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# **Briefing on Clauses 11-13 (secret inquest provisions) of Coroners and Justice Bill 2009**

**20 February 2009**

## Background and overview

1. INQUEST is working closely with the family of Azelle Rodney, a 24 year old black man who was shot seven times in the head by a Metropolitan Police Service (MPS) officer in a pre-planned police operation in April 2005. It appears that it was a legal challenge to the Regulation of Investigatory Powers Act 2000 (RIPA) brought by lawyers representing Susan Alexander (Azelle's mother) as far back as September 2007 which prompted proposals for secret inquests which were originally contained in Part 6 of the Counter Terrorism Bill 2008 (CTB).
2. INQUEST is also working closely with the lawyers for the family of Terry Nicholas, a 52 year old black man who was shot by MPS officers at Hanger Green, London W5 on the evening of 15 May 2007, after he had left the rear of a restaurant premises. In October 2008 it emerged that the inquest touching on this death was also stalled because the inquest could not receive sensitive material and that the government proposals in the CTB regarding secret inquests were supposed to make it possible to resume the inquest into this death too.
3. However, the secret inquest provisions in Part 6 of the CTB were withdrawn by the government on 14 October 2008 after clear indications that those provisions faced defeat in the House of Lords. Following the withdrawal of the secret inquest provisions in October and November 2008, Parliament debated a proposed amendment to RIPA that would have enabled the Rodney (and possibly Nicholas) inquests to resume.<sup>1</sup> Ultimately, the proposed amendment to RIPA was defeated, inevitably delaying yet further the resumption of these inquests, which in the case of Azelle Rodney has been completely stalled since August 2007. After the final Parliamentary debate of 24 November 2008, INQUEST is aware that Susan Alexander's lawyers and her MP, Alan Keen, received clear assurances that she would be given the courtesy of a short consultation period concerning the relevant provisions of the Coroners and Justice Bill 2009 (CJB) *before* its publication. In fact, no such consultation was held, just as the year before the government failed to

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<sup>1</sup> Debate in House of Lords, 21.10.08

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81021-0002.htm#08102134000002>; Debate in House of Lords, 11.11.08

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81111-0009.htm>; Debate in the House of Commons, 17.11.08

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081119/debtext/81119-0009.htm>; and Debate in the House of Lords, 24.11.08

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/81124-0003.htm>

consult Ms Alexander on Part 6 CTB.<sup>2</sup> The provisions in clauses 11-13 of the CJB are slightly modified versions of the equivalent clauses in the CTB.

4. INQUEST is strongly opposed to the measures contained in clause 11 of the CJB, just as it opposed the very similar clause in the CTB last year, which give the Secretary of State power to intervene in inquests where sensitive information is involved. The proposals amount to a fundamental attack on the independence and transparency of the coronial system in England and Wales; are fundamentally flawed; unsupported by evidence; disconnected from legal principles and have come about without any consultation with stakeholders.
5. The proposals could result in inquests into highly contentious deaths in custody taking place without juries and in private with a High Court judge alone overseeing the evidence. This would exclude bereaved families, their legal representatives and the public at large from the investigation process in breach of article 2 of the European Convention on Human Rights (ECHR).
6. Many contentious deaths including those in custody raise important issues of state power and accountability and in a free democratic society such deaths should be subject to particularly close public scrutiny. For this reason it is imperative the inquest system is open and transparent so justice is seen to be done and public confidence in state bodies is upheld.
7. From our experience as practitioners working on deaths in custody and the inquest system for over 25 years, we cannot envisage a situation where the proposed legislation is necessary, including the Rodney and Nicholas cases. We have seen no arguments or evidence from the government to justify the imposition of such wide-ranging and draconian proposals.
8. The wording of the proposals is open wide interpretation and gives the Secretary of State extensive discretion to intervene in the inquest process. We fear the way in which the proposals are currently drafted would give a green light for the closing down of inquests in a broad range of circumstances in the future.
9. The proposed changes to RIPA in clause 13 CJB simply repeat the same errors as before in the CTB by seeking to restrict access to intercept evidence to a High Court judge and to counsel to the inquest, while denying access to the bereaved family, let alone a jury. We believe this amendment to RIPA is wrong and that the proposal put forward on 24 November 2008 by Baroness

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<sup>2</sup> House of Commons Justice Committee Report on the Coroners and Justice Bill, 20 January 2009, HC 185, para 14 which states: "...we are not aware of any consultation on these provisions having taken place in the intervening period despite reservations having been expressed by the two most relevant committees of the House."

Sue Miller is the appropriate way forward in connection with the disclosure of intercept evidence and other sensitive material.

## **INQUEST's detailed views**

10. The proposals contained in clauses 11-13 of the Bill arose from legal challenges brought on behalf of the family of Azelle Rodney over admissibility of intelligence evidence. Azelle Rodney in died in April 2005 after a police operation in north London in which he was shot seven times – the circumstances surrounding his shooting had nothing to do with counter-terrorism or national security but involved criminal allegations. Azelle was shot seven times after the car he was in was ordered to halt in a 'hard stop' after being under police surveillance for over three hours in Edgware, north London. In July 2006 the Crown Prosecution Service (CPS) announced that there was insufficient evidence for a successful prosecution. After the CPS decision, the family was told by the coroner that the full inquest could not be held because large portions of the police officers' statements had been crossed out under RIPA, which covers information obtained from covert surveillance devices such as telephone taps or bugs. Lawyers acting for the family of Azelle Rodney threatened to take the government to court to show that RIPA was in breach of the Human Rights Act 1998.
11. Clause 11 gives the Secretary of State the power to issue certificates which would remove juries from inquests if he or she believes evidence will be heard which should not be made public:
  - (a) in order to protect the interests of
    - (i) national security,
    - (ii) the relationship between the United Kingdom and another country, or
    - (iii) preventing or detecting crime;
  - (b) in order to protect the safety of a witness or other person;
  - (c) otherwise in order to prevent real harm to the public interest.

## **Political interference in the inquest system**

12. INQUEST believes this is a disproportionate and draconian measure. It falsely equates the existence of material which "should not be made public" with the need to remove a jury and gives the Secretary of State unprecedented and wide-reaching powers to intervene in the investigation of contentious deaths. Clause 11 would give the Secretary of State a key decision making role in the very inquests where the state's actions were most under scrutiny and amounts to excessive political interference in the inquest system. The breadth of the clause is enormous.

## The importance of juries

13. The removal of juries from proceedings is highly flawed as juries have a central role in ensuring maximum public scrutiny and this is particularly important where officers of the state may be involved in the circumstances of death. Juries are the only opportunity where ordinary people, independent of the state, can participate in the judicial system. They have the effect of diffusing power into the community and in cases of contentious deaths are often seen by families as the key safeguard in terms of public accountability.

## Article 2 and inquests

14. The standard by which any investigation of a death in custody must be measured against is the obligation laid down by article 2 of the ECHR which protects the right to life. It is well established that "wherever state bodies or agents may bear responsibility for [a] death", a procedural duty to investigate the death arises under article 2 [see for example *R (on the application of Hurst) v Commissioner of Police for the Metropolis* [2007] UKHL 13, para 28).
15. The House of Lords has acknowledged that:

*The European Court has also interpreted article 2 as imposing on member states a procedural obligation to initiate an effective **public** investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of [article 2] obligations has been, or may have been violated and it appears that agents of the state are, or may be, in some way implicated.*<sup>3</sup>

*Middleton* also set out that "...there must be a sufficient element of public scrutiny of an investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved to the extent necessary to safeguard his or her legitimate interests."

16. It is now well established that the primary way in which the UK fulfils its procedural duties under article 2 ECHR is through coroners' inquests, which, in their current form, are open to public scrutiny and the full participation of the next of kin of the deceased. In *R (on the application of Amin) v Home*

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<sup>3</sup> *R (on the application of Middleton) v HM Coroner for West Somerset*, [2004] UKHL 10, para.3, emphasis added.

Secretary [2003] UKHL 51 Lord Bingham listed the purposes of an article 2 compliant investigation:

1. *to ensure as far as possible that the full facts are brought to light;*
2. *that culpable and discreditable conduct is exposed and brought to public notice;*
3. *that suspicion of deliberate wrongdoing (if unjustified) is allayed;*
4. *that dangerous practices and procedures are rectified; and*
5. *that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.*

Given that the ECHR requirement is for a public investigation, for purpose 1 to have any meaning, "brought to light" must be interpreted as "exposed to public scrutiny".

17. With regard to purposes 2 and 3, culpable and discreditable conduct cannot be brought to public notice in the absence of a ***public examination of the core facts*** surrounding the circumstances of a death, and ***neither can suspicion of deliberate wrongdoing be allayed*** in the event that it is unjustified. Similarly, while it is in any event difficult to see how lessons can possibly be learnt where core evidence is kept secret, purpose 5 simply cannot be fulfilled where the next of kin of the deceased are denied knowing the crucial circumstances surrounding their loved one's death.
18. An inquest conducted without public scrutiny or the full participation of the deceased's family cannot properly fulfil any of the purposes set out by Lord Bingham above, and therefore cannot be article 2 compliant.
19. While the European Court of Human Rights has not prescribed a single model for article 2 compliant investigations, the Court has stated in *Jordan v United Kingdom* ([2003] 37 EHRR 2), that the bare minimum requirements include "a sufficient element of public scrutiny" and the involvement of the next of kin "to an appropriate extent".
20. There can be *no* public scrutiny where core evidence is withheld from the public, and similarly ***it can never be appropriate for the next of kin to be denied the core facts surrounding the death of a loved one***. Again, the element of public scrutiny must be sufficient in order "to secure accountability in practice as well as in theory" (*Jordan and Middleton*). By way of example, *R on the application of Sacker v HM Coroner for West Yorkshire* ([2004] 1 WLR 796) and *R on the application of D v the Secretary of State for the Home Department* ([2006] 3 All ER 946) both confirmed that when an investigation had not been carried in public, the publication of a report was insufficient to make the procedure compatible with article 2.

21. In relation to the involvement of the next of kin, *Amin* found that "the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests." In *Jordan* the European Court has reflected on its own tendency to increasingly emphasise the importance of involving next of kin to an appropriate degree in investigations.
22. As for the disclosure of relevant material to relatives of the deceased, Mr Justice Collins stated in the case of *Smith v The Assistant Deputy Coroner for Oxfordshire* ([2008] EWHC 694 (Admin)) "...in an Article 2 case it will be difficult to justify any refusal to disclose relevant material" (para 37). Where material is not just relevant, but goes to the core of the circumstances of a death, there can be no justification for denying either next of kin or the public generally the opportunity to scrutinise that evidence.

### **Sufficiency of current procedures**

23. Current inquest procedures are sufficient for dealing with issues of sensitive material. Rule 17 of the Coroners Rules 1984 (as enacted by SI 1984 No 552) enables coroners to "direct that the public be excluded from an inquest or any part of an inquest if he considers that it would be in the interest of national security so to do". Public Interest Immunity (PII) certificates can also be issued if necessary. These powers can and should be maintained in the CJB.
24. If inquests take place behind closed doors it will be hard for bereaved families and the public at large to allay any suspicions of any wrongdoing. Indeed, it may actually add to feelings to suspicion that the state is attempting to deliberately clamp down on information reaching the public domain.
25. A number of commentators have remarked that the de Menezes inquest is one that, under the terms of the Bill if passed, could have been subjected to certification had this procedure been available.
26. The de Menezes inquest did involve the consideration of evidence that was highly sensitive, such as the details of the Metropolitan Police's operational response to the threat posed by suicide bombers (including Operation Kratos), the assistance they had had from countries such as Israel and the USA in developing this, and other aspects of undercover and surveillance operations. The widespread concern that the Metropolitan Police had been operating a "shoot to kill" policy without any parliamentary approval or oversight made it particularly sensitive. A large number of witnesses also sought anonymity before giving their evidence. The inquest would therefore

potentially have been covered by all of the reasons under clause 11(2) of the Bill that would justify certification under clause 11(1).

27. In fact, the de Menezes inquest managed to deal effectively with highly sensitive evidence and the protection of witnesses whilst remaining largely open and accessible to all, showing that it was perfectly possible to conduct a full inquest without the need for certification.
28. This was done, firstly, by appointing a High Court judge as coroner who would be able to consider PII applications by the police in respect of highly confidential policies and documents. National security issues were clearly central to the subject matter of the inquest, most importantly the Metropolitan Police strategy for dealing with suicide bombers. Where needed, the coroner granted full PII in relation to certain documents. However, he ruled that many of the documents could be provided to the legal teams, upon strict undertakings as to confidentiality, not making copies, keeping the material secure, etc. On that basis the family's lawyers were permitted to see highly sensitive documents, and to question witnesses based on that material. In relation to the most sensitive material, a gist document was prepared summarising the material that could be shared with the family, and their lawyers were provided with the material underlying the gist document, again on strict undertakings.
29. Where discussion in open court touched upon the contents of any such protected documents, agreements were reached in the absence of the jury and the public as to what could be explored and, although some aspects were regarded as too sensitive to be investigated publicly, overall a reasonably fair exploration of the issues was allowed whilst national security and other policing concerns were protected.
30. Secondly, suitable arrangements were made for the protection of witnesses (a reason for certification under clause 11(2)(b) of the Bill) without the need for certification. There were over 40 police officers who worked in highly sensitive anti-terrorist operations or covert surveillance whose witness evidence was required at the inquest. They were all granted anonymity by the coroner as a result. They gave evidence from behind a screen in court, and careful provision was made at the venue for their arrival and departure to protect their identities. The inquest was nevertheless able to hear evidence from those witnesses. The jury, the family, one of their supporters and the lawyers were all permitted to see the witnesses giving evidence so as to assess their demeanour (the police having carried out police checks on the family members and their chosen supporter beforehand). This was done without any risk or compromise to the identity of any of those witnesses, whose anonymity has been maintained despite the huge attention from media organisations.

31. In this case there was a huge public interest in hearing as much evidence as possible in the open, given the repercussions of this very public shooting of an innocent man. We believe that by applying the safeguards such as those identified above, the inquest was able to remain public and accessible, yet with due respect for the concerns set out in clause 11(2).
32. Had this inquest been certified in accordance with the Bill then the family would have been prevented from participating in the inquest, and the actions of the police would not have been exposed to the full public scrutiny that the common law and article 2 requires.
33. Furthermore, if no jury had been sitting to pronounce its verdict, there would have been no public involvement in scrutinising of one of the most appalling tragedies in police history.
34. We therefore believe that the de Menezes case shows that in practice, certification is unnecessary; and in principle, it is wrong.

### **Enabling certification to be subject to judicial review adds nothing**

35. A 'safeguard' that was not part of the CTB provisions is included at clause 11(5) CJB, namely a statutory delay in the certification procedure to enable a judicial review of the certification decision to be brought. However, if the interested persons, and the family of the deceased in particular, are unaware of the content of the material in question they will be in no position to make an informed decision as to the efficacy of a legal challenge nor, if one is brought, will the parties be able to put any legal arguments to the Courts in this regard. The limits of judicial review are inherently unsatisfactory as a way of keeping in check the abuse of the power granted to the Secretary of State under clause 11. Including a judicial review option in the Bill simply begs the question as to why a High Court judge cannot simply be invited by way of an application on the part of the Secretary of State to withhold certain evidence from a jury and for the whole matter of sensitive material to be subjected to judicial consideration and not political decision making and partially secret inquests.

### **Clause 13 intercept evidence**

36. The amendment to section 18 of RIPA (widening the exceptions from exclusion of intercept material from legal proceedings) is no better than the equivalent proposals in the CTB and it appears evident to INQUEST and the family of Azelle Rodney that the government has simply ignored the detailed debates in Parliament on this subject.<sup>4</sup>

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<sup>4</sup> As to which see the links cited in note 1 above.

37. Allowing disclosure of RIPA material solely to a High Court judge conducting a secret inquest and possibly counsel to a secret inquest is not appropriate, not least because on 4 February 2008 the Privy Council Review of Intercept as Evidence (the Chilcot Review) recommended the abolition of the absolute prohibition contained in section 17 of RIPA. Thus, significant changes are imminent to the existing law on the treatment of intercept evidence in criminal proceedings.
38. Many inquests and criminal trials involve the consideration of material that should not be made public. This ranges from personal details about the witnesses to operational matters concerning police conduct or matters of national security. The existence of such material does not mean that a jury cannot or should not hear the case. It may mean that part of the proceedings should be held *in camera* so that the jury and the interested parties may hear the evidence but the public may be excluded from that part of the hearing.
39. The government's proposals appear to be a knee-jerk reaction to the problem of how to deal with sensitive information at inquests. Yet the proposals are so wide reaching they create more problems than the issue which they were attempting to resolve.
40. Instead, INQUEST proposes that the government withdraws clauses 11-13 of the CJB and simply amends RIPA along the lines proposed by Baroness Miller on 24 November 2008, for example:

"Inquests: intercept evidence

(1) In section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) (exceptions to section 17), after subsection (7)(c) insert-

"(d) a disclosure to a coroner or to a person appointed as counsel to an inquest or to members of a jury or to any properly interested person where-

(i) the coroner holding the inquest is a judge of the High Court;  
and

(ii) the coroner has ordered the disclosure to be made to- (a) the coroner and, if he is satisfied that the disclosure will not prejudice national security, the person appointed as counsel to the inquest and to members of a jury and to any properly interested person; or (b) the coroner and, if he is satisfied that it is necessary to avoid prejudice to national security, in redacted form to the person appointed as counsel to the inquest and to members of a jury and to any properly interested person."

(2) In that section, after subsection (8A) insert-

“(8B) A coroner shall not order a disclosure under subsection (7)(d) except where the coroner is satisfied that the exceptional circumstances of the case make the disclosure essential to enable the matters that are required to be ascertained by the inquest to be ascertained.”

(3) In that section, after subsection (11) insert-

“(11A) References in this section to a coroner apply only where the coroner is a judge of the High Court.”

(4) This section has effect in relation to inquests that have begun, but have not been concluded, before the day on which it comes into force as well as to inquests beginning on or after that day.”

41. This proposal introduces a small change to RIPA to allow an article 2 compliant inquest to take place where such material exists and when, crucially, a High Court judge determines that the material concerned is central in ascertaining how a person came to die.
42. Accepting this clause would bring the treatment of such material at inquests broadly in line with the way it is treated in criminal proceedings. It deals with an anomaly in RIPA, because RIPA simply did not envisage such material causing any problems in inquest proceedings.
43. This amendment is necessary for the inquest into the police shooting of Azelle Rodney to take place. At the moment, coronial law/RIPA does not allow for the coroner to see (let alone disclose) any RIPA-related material to any properly interested persons. This legal lacuna appears to be the reason why the Rodney inquest has been put on hold.
44. Article 2 requires the government to have proper procedures in place for ensuring the accountability of agents of the state to maintain public confidence. The positive duty on the state is to investigate a death in custody with an inquiry that is (per *Jordan v UK* (2001) 37 EHRR 52, also approved by the House of Lords in the case of *Amin*):
  - on the state's own initiative;
  - independent, both institutionally and in practice;
  - capable of leading to a determination of responsibility and the punishment of those responsible;
  - prompt;
  - allows for sufficient public scrutiny to ensure accountability;

- enables the next of kin to participate.

45. At present, the anomaly in RIPA means there cannot be an article 2-compliant inquest in the Azelle Rodney case. This clause would potentially permit the disclosure of RIPA material in a highly structured, judicially-controlled manner to the family of the deceased, their counsel and the jury at an inquest, but only on the proviso that the coroner (who must be a High Court judge in such cases) believes the information contained in the intercept is central in finding out how a person died.
46. The High Court judge sitting as a coroner would then have sight of the material and would decide who the material would be disclosed to.
47. The coroner's decision would be his/hers alone and any of the other parties would be able to make submissions to him/her about the decision or challenge it in the usual manner. Section 8B of the amendment sets out the exceptional circumstances where such disclosure would need to take place in order for the inquest to go ahead – it is a 'necessity test' and would not allow the indiscriminate disclosure of any RIPA related material, only if and when it was essential.
48. This proposed clause means that decision over whether or not RIPA material is disclosed at an inquest will therefore be solely a judicial one. It has no bearing on the release of any other sensitive material such as those covered normally by Public Interest Immunity decisions at inquests, but only RIPA-related material.
49. Speaking on behalf of the government at the committee and report stage debates on the Counter Terrorism Bill in the Lords, Lord West of Spithead made several assertions regarding the then proposed clause which were legally and factually incorrect.
50. He claimed that the amendment would allow the "wide disclosure of very sensitive material." This is simply not true. It would only allow the disclosure of RIPA-related material and only when a High Court judge sitting as a coroner is satisfied that the material is essential in finding out how someone died. It would not necessarily mean the material would be subject to public disclosure if it was deemed to be too sensitive. A whole series of options are currently available (and are used in inquests) which could be decided by the coroner, such as imposing reporting restrictions on proceedings or deciding that in the interests of national security certain sections of the proceedings take place *in camera* and properly interested persons agreeing to confidentiality undertakings.

51. Lord West also said "it is unclear how the new clause would work in practice in the absence of any legislative mechanism to ensure a High Court judge is appointed to hold inquests." This is legally wrong. Under the power of section 14 of the Coroners Act 1988, coroners can apply for the jurisdiction of an inquest to go to a Circuit or High Court judge. High Court judges have sat as coroners at inquests quite recently in two high profile death in custody cases, both at the inquest into the death of Gareth Myatt which took place in 2007 and the recent inquest into the shooting of Jean Charles de Menezes.
52. Lord West also said that it is necessary to balance the interests of the family and the public interest when discussing material that cannot be disclosed publicly. We agree and think that a balance is achieved in this proposal.

## **Conclusion**

53. Concern about the proposals in the CTB and CJB has been expressed by the chairs of the parliamentary Joint Committee on Human Rights (JCHR) and of the Justice Committee. The JCHR expressed concern that the proposals could compromise the independence of controversial inquests into the deaths of terrorism suspects in police operations or the deaths of service personnel in Iraq. Chair of the Committee, Andrew Dismore MP, said about the CTB provisions:

*We are seriously alarmed at the prospect that under these provisions inquests into deaths occurring in circumstances like that of Jean Charles de Menezes, or British servicemen killed by US forces in Iraq, could be held by a coroner appointed by the Secretary of State sitting without a jury. Inquests must be, and be seen to be, totally independent, and in public to secure accountability, with involvement of the next of kin to protect their legitimate interests. When someone dies in distressing, high profile circumstances their family need to see and feel that justice is being done, and where state authorities are involved there is a national interest in accountability as well.*<sup>5</sup>

54. Very serious human rights concerns about the similar CTB proposals were raised during its passage by the Northern Ireland Human Rights Commission, the House of Commons Justice Committee<sup>6</sup>, the Joint Committee on Human Rights<sup>7</sup>, the House of Lords Select Committee on the Constitution<sup>8</sup> and many

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<sup>5</sup> JCHR press release 6 February 2008

<sup>6</sup> House of Commons Justice Committee Report on the Counter Terrorism Bill, HC 405, para 5, where the Committee stated with regard to the proposals that "it is not clear that they sufficiently guarantee independence of investigation and involvement of victims' families".

<sup>7</sup> Joint Committee on Human Rights, *Counter Terrorism Policy and Human Rights: 8<sup>th</sup> Report: Counter Terrorism Bill*, 7 February 2008, HC 199, see paras 4-8 and *Counter Terrorism Policy and Human Rights: 13<sup>th</sup> Report: Counter Terrorism Bill*, 8 October 2008, paras 110-120

other organisations. The secret inquest provisions were also subject to serious cross party opposition by a wide range of MPs and Peers during the debates on the CTB.

55. Already, in relation to the CJB proposals, the Justice Committee of the House of Commons has stated on 20 January 2009:

*These clauses, and the changes made to them since their first appearance in the Counter Terrorism Bill, will therefore merit close and careful scrutiny as the Coroners and Justice Bill passes through Parliament. The Government should be prepared to withdraw them once again if it cannot justify these provisions as proportionate and fully compatible with Article 2 of the ECHR.<sup>9</sup>*

56. INQUEST supports the view taken by the Northern Ireland Human Rights Commission<sup>10</sup> as to the unacceptable breadth of the grounds on which a certificate can be issued under clause 11; the irrelevance of the availability of judicial review; and the violation of article 2 entailed in the exclusion of the next of kin and use of special counsel.

57. Further, INQUEST welcomes the Justice Secretary's comments during the second reading debate on 26 January 2009, where he said that he did

*...not claim to the House that the provisions in the Bill are the last word—indeed, we are open to amendments. However, I ask hon. Members to acknowledge that there is a problem and that PII certificates will not tackle it. The state is not in the shoes of a prosecutor in respect of an inquest. As I have said, in the case of a criminal trial, the prosecution can be withdrawn, but in the case of an inquest, that cannot happen.*

58. Indeed he added further on 3 February 2009 that:

*...I think that the House now accepts that there is a problem that cannot be dealt with simply by PII certificates. ...I think that there are some practical problems because we are dealing with extreme circumstances in which there is a very severe risk, not of damage or embarrassment to the Government, but of an individual—a covert*

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<sup>8</sup> HL Paper 167, House of Lords Select Committee on the Constitution, 10<sup>th</sup> report of Session 2007-2008: "Counter Terrorism Bill: The Role of Ministers, Parliament and the Judiciary" pp 17-18

<sup>9</sup> House of Commons Justice Committee Report on the Coroners and Justice Bill, HC 185, 20 January 2009 at para 14

<sup>10</sup> Northern Ireland Human Rights Commission, Coroners and Justice Bill, Briefing for Committee Stage House of Commons, February 2009

*human intelligence source, say—being killed... At present there are two inquests that cannot proceed because the arrangements made in the de Menezes and Nimrod cases are not regarded as satisfactory... I repeat to the House that I do not regard the proposals as copyright. We are happy to consider other alternatives, but the House has to face the fact that there needs to be additional provision that is currently not in the law, because otherwise some bereaved relatives will go without an inquest at all.*<sup>11</sup>

59. However, INQUEST do consider that the proposals set out above more than adequately address the government's concerns.
60. It is clear that the proposals contained in clause 11-13 of the CJB are ill-advised, inappropriate, unnecessary and amount to a breach of fundamental rights. For this reason, these clauses should be withdrawn and replaced with the simple amendment to RIPA proposed above.

INQUEST 20 February 2009

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<sup>11</sup> House of Commons Hansard 3 Feb 2009: Column 685