a more mature and settled approach to the question of the selection of Coroners. In making each appointment, there should of course be local consultation.

13
Various commentators have suggested more minor changes to the present system, such as retaining local control of selection but allowing the Lord Chancellor a power of veto, or encouraging the Lord Chancellor to introduce national guidelines for selection. We would regard the second of these as a step in the right direction, but nonetheless a poor substitute for selection by an experienced national body.

14
We would like to add that most of the support for local appointment has come from organisations that would also support greater local authority involvement with, and support for, their Coroners. Thus it has been suggested that the local authorities should be responsible for training, following up riders, and investigating complaints against Coroners. In some respects this points the way to a more satisfactory system than the present: it would certainly be no bad thing if local authorities in general were to increase the facilities available to the Coroners in their areas. But while a few countries might be persuaded to take a more active interest, we doubt that they would be more than a small minority. There are in any event potential dangers in encouraging local authorities to think of the Coroner as 'theirs'. Independence for the Coroner and good relations with the local authority cannot always go hand-in-hand. We consider that the Coroners service should be the responsibility of central government, not only in matters of appointment and removal but generally in relation to funding and the provision of a court room and other facilities. Several instances could be given where in recent years the independence of a Coroner has been jeopardised by disagreements with the very local authority which funded the Coroner's activities. A centralised Coroners service seems to us the only way to secure impartiality in such cases.

Qualifications and Training

15
The present statutory qualifications for Coroners are that they must be either lawyers or medical practitioners of at least five years professional standing. In fact, very few Coroners have only medical qualifications. The Brodrick

Committee recommended that, so far as possible, Coroners should be full-time officials with a legal qualification. There have been many calls for Coroners to have better qualifications; in particular, the suggestion that legal qualifications should be mandatory has been made again and again. Views on this matter have typically been fiercely argued, often reflecting deep dissatisfaction with the quality of Coroners generally. As might be expected, the various professions have by-and-large fought their own corners, the lawyers emphasising the importance of legal skills, the doctors those of medical skills, and the Coroners whichever skills they personally have found useful, a matter on which they are by no means unanimous. Blanket generalisations as to the qualities which 'make a good Coroner', and as to whether 'lawyers make better Coroners than doctors', have been all too common.

16
In our view, the issue simply serves to emphasise the need for a centralised approach to the appointment and training of Coroners. If the general standard of Coroners is low (a matter on which we make no comment) then the solution is to attract better applicants, to exercise more care in selecting candidates with the right blend of skills – legal, medical and other – and to provide more effective training. Accordingly, we think it misguided to call for a mandatory legal qualification, or a double qualification, or for longer periods in practice. Obviously an applicant who had both legal and medical qualifications would (all other things being equal) be a highly desirable choice for appointment; but to insist that all applicants should have both qualifications would narrow the field far too much. We therefore recommend that there be no change in the existing qualifying requirements for Coroners.

17
Various means for improving the quality of Coroners suggest themselves. The salary for the post could be increased to attract better applicants; the salary should be linked to that of some comparable judicial office. Coroner's districts could be enlarged by amalgamation, so that a greater proportion of Coroners could be full-time appointments and so build up greater experience. In addition, there is the matter of training. Many of our commentators have called for more and better training, both as a preliminary to appointment and after it in the form of refresher courses; and we can only agree. It is true up to a point that individual Coroners should be left to develop their own style of working, but nonetheless we feel that not enough training is provided at present in matters of legal procedure and forensic medicine.

18
One difficulty is in determining the appropriate body to conduct the training. As we have already noted, some local authorities are willing to do this; but even with co-operation between neighbouring authorities we do not feel that

this can cover the country effectively. As with matters of appointment, the less densely populated areas simply have so little work for their Coroners to do that they cannot realistically be expected to take much of an interest in them. Indeed, these areas present a problem whatever scheme is adopted; it is all too easy for such Coroners to become isolated. Much useful work is already done by the Coroner's Society; but the Society's resources are necessarily limited. We accordingly recommend that a national training body should be set up, either attached to or along the lines of the Judicial Studies Board. As to the form the training should take, obvious possibilities are courses in evidence, procedure and forensic medicine; perhaps intending Coroners could be attached to university departments of forensic medicine for a period. We also believe it would be useful if a necessary part of the Coroner's training were a substantial period of sitting with a practising Coroner before taking up office.

The Coroner's Staff

19
The Coroner's staff usually comprises a single individual, the Coroner's Officer. This seems to us one of the least satisfactory aspects of the present system. At the very least, the Coroner would seem to require a secretary/clerk, in addition to a Coroner's Officer; and it is a distressing indication of the low priority generally accorded to the work of Coroners that such help is not provided as a matter of course. Many part-time Coroners have access to secretarial help from their other employment; but it seems undesirable that they should have to resort to this; and this is in any event not a course open to full-time Coroners. In line with our proposals on the appointment of Coroners, we recommend that central government should take responsibility for this aspect of the Coroners' service as well.

20
The issue which has generated the most controversy here is that of whether the Coroner's Officer should or should not be part of the police force. The usual position is that the Officer is a police constable, seconded to the Coroner on either a temporary or permanent basis; thus a Coroner may have the use of as many Officers as there are police divisions covered by the district. Chief police officers are not generally in favour of permanent secondment, as this can lead to allegations of favouritism or even corruption in connection with the recommendation of undertakers for funerals. There is no career element in the post, and little status. The post is not infrequently filled by an older officer within sight of retirement.

21
The Brodrick Committee proposed that the use of police officers should be phased out and the post 'civilianised'. The Government did not implement rhis part of the report, but it has received much support since that time. We think that there is much to be said for this proposal. It would go a long way to dispel suspicions aroused under present arrangements when deaths occur in police custody, and remove doubts as to whether in any particular situation the Officer was working for the Coroner or for the police. The present arrangements are wasteful of police manpower, and it is sometimes unsatisfactory for relatives of the deceased person to have to deal with a police officer at such a time. The involvement of a police officer can unnecessarily upset people at a sensitive time, and where there is no suggestion of crime.

22
Nonetheless the present position has many advantages. In the absence of any national training scheme for Coroners' Officers, a police training is perhaps the best that can be had; and access to police facilities is of course a considerable resource for the Coroner's Officer. In many cases it is important to preserve the existing close liaison between the police and the Coroner's Officer, because time can be saved with local knowledge and it is vital to act promptly in medico-legal investigations. For so long as there is no national, independent body of Coroner's Officers, the present arrangements have much in their favour. But we do not believe that they are an adequate substitute for a fully independent national service.

23
We therefore recommend that Coroners' Officers should constitute a national, full-time service, independent of all other services. In line with our proposals on the appointment of Coroners, we envisage that appointment, training and funding would be handled centrally, though of course appointment would only proceed after consultation with the Coroner to whom the officer will be assigned. In view of the many comments we have received on the suitability of police officers for the role of Coroner's Officer, we would add that we think ex-police officers excellent material for the new service, not least because of the constant need of the Coroner's Officer to liaise with the local force; and perhaps provision should be made for pension rights to be carried over from the force as an incenrive. But in our view the Officer must be as independent of other agencies as possible, both apparently and in fact. We are pleased to note that the Home Office now favours moves towards 'civilianisation' (see Parliamentary written answer, House of Commons 13 December 1985), and we urge that it be implemented as soon as possible.

The Extra-territorial Jurisdiction of the Coroner

24
The present position is that there is a duty to investigate the death of any person whose body lies within the Coroner's district – even if it is clear that the death took place outside it. This point has only been settled in the last few years, as one result of the *Helen Smith* case (*Reg.* v. *West Yorkshire Coroner, ex parte Smith* [1983] QB 335). The Brodrick report proposed that the Coroner should have a power, but not a duty, to investigate in such cases. In our opinion the present law is manifestly too wide, as it requires the Coroner to act even if the death has already been fully investigated in the jurisdiction where it occurred, and the body is only in the country because relatives have brought it home for burial. An inquest in such a case is an offensive waste of the time of everyone involved.

25
The present law seems to have little support, and in our view rightly so. Indeed, it can only be regarded as doubtful whether it was Parliament's intention that foreign deaths should be treated this way. But equally, we think it would be undesirable to deny jurisdiction to the Coroner in *every* case where rhe death occurred abroad. The death of a British citizen abroad is a matter of obvious public interest, and should receive a full investigation if it has not had one already. We fully take the point that most bodies will be brought home simply for burial, and that inquests will rarely be appropriate in such cases. What is needed is freedom for the Coroner to determine which cases need investigation and which do not. Accordingly, we recommend that where an inquest would normally have been held on a death had it occurred in this country, then the Coroner in the district where the body lies should have a discretion to hold an inquest even though the death occurred abroad. This discretion should of course be exercised judicially, and open to challenge by way of judicial review. We do not envisage that many foreign deaths will call for an inquest; but if a case seems to call for investigation, and it is practicable for the Coroner to conduct one, we do not think it right to forbid an inquest.

26
Some have urged that the deaths of British subjects abroad should be investigated by Consular officials only, and that bringing the body home is a mere matter of disposal, not grounds for a fresh inquiry. Superficially, it seems a strong argument to say that an adequate investigation by British Embassy officials is the most that the relatives of the deceased are entitled to expect. But to say that such an investigation is 'adequate' begs important questions. Diplomatic staff are not trained as investigators; indeed, full attention to objective fact-finding to the exclusion of all other considerations could well

prove inconsistent with their diplomatic functions. If the only material before the Coroner is the consular report, and there is no reason to doubt its accuracy, then the inquest will be a short and simple affair; if the Coroner has the ability to conduct an independent inquiry, there seems no reason to preclude this.

Controversial Inquests

27
In the years since the Brodrick Report, there has been a substantial rise in the amount of publicity attending certain inquests. These are typically but not invariably inquests where the conduct of the police is called into question. There have been some purely administrative problems – especially in finding space for all the people who wish to attend – but the matter goes deeper than this. Accusations of bias have been made against Coroners by political groups and the media; and in some cases Coroners have responded in kind. The causes of this recent publicity are unclear, for while there have been various changes to the Coroners' system in recent years, there is no obvious reason why they should have been such as to spark controversy.

28
The substance of the criticism of Coroners has varied from case to case, but the basic irritant appears to be that the inquiry the Coroner is bound to make is a limited one – a very significant restriction being that there is to be no inquiry into legal liability for the death – whereas the public and the media not unnaturally expect something more wide-ranging. In particular, where allegations of police misconduct are rife but the Coroner (quite properly) declines to investigate those allegations, it is probably inevitable that the Coroner will be accused of shielding the police, and that the Coroner will retort that political agitators are interfering with the proper course of the inquest. The matter is exacerbated by the inquisitorial procedure at the inquest, which can all too easily give the impression that the Coroner is deciding the issues on the basis of preconceptions formed before the proceedings began. We stress that we are not in a position to say who is to blame in these cases, if anyone. However, with the benefit of hindsight it is easy to see how these controversies could have arisen without any of the parties involved having acted in a reprehensible fashion. As we view the matter, the political tensions involved are such that they cannot possibly be resolved by any legal procedure short of a full public inquiry in each case. This is not a function Coroners are able to perform. Accordingly the question is how, if at all, the Coroners' system should be modified to allow it to function in these unusual circumstances.

29
The problem has implications outside its immediate context, for criticism of the conduct of such inquests is easily converted into wholesale condemnation of the entire Coroners' system, which we feel is unwarranted. It is not that we think the everyday operation of the system is flawless; far from it. However, the problems associated with this special type of case are so different from the normal run of cases that we think any reforms based on them would be utterly inappropriate if applied generally. The problem, then, is to achieve a satisfactory resolution of the handful of controversial cases without undue interference in the everyday cases, which far outnumber them. Three rypes of solution have been suggested: to leave matters as they are; to allow controversial cases to be resolved outside the Coroners' system altogether; or to introduce a special procedure for controversial cases. There has been relatively little support for the second solution, but for the other two support has been fairly evenly divided, even amongst Coroners themselves.

30
The first solution, to leave matters as they are, has support from many quarters. They emphasise that an inquest is not a trial, nor is it a public inquiry; and they reject the suggestion that it should be either. But while it is quite true that Coroners cannot be blamed for the current controversies, nonetheless we think it highly likely that such controversies will continue if present arrangements are adhered to. It is indeed not the fault of the Coroners that the public misunderstand their function; but neither is it a point in favour of present arrangements that they persistently lead to misunderstandings. The question, we think, is not whose fault the public outcry is, but how it can be avoided. It is tempting to suppose that, just as the controversies have appeared suddenly over the past few years, so they might disappear equally suddenly. But there is as yet no indication that this is happening. We would add that every year where matters are left as they are is another year in which some new *cause célèbre* may panic Parliament into hasty reforms of the entire Coroners' system. We emphasise the point that the present controversies have a tendency to bring the *entire* system into disrepute, even though they form only a small proportion of the total work-load.

31
The second solution is to allow controversial cases to be taken out of the Coroners' system and resolved by a full public inquiry. It is indeed already possible for a public inquiry to be ordered in many such cases, and perhaps the existing provision could be strengthened so as to allow the Coroner to take the initiative in proposing such an inquiry. But we do not regard this as a solution to the entire problem. While this solution has the considerable advantage of diverting hostile attention from the Coroner, to be really effective it would have to be speedily invoked. While we recognise that the public inquiry is a

valuable tool to be kept in reserve, we do not think it can provide a workable solution in many cases. This is unfortunate, because it is in some respects ideal for deflecting dissatisfaction with the Coroner and thus allowing efficient performance of the task for which the inquest was designed, namely determining the cause of death. Wider political and quasi-political issues could then be canvassed at the public inquiry. We would favour a suggestion that powers to order such inquiries be strengthened, and that consideration be given to how they might be set up very speedily if required. But we do nor hold out much hope that this will save Coroners from all of their present difficulties.

32
The third solution is to institute some special procedure for inquests likely to attract public interest. On consideration, however, this solution includes a number of options. At one end of the scale, so to speak, would be a procedure under which the inquest would be conducted by a judge, and run on adversarial lines, the relatives and other interested parties each having the right to present their own arguments and witnesses. This would of course be a species of public inquiry in all but name. Supporters of this solution envisage that the special procedure could be set in motion either by the Coroner or by the Home Secretary, perhaps with a right of appeal to the courts. At the other end of the scale would be minor modifications to the present system, to minimise the impression of unfairness given by the normal procedure. Many variations would be possible.

33
A crucial issue, in our view, is that of who is to sit on the 'special procedure' inquest: is it to be controlled by a judge, or by a Coroner? Many have suggested that a judge is needed, arguing that the new procedure would be outside the experience of Coroners, and that public confidence requires a judicial officer. However, we do not think that these points have much weight. The new procedure would be unique and so not obviously within the experience of a judge either; the argument from judicial experience is only valid if we assume that the new procedure would be adversarial, whereas we do not think that this would be desirable. The tendency for the various participants to take opposing sides is pronounced enough under present arrangements, and we think it most undesirable to encourage this tendency by procedural means. All in all, we are of opinion that any special procedure must be one run by a Coroner; there is little to be gained by appointing a judge, and much to be lost. The only alternative would be to involve the Coroner for the district in the special inquest in some other way. One obvious way would be ro treat the Coroner as an interested party in the special inquest, and thus as entitled to argue for a particular version of events. But this could lead to precisely the same charges of partiality as are made under the present system.

34
That being so, what can be done to minimise hostile publicity? In our view, much of the problem from the limited scope of the inquiry and from the inquisitorial procedure. Neither of these features are ones we would wish to change. Broadening the scope of the inquiry would simply fan the flames of controversy still further, and the Coroner cannot be relied upon to have adequate experience of adversarial systems. What can be done, however, is to avoid the impression, so easily given by the inquisitorial system, that the Coroner has already made a decision on the important issues of the case. Our proposal is therefore as follows: existing Coroners should be grouped into areas, and a Senior Coroner appointed for each area, and given further training; this Senior Coroner would then handle controversial cases arising within that area. Inquests in such cases would depart from the normal procedure in that the Senior Coroner would be empowered to appoint an *amicus curiae* or counsel to the inquest (instructed by the Treasury Solicitor) to present the evidence. In controversial cases the Coroner would thus become much more of an umpire, resolving procedural disputes between counsel and delivering a summing-up at the conclusion of the case, but remaining above the dust of the arena for the most part. We recognise that this is in some respects more adversarial than inquisitorial, but not we think in any way that is likely to embarrass the Coroner. Power to invoke this special procedure should be vested in the Coroner of the district; appeal should lie to the Senior Coroner for the area, who should also have an independent power to invoke the procedure. The Senior Coroner's decision should be reviewable (on the application of any interested party) by the Divisional Court.

35
On the whole, therefore, we do not think that major modification to the present system is likely to be an improvement. We do not think that Coroners are asking the wrong questions in investigating these cases. To narrow the question would often be to forbid the inquest from discovering anything of importance; to widen it would be to encourage interested parties to make the inquest a forum for wider political concerns. We stress that in the type of case we are considering there is unlikely to be any solution that will satisfy all parties. A major concern must be to direct hostile attention away from the everyday operation of the Coroners' system, which is not designed to handle cases attracting substantial public interest, and is only rarely asked to.

When Should a Jury be Summoned?

36
Under the present law, the Coroner is always free to summon a jury; and there is a number of cases where statute imposes a duty to do so. These cases have been amended over the years, but since the Administration of Justice Act 1982 a jury is required (a) where the death occurred in prison or in police custody, (b) where there is a statutory duty to hold an inquest (other than a duty under the Coroners Act 1887), (c) where the cause of death was one which statute requires to be notified to a Government Officer, and (d) where the death occurred 'in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public' (Coroners (Amendment) Act 1926). We have received some criticism of this statutory insistence on juries, but we do not think it is justified. It is of course true that the average Coroner has greater experience in medico-legal affairs than does the average jury; but that is not the point. As with jury trials in Crown Courts, the presence of the jury is to be justified not only in the terms of the experience the individual jurors bring with them from their daily lives, but also (perhaps principally) in terms of their independent status within the inquiry. The presence of a jury in cases of public concern makes for greater openness, and gives better grounds for public confidence in the impartiality of the proceedings.

37
On the whole, therefore, we see no cause for complaint in this regard. However, we feel that the existing list of cases where a jury must be summoned is deficient inasmuch as it does not include deaths of patients detained for psychiatric treatment. These are cases where deaths occur very much away from the public eye, and we think that the public are entitled to the assurance that the full attention of a Coroner and jury will be focused on establishing the circumstances of any death. This proposal should not be taken as implying wholesale criticism of the staff treating psychiatric patients – any more than the existing provision for inquests on deaths in police custody implies criticism of the police. But we consider it essential that deaths which occur 'behind closed doors' should receive full public investigation, in the interests not simply of the patients and their relatives but also of the staff, who might otherwise be subject to suspicions they have no means of dispelling. We accordingly recommend that deaths of patients while receiving psychiatric treatment as an in-patient (whether in a hospital, nursing home or elsewhere) should automatically be reported to the Coroner; further, that where the patient was compulsorily detained, the Coroner should be under a duty to hold an inquest and to summon a jury. The Coroner will, of course, retain a power to hold an inquest in other cases if this seems desirable.

Legal Aid for Inquests

38
Statute has provided for legal aid in Coroners' inquests ever since the Legal Aid and Advice Act 1949; but the statutory provisions have never been implemented. The provision is now contained in Schedule 1 to the Legal Aid Act 1974; it is one of the only two provisions in schedule 1 not yet to have been implemented. The Brodrick Committee were in favour of implementation. We approach this issue in four stages: (a) Is legal aid desirable in principle? (b) What form should it take? (c) How much would it cost? (d) Can a case be made for immediate extension of the system?

39
The first issue is whether legal aid at inquests is desirable in principle. We note that inquests are not designed to determine matters of civil or criminal liability, and so this is in a sense an unusual use of legal aid funds. We are also fully aware of the dangers that publicly funded barristers will engage in 'fishing expedition' to further such litigation, to the detriment of the proper conduct of the inquest. But this danger is implicit in allowing *any* legal representation, publicly funded or not. Parliament has clearly recognised that legal aid should in principle be available, and we wholly agree with this. In particular, we feel that relatives of a dead individual should be entitled to satisfy themselves as to the circumstances of the death, and that money spent to further this object can only increase public confidence in the Coroners' system. Nearly all the comments we received have favoured legal aid. Several comments were from Coroners; none of these directly opposed legal aid, though it is fair to say that some were apprehensive over the likely effect. In principle, therefore, we support the introduction of legal aid for all 'properly interested parties' as defined by the present law. We note in passing that this includes any person whose conduct may be called into question during the inquest, as well as the deceased's family.

40
That being so, the next issue is what form the legal aid should take. Legal aid is already available under the Green Form scheme for preparation for and advice in relation to inquests, and any medical or other expert evidence could be obtained on this basis. Thus the only issue is as to extending the legal aid scheme to cover assistance by way of representation (ABWOR) before a Coroner. The next question is whether legal aid should automatically be available for any inquest, perhaps having to get authority for counsel as opposed to a solicitor, or should it have to satisfy criteria for the grant of ABWOR. On the one hand any death is important, and there must be some question about any death in respect of which there is an inquest. On the other

hand, it does not seem reasonable that the legal aid fund should pay simply to have a participant's hand held, as it were, when a friend who is not legally qualified could perform the same service. Given the present willingness of Coroners and their Officers to advise and to facilitate adjournments for the purpose of advice under the Green Form scheme, we recommend that there should be a system of grant: there should be a discretion to grant legal aid where the Secretary of the legal aid committee thinks fit. We are reluctant to tie the hands of the Secretary in advance; each case should be considered on its merits. Nonetheless we think it should be made clear that the Secretary should regard as particularly deserving those who are seeking an explanation of a death which took place 'behind closed doors', that is, in a prison, police station, hospital or institution of any sort.

41
The third issue is the likely cost of this extension of the legal aid scheme. In a memorandum dated April 1983, sent to Christopher Price MP, on 'Coroner's Law and Administration', the Home Office estimated that the extension of legal aid to inquests would cost an estimated £3m a year. This was 'based on the assumption that in some 15,000 of the 23,000 inquests each year, parties interested would qualify for legal aid and that the average bill for each inquest would be about £200'. The memorandum commented that 'controversial' inquests would be likely to increase this figure. It appears from the 1983 legal aid report that the total cost of all legal aid for 1982–83 was £213m net. However, we do not think this estimate realistic. There is little support for the Home Office's assumption that two-thirds of families would want to be represented; this was apparently not based on any research, and it seems most unlikely.

42
Any estimate of take-up could only be a guess, but bearing in mind that most inquests are very short and uncontroversial, we think it most unlikely that more than one family in ten would be represented. Of those families who wanted to be represented, obviously not all would qualify, and many others would have to pay a contribution. Anyone on social security would qualify, and someone with a disposable income (that is, net income after certain permitted deductions) of £54 or less per week would qualify. Anyone with a larger disposable income would have to pay a contribution, and anyone with a disposable income of over £114 per week would not qualify. Also, anyone with a disposable capital of more than £3,000 would be disqualified – and the deductions allowed are very small. There appears to be no available figures for the proportion of the population eligible for legal aid. Again, as a guess, it might be that one family in ten would be eligible, and at least one more eligible only with a contribution. The maximum contribution would be £62, which would recoup a quarter of the cost of the inquest. The proportion of

inquests which would merit representation on these criteria would probably be slightly smaller than the proportion who wanted it. It therefore seems likely that of the 23,000 inquests which took place in 1983, perhaps one in twelve would have been legally aided if ABWOR had been available. This is of course a guess, and a matter of impression, but so is the Home Office's estimate. Even if we accept their suggestion of about £200 per inquest (a generous estimate in view of the fact that many, if not most, inquests last only about an hour) this brings the total cost up to approximately £400,000 per year. The very small number of controversial inquests would add perhaps £40,000–50,000 per year to that. Altogether, the best estimate of the real cost is likely to be in the region of £450,000.

43
Finally, then, we must consider the case for immediate extension of legal aid to Coroners' inquests. We are reluctant to make comparisons with other tribunals against which Coroners' Courts are, as it were, competing for legal aid. We content ourselves by pointing out the manifold difficulties which may confront those who appear at inquests. Witnesses may incriminate themselves, and in this respect are dependent upon the Coroner for protection. Cross-examination of a family witness may be used to protect professionals from civil action; the professional will be represented, the family will not. Family witnesses may attack each other. In the case of a death in custody, skilled help may be needed to deal with witnesses who may be colluding to conceal the truth; the family will be desperately anxious for answers to questions which they cannot rely on the Coroner to ask, and are incapable either to ask them or to deal with the volume of evidence without help. Many families will need skilled help with technical evidence and be ill equipped to ask witnesses the questions to which they want to know, and want the Coroner to know, the answers. All in all we think the case is made out for priority treatment of legal aid, and we therefore recommend its immediate implementation.

44
It seems to us unlikely that the public will receive the full benefit of legal assistance unless positive steps are taken to bring it to their attention. For this and other purposes it would be necessary to have an information booklet available. As a related matter, we think that consideration should be given to expanding the Duty Solicitor scheme, in order to provide for cases where families need advice on Coroners' Courts and generally on the legal machinery for the investigation of deaths. We envisage that under the extended scheme it would become standard practice for Coroners' Officers to inform the Duty Solicitor of cases where legal assistance might be needed.

45
Procedure during the inquest is along inquisitorial lines; that is to say, the Coroner decides which witnesses are to be called, and they are examined by the Coroner personally. The interested parties themselves play a much more limited role than they would expect to in adversarial proceedings: they are allowed to ask questions after the Coroner has done so, but they may not call witnesses of their own, nor may they address the court on the facts.

46
We have already referred to the way in which this procedure may give the appearance of unfairness in controversial cases, and have made suggestions for reform (paras 27–35 above). But the question must remain whether reforms should be made for everyday cases. Some have argued that the procedure in Coroners' Courts is fundamentally flawed: that the inquisitorial system is an anachronism which has no other foothold within our legal system, and should be expelled forthwith. We do not agree. Anachronism or not, in our opinion the inquisitorial system works adequately in most cases. But equally, we do not accept the argument that because the system is inquisitorial, nothing should be done to weaken or modify the powers of the inquisitor. We have three proposals.

47
First, we propose that interested parties should in general have access to all statements in the Coroner's file before the inquest, whether or not the Coroner intends to call the maker of the statement. This is the general practice in inquisitorial proceedings in other countries and it seems to us the best course, both for satisfying interested parties that the death has received a full inquiry, and for correcting errors. The best of Coroners must occasionally make mistakes over the relevance of particular statements, and allowing interested parties access to these statements would provide a welcome cross-check. We recognise that the Coroner must have the power to forbid access: some statements, for example, will have been made on the understanding that they would remain confidential, and indeed might not have been made at all but for that understanding. Nonetheless, there should be a presumption in favour of access.

48
Secondly, we propose that in general interested parties should have the right to require the Coroner to call witnesses. Again, we recognise that there will be cases whether the Coroner will have to refuse to call a particular witness; but there should be a presumption in favour of calling the witness, and the Coroner

should be bound to give reasons for a refusal to do so. We do not consider it likely that interested parties will abuse this right by requiring the Coroner to call witnesses with nothing relevant to contribute; the usual reason for invoking this right will be legitimate disagreements as to the importance of the witness's testimony, and we think the best solution in such cases is to admit the testimony, in the interests of fairness and openness. The Coroner will of course retain control of the proceedings, and thus be able to forbid questions with no relevance to the inquest, such as those which go into matters of civil or criminal liability for the death.

49
Finally, we propose that interested parties be entitled to address the court on the facts. We see little merit in the present arrangements, under which interested parties are forbidden from doing so except to the extent that they can disguise factual points as questions for witnesses; allowing an address on the facts should help the inquest to run smoothly. Again, we do not envisage that this right will be invoked very often; in a case where interested parties wish to argue openly for their view of the facts we think that they should be entitled to do so.

50
A general objection might be raised against the proposals in this section, that they increase the risk of the inquest's becoming a forensic battle between rival camps of interested parties, and provide scope for the abuse of the inquest by those with ulterior motives, whether political or in furtherance of other litigation in respect of the death. We are fully aware of the dangers involved, and recognise that the limited scope of the Coroner's inquiry necessarily places firm limits on the involvement of lawyers for the parties interested. Nonetheless we do not think that our proposals represent an undue departure from the inquest's proper function. If the parties' advocates are tempted to broach wider questions than the Coroners Courts Rules permit, then the inquest is indeed likely to be a failure unless the Coroner can keep a firm control of the proceedings; but if this is thought to be a problem, we think the solution is not to place arbitrary restrictions on the advocate's role but to improve the training of Coroners so that they may manage the advocates with the greatest possible degree of maturity and confidence. Allowing an opportunity for full discussion of the subject-matter of the Coroner's inquiry seems to us to be an important object of the Coroners' system; we do not think it necessarily involves insuperable procedural problems.

The Coroner's Verdict

51
As we have previously noted, the functions of the Coroner are strictly limited by the Coroners Rules. Under the present law, it is not permissible for the Coroner to add a rider to the conclusion of an inquest, though 'A coroner who believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held may announce at the inquest that he is reporting the matter to the person or authority who may have power to take action and report the matter accordingly' (Coroners Rules 1984 rule 43).

52
In our view, this does not give sufficient weight to the recommendation of the Coroner. We propose that the Coroner should have power to recommend that the Home Office should investigate dangerous situations which caused the death under investigation, and which in the Coroner's opinion may continue to be a danger to the public. We stop short of recommending that the Coroner be given the power to order the situarion to be rectified, or that the right of the jury to add a rider be restored; but we think that recommending the Home Office to investigate will do much to publicise causes for concern, and so stimulate moves to correct them.

53
We are also of opinion that the findings of all Coroners' Courts should be computerised, in order to reveal any significant trends. The sum of all Coroners' findings represents a wealth of information on the incidence and causes of death in this country, which cannot fail to be of value to the medical community if it is put in a form which they can use. The existing information should not be allowed to go to waste when it could so easily be made generally available.

Summary of Recommendations

1
Coroners should in future be appointed by the Lord Chancellor, on the advice of a national committee established for that purpose (para 12); Central Government should assume general responsibility for the Coroners' service (paras 14 and 19).

2
The existing qualifications necessary for Coroners are adequate and should remain unchanged (para 16).

3
More and better training for Coroners should be provided, both before and after their appointment (para 17); a national training scheme should be set up (para 18).

4
Coroner's Officers should form a national service, independent of the police and all other services. Funding and training should be the responsibility of Central Government (para 23).

5
The Coroner should have a discretion whether to hold inquests on foreign deaths where the body is brought into the Coroner's district (para 25).

6
Existing powers to order public inquiries should be strengthened (para 31), and cases likely to provoke controversy should be handled by a Senior Coroner, with power to appoint an *amicus curiae* to present the evidence (para 34). Beyond this, however, we do not think that controversial cases need special treatment within the Coroners' system (para 35).

7
The deaths of in-patients receiving psychiatric treatment should automatically be reported to the Coroner, and those of compulsorily detained patients should automatically receive an inquest with a jury (para 37).

8
Legal aid should be made available for all persons properly interested in the inquest (para 43); consideration should be given to extending the Duty Solicitor scheme to advise the family of the deceased (para 44).

9
Interested parties should be entitled to copies of all statements in the Coroner's file before the hearing begins (para 47), and be entitled to require the Coroner to call witnesses (para 48); the Coroner should be able to refuse these entitlements only for cause. Further, interested parties should be entitled to address the court on the facts (para 49).

10
The Coroner should be given power to recommend a Home Office investigation into potentially dangerous situations (para 52).

11
The findings of Coroners should be computerised in order to reveal any significant trends (para 53).

Appendix

List of those who submitted comments:

Individuals
Rt. Hon. P. Archer QC, MP
Dr. B. Barraclough, Department of Psychiatry, Southampton University
Dr. D. Barrowcliff, Home Office Pathologist
G. Beck, Solicitor
G. Bovell, Solicitor
His Honour Judge Norman Brodrick QC
R. Burridge, Warwick University Law School
Dr. J. Burton, Hammersmith Coroner
D. Chambers, Inner London Coroner
L. Christian, Solicitor
B. Dickson, Faculty of Law, Queen's University, Belfast
Dr. R. Goodbody, Division of Pathology, Southampton Health Authority
M. Green, Department of Forensic Medicine, University of Leeds
M. Howells, Pembrokeshire Coroner
G. Kavanagh, Barrister
Dr. P. Knapman, Inner London Coroner
Professor B. Knight, Welsh National School of Medicine
Professor H. Johnson, Forensic Medicine Unit, St Thomas's Hospital
M. Leigh, Solicitor
Professor J. Mason, University of Edinburgh Medical School
G. Peirce, Solicitor
P. Revington, Manchester Coroner
Dr. P. Roberts, Consultant Pathologist
A. Paliwala, Warwick University Law School
Dr. J. Turnball, Consultant on Explosives and Ballistics
Professor A. Usher, Department of Forensic Pathology, Sheffield University
Dr. R. Whittington, Birmingham Coroner
G. Wicks, Solicitor
A. Winyard, Solicitor

Organisations
Association of Clinical Pathologists
Association of County Councils
Association of Libetal Lawyers
Attorney-General's Chambers
Automobile Association
British Medical Association
Committee on the Administration of Justice
Coroners' Society
Guild of British Newspaper Editors
Home Office
INQUEST
Institute of Journalists
Legal Action Group
Legal Aid Department, Law Society
Life Offices' Association
London Boroughs Association
Lord Chancellor's Department
Medical Protection Society
National Union of Journalists
Police Federation
Senate of the Inns of Court
Society of County Secretaries
West Yorkshire Metropolitan County Council

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