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

Ruling on Verdicts

Introduction

1. I propose to leave the following verdicts to the jury:-

   (1) Unlawful killing (grossly negligent driving of the paparazzi);
   (2) Unlawful killing (grossly negligent driving of the Mercedes);
   (3) Unlawful killing (grossly negligent driving of the paparazzi and grossly negligent driving of the Mercedes);
   (4) Accidental death;
   (5) Open verdict.

   These are my reasons. I have received written and oral submissions from Interested Persons and from Counsel to the Inquests. My reasons are necessarily in relatively summary form because of the limited time available and the need to prepare the summing-up. I shall not, therefore, deal with all the points made in over 450 pages of written submissions.

2. The inquests into the deaths of Diana, Princess of Wales, and Dodi Al Fayed heard evidence over a period of 5 ½ months. They have covered a wide range of topics. At the heart of the evidence has been detailed consideration of the circumstances of the crash in the Alma Tunnel in Paris just after midnight on 31 August 1997. We have heard from dozens of witnesses who saw some part of the journey of the Mercedes from the rear of the Ritz Hotel to the scene of the crash. Some have given oral evidence, others have had their evidence read under rule 37 of the Coroners Rules as uncontroversial. Yet more has been introduced as hearsay evidence when it has not been possible to secure the attendance of a witness. The circumstances of the crash have also been considered in detail by a range of experts, whose opinions have been explained to the jury. There was considerable agreement between those experts.

Similarly, we have heard an enormous quantity of evidence that goes, in one way or another, to conspiracy theories that have abounded since the crash.

3. My assessment of whether particular verdicts should be left to the jury is based upon my understanding of the evidence as it has unfolded. In a case such as this it is all too easy for an exercise to develop of picking and choosing bits and pieces of the evidence from the transcripts and developing them in isolation from their context and the totality of the surrounding material. Although I shall refer to a number of pieces of evidence in the course of this ruling, I have not engaged in the exercise I have just described but have considered the evidence as a whole.

4. There is some common ground on the verdicts which should be left. All are agreed that the verdicts accidental death and open verdict should be left to the jury. All are agreed that, whatever 'short-form' verdict is returned by the jury, it can and should be supplemented by a short, non-judgmental narrative conclusion. The debate has focussed on the following questions:

   (i) Should unlawful killing be left to the jury on the basis that the crash was deliberately staged, with the intention of killing, harming or scaring? Deliberately causing the crash with the intention of killing the occupants of the car or causing them serious injury would support a verdict of unlawful killing by murder. Deliberately causing the crash with a view to scaring the occupants of the car would support a verdict of unlawful killing on the basis of unlawful act manslaughter. Mr Al Fayed submits that such a verdict should be left to the jury, whereas the Metropolitan Police submit that it should not.

   (ii) Should unlawful killing be left to the jury on the basis of gross negligence manslaughter by the driving of following paparazzi? The Ritz Hotel submits that it should, while the Metropolitan Police disagree. There is a subsidiary issue. The Ritz contends that this verdict should be left both on the basis of gross negligence manslaughter and on the basis of unlawful act manslaughter; the latter founded on a hypothetical offence under the Protection from Harassment Act 1997.

   (iii) Should unlawful killing be left to the jury on the basis of gross negligence manslaughter by the driver of the Mercedes (Henri Paul)?

The Metropolitan Police say that this verdict should be left, while the family of Henri Paul argue that it should not.

(iv) How should the narrative conclusion, which is to supplement the short-form verdict, be elicited from the jury?

The Law on Verdicts

5. Section 11(5) of the Coroners Act 1988 lays down what the jury should determine and record in the Inquisition:

> 'An inquisition –
> (a) shall be in writing under the hand of the coroner and, in the case of an inquest held with a jury, under the hands of the jurors who concur in the verdict;
> (b) shall set out, so far as such particulars have been proved –
> (i) who the deceased was; and
> (ii) how, when and where the deceased came by his death.'

Rule 36 of the Coroners Rules 1984 mirrors that provision:

> '(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely –
> (a) who the deceased was; and
> (b) how, when and where the deceased came by his death;
> (c) the particulars for the time being required by the Registration Acts to be required concerning the death.
> (2) Neither the coroner nor the jury shall express any opinion on any other matters.'

Rule 42 of the 1984 Rules provides:

> 'No verdict shall be framed in such a way as to appear to determine any question of –
> (a) criminal liability on the part of a named person, or
> (b) civil liability.'

Form 22 of Schedule 4 to the Rules (a standard-form inquisition) contains notes which set out the well-known 'short-form' verdicts, such as 'accidental death' and 'unlawful killing'. It is well-established that no verdict of unlawful killing may be returned unless the relevant ingredients of a particular homicide offence have been established to the criminal standard of proof. See: *R v West London Coroner, Ex Parte Gray* [1988] 1 QB 467 at 477H.

6. In *R v North Humberside Coroner, Ex Parte Jamieson* [1995] QB 1, Sir Thomas Bingham MR set out a series of general conclusions concerning inquest proceedings, the second of which was:

> 'Both in section 11(5)(b)(ii) of the Act of 1988 and in rule 36(1)(b) of the Rules of 1984, "how" is to be understood as meaning "by what means."

> It is noteworthy that the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but "how… the deceased came by his death," a more limited question directed to the means by which the deceased came by his death.' (24A)

The House of Lords in *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182 held that, where Article 2 of the European Convention on Human Rights imposes a particular legal duty on the state to investigate a death, the statutory provisions should be interpreted in a different way (using section 3 of the Human Rights Act 1998). In those cases, the 'how' question in section 11 and rule 36 should be construed as meaning 'by what means and in what circumstances'. However, that interpretation is not to be used in inquests into deaths which occurred before the Human Rights Act came into force (October 2000). See: *R (Hurst) v London Northern District Coroner* [2007] 2 AC 189 at 214E-216G (paras [48]-[52], Lord Bingham) and 204C (para [8], Lord Rodger).

7. *Middleton* encouraged the use of short narrative verdicts in Article 2 cases where a traditional, short-form verdict (such as 'accidental death') is inadequate to address the key issues in an inquest. However, such short narrative verdicts were available in principle to coroners and juries before *Middleton*, whether as an alternative to a short-form verdict or in combination with such a verdict. It was (and remains) critical that such narrative verdicts do not offend against Rules 36 and 42. As Sir Thomas Bingham said in *Jamieson* at 24F (general conclusion (6)):

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

8. Therefore, the question for the jury in these inquests will be: by what means did Diana and Dodi come by their deaths? Their answers will be given in sections 2, 3 and 4 of the Inquisition completed in relation to each of the deceased. Section 2 will contain details of the medical cause of death, which should be uncontroversial. Section 3 will contain the 'time, place and circumstances of death', which I shall consider in more detail later in this Ruling. Section 4 will contain the 'conclusion as to the death'; the verdict.

9. As Coroner, I have a duty to assess the evidence and to leave to the jury only those verdicts which can be supported by the evidence and I have to identify

that evidence to them. There is a clear duty to withdraw any verdict which cannot be so supported. In *R v HM Coroner for Exeter and East Devon, Ex Parte Palmer* [1997] CA (unreported) and in *R v Inner South London Coroner, Ex Parte Douglas-Williams* [1999] 1 All ER 344 (at 348b-349c), Lord Woolf MR concluded that a coroner should apply a test similar to that developed by the courts for submissions of 'no case to answer' in criminal trials. The leading case on the criminal test is *R v Galbraith* [1981] 1 WLR 1039, where Lord Lane CJ said:

> 'How then should the judge approach a submission of "no case"? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there *is* evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred.
> There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.'

In *Palmer*, Lord Woolf said that a similar approach should be followed by a coroner at the end of an inquest.

10. In *Douglas-Williams*, Lord Woolf modified that test somewhat:

> 'The conclusion I have come to is that, so far as the evidence called before the jury is concerned, a coroner should adopt the *Galbraith* approach in deciding whether to leave a verdict. The strength of the evidence is not the only consideration and, in relation to wider issues, the coroner has a broader discretion. If it appears there are circumstances which, in a particular situation, mean in the judgment of the coroner, acting reasonably and fairly, it is not in the interest of justice that a particular verdict should be left to the jury, he need not leave that verdict. He, for example, need not leave all possible verdicts just because there is technically evidence to support them. It is sufficient if he leaves those verdicts which realistically reflect the thrust of the evidence as a whole. To leave all possible verdicts could in some situations merely confuse and overburden the jury and if that is the coroner's conclusion he cannot be criticised if he does not leave a particular verdict.' (349a-c).

The most recent comments of the Court of Appeal on this subject appear in the case of *R (Bennett) v HM Coroner for Inner South London* [2007] EWCA Civ 617. In that case, Waller LJ concluded that the language of Lord Woolf in

Palmer and of Leveson J in *R (Sharman) v HM Coroner for Inner North London* [2005] EWHC 857 Admin suggested that the proper test was whether a verdict, if returned, would be unsafe. That had, in fact, been the test rejected by the court in *Galbraith* for criminal cases. It is important therefore to set out Waller LJ's remarks in full:

> '[The language] of Lord Woolf and Leveson J, so far as coroners are concerned, would seem to be nearer the rejected school of thought, albeit Lord Woolf was saying that a coroner should not "decide matters which are the province of the jury". I would understand that the essence of what Lord Woolf was saying is that coroners should approach their decision as to what verdicts to leave on the basis that facts are for the jury, but they are entitled to consider the question whether it is safe to leave a particular verdict on the evidence to the jury, i.e. to consider whether a verdict, if reached, would be perverse or unsafe and to refuse to leave such a verdict to the jury.' (paragraph [30]).

There may be some tension between that passage and the judgment of Keith J in *R (Cash) v County of Northamptonshire Coroner* [2007] 4 All ER 903 at 913b-914a, which was handed down after the argument in *Bennett* but shortly before the judgment. His conclusion was that, subject to the caveat explained by Lord Woolf in *Douglas Williams,* there was no difference between the approach of a judge in the Crown Court at half-time and a coroner when considering leaving a verdict. Although *Bennett* represents the last word of the Court of Appeal, I should make clear that my decisions do not, in the event, depend upon which precise test is to be applied. I would come to the same conclusion either way. Furthermore, whatever test is adopted it must be applied to the evidence as a whole, without being improperly selective.

11. All before me accepted that the law of England and Wales should be applied to all the decisions to be taken, even though jurisdiction in relation to some of the offences under consideration is not extra-territorial. This has been the consistent practice of coroners in similar cases, and I shall follow it. I should, however, mention a reservation which does not inform my decisions but which may need further consideration in other cases. Historically, one of the functions of a coroner's Jury was to commit those it believed guilty of homicide to trial. That power was long ago abolished. That step could be taken only if the homicide was a crime justiciable in the courts of England and Wales. Generally, actions done outside the jurisdiction which would be crimes within in it, cannot be prosecuted here. There is an exception for some homicides. Thus section 9 of the Offences Against the Person Act 1861 enabled a British subject to be tried here for murder or manslaughter irrespective of where the crime was committed. War crimes legislation provided another exception. So unlawful killing as a verdict at an inquest would pose no difficulty in those circumstances.

It is not obvious that the same should be the case in respect of actions which would be crimes if committed in England or Wales but are not justiciable here. That would include murder or manslaughter committed abroad by non-British nationals. The issue is thrown into focus by the submission (to which I return below) that someone who acts abroad in a way prohibited by the Protection from Harassment Act might be guilty of unlawful act manslaughter. So the fact that I am following the approach which appears to be universal amongst coroners should not be taken as an indication that I have decided the matter. Counsel's researches did not produce any case on judicial review where the issue has been argued or decided. I heard no argument on the matter.

Unlawful Killing: Staged Accident

12. For some years, Mr Al Fayed has expressed the firm belief that his son and the Princess of Wales were murdered in furtherance of a conspiracy to kill them or do them serious harm. This 'broad and overarching allegation' was elaborated in written submissions before the inquest began. Mr Al Fayed believes that the conspiracy was orchestrated by the Duke of Edinburgh and executed by the Secret Intelligence Service on his orders. In the light of the evidence, Mr Mansfield QC has, quite properly, accepted that there is no direct evidence that the Duke played any part in the deaths and has accepted that there is no direct evidence of any involvement of the SIS. Mr Mansfield now submits that the jury should consider an alternative scenario, which he terms the 'troublesome priest thesis': a plan by unknown individuals (perhaps rogue SIS operatives) to stage the crash in order to serve the perceived interests or wishes of the Royal Family or 'the Establishment', as he and Mr Al Fayed term it. He also now submits that the aim of the plot may have been to scare the Princess. That submission may rest in part on a realistic acceptance that there could have been no certainty that the Princess and Mr Al Fayed would die or be seriously harmed. The lethal forces that resulted in the deaths of Diana, Dodi and Henri Paul resulted from the high speed of the Mercedes (about 65 mph at the moment of the collision) and the fact that it impacted with the corner of a pillar. Had the Mercedes hit the side of the pillar or gone out of control and hit the wall on the other side of its carriageway, it would probably have been deflected and the outcome may well have been different. Additionally, the occupants were not wearing seatbelts. The expert evidence was that wearing a seatbelt would either have prevented or at the very least diminished the prospect of a fatal injury.

13. As I said in my Reasons regarding the decision not to call the Duke of Edinburgh to give evidence, the question of whether this was a staged crash is different from the question of whether the Duke could have been involved. But because it is impossible for anyone to argue that particular individuals or agencies were involved, beyond what amounts to speculation, it is necessary to focus on the issue whether the circumstances of the crash point to a staged accident. In other words, would the evidence of the events on the evening of 30 / 31 August 1997 enable the jury to be sure that the crash was staged by somebody of whose identity there is no evidence? In my judgment it would not.

14. It is common ground between the reconstruction experts, and has not been disputed by anybody, that, either at the entrance to the Alma underpass or shortly into it, the Mercedes had a glancing collision with a white, slower moving Fiat Uno. The collision was between the right front corner of the Mercedes and the left rear corner of the Uno. There was a 17cm overlap between the vehicles at the time of collision, and the point of impact was around the dividing line between the two lanes of the carriageway. Debris from the rear left light cluster of the Fiat was found at the scene, as was debris from the front right light cluster of the Mercedes. Additionally, the Fiat left a smear of paint on the Mercedes. There is some doubt about where precisely the collision took place, but of the fact that an impact took place between the Mercedes and the Fiat there is no doubt. The Mercedes clipped the slower moving Fiat as it went past. It would, in my view, be irrational for the jury to come to any conclusion other than that the presence of the Fiat was a potent contributory factor in the loss of control of the Mercedes and thus the crash and the deaths.

15. Mr Mansfield made clear in his oral submissions that the driver of the Fiat Uno, who has never been traced, was not involved in any plot. That is obviously right. The evidence to which he pointed as supporting a staged accident was different. He argued that there was evidence of a dark-coloured vehicle in front of the Mercedes in the left hand lane and evidence of a motorcycle behind it in that lane. As a result, he says that the Mercedes was ‘boxed in’ and, on the evidence, collided with the dark vehicle. He also argues that there is evidence to support a conclusion that a bright light of some kind was deliberately flashed in the eyes of Henri Paul to disorientate him, and that this light may have been flashed by the motorcycle rider or from elsewhere. These are the physical features which he identifies as pointing to a plot.

16. As regards the 'blocking vehicle' and the motorcycle, the difficulties with the argument are as follows.

(a) Given the speed of the Mercedes, any vehicle ahead in its lane and observing the speed limit, or even driving close to the limit, would have impeded its progress and would have appeared to be blocking it. The witness who used the term 'blocking' (Olivier Partouche) said in his first statement to French police that he thought the car in front was being used to slow the Mercedes down to allow paparazzi to take photographs from behind. When asked specific questions in the French investigation, he said that he could not say whether or not the car in front was deliberately being driven slowly. In any event, he maintained that it did not perform any dangerous manoeuvre. See 24/10/07 at p10-11, 23-24 and 33-34. The evidence of his colleague, M Gooroovadoo, was to similar effect (12/3/08, p93).

(b) The other witnesses who saw a vehicle in front of the Mercedes in its lane were the driver and passenger of a car in the opposite carriageway: Benoit Boura and Gaelle L'Hostis. They did not conclude that the car was being driven deliberately slowly or manoeuvring dangerously. They described the car as being in front of the Mercedes as it was going out of control, and then driving off. See 24/10/07 at p47-48, 63-64, 72-74, 83-84, 85-86. In that regard, their evidence should be seen in the context of the evidence of Mohamed Medjahdi and Souad Mouffakir, who were in a car ahead of the Mercedes. See 6/11/07 at p57ff; 12/3/08 at p108ff. They gave evidence that they were in the tunnel when they saw the Mercedes behind them out of control, and that there was no vehicle between their car and the Mercedes. They drove on. Their evidence would seem to suggest that their car was the closest in front of the Mercedes when it lost control in the tunnel. M Boura and Mlle L'Hostis describe the car in front of the Mercedes as rather different from M Medjahdi's car, but their descriptions of the car are also inconsistent from each other. They say that there was a shorter distance between the Mercedes and the car in front than M Medjahdi and Mlle Mouffakir say separated their car from the Mercedes, but judgment of distances in these circumstances can be very problematic.

(c) The experts on road traffic reconstruction all agree that the Mercedes collided with the Uno (because of the debris at the scene) and all agree

that the Mercedes lost control at around the time that collision occurred. There is some dispute about the extent to which that collision influenced the course of the Mercedes. However, Mr Mansfield suggests that a collision which M Boura heard between the Mercedes and a car ahead of it, and described as sounding like 'bumper-to-bumper' and not involving metal, was an impact between the Mercedes and the hypothetical 'blocking vehicle'. Yet there is no debris from that collision and none of the experts has put forward a thesis which involves such a collision.

(d) The presence of a motorcycle relatively close behind the Mercedes does not point to a plot. M Partouche and M Gooroovadoo, who saw the motorcycle behind, gave evidence about seeing camera flashes from a pillion passenger on the motorcycle (24/10/07 at p14 and 26; 12/3/08 at p77 and 83). This would be consistent with the motorcycle of Rat and Darmon, who were among the paparazzi closest to the Mercedes. Although Boura and L'Hostis recall only one person on the motorcycle, and that is not consistent with any known paparazzo believed to have been near the Mercedes, they could well be wrong. And even if they were right, it does not go to prove that the motorcycle was deliberately doing anything dangerous.

17. While various witnesses recall 'bright lights', the evidence is simply not sufficient for a jury to conclude that a light was flashed deliberately to disorientate Henri Paul. Mr Mansfield relies upon the evidence of: Boura; Partouche; Levistre; and Moufakkir. He does not rely upon the evidence of Brian Anderson, and for good reason. The following points need to be made.

(a) On his approach to the tunnel in the opposite direction from the Mercedes, M Boura saw flashes which he initially thought were like speed camera or radar flashes. On reflection, he thought that they were camera flashes (24/10/07, p44).

(b) As mentioned above, M Partouche also thought the flashes were from paparazzi cameras (24/10/07, p36-37).

(c) Mr Mansfield relies upon one witness who gave evidence that, in general, paparazzi do not take pictures on the move. However, various eyewitnesses (including some paparazzi) have given evidence that they

saw camera flashes on the journey in this particular case, not only close to the scene of the crash but also earlier when the Mercedes was in the Place de la Concorde.

(d) Mlle Moufakkir gave evidence of seeing bright lights behind her (6/11/07, p74). However, she immediately acknowledged that those lights could have been the lights of the Mercedes as it swung around after Henri Paul had begun to lose control. Also, she only looked around to see the Mercedes after it was out of control, so her evidence is of limited value as to the cause of the loss of control. Her account about bright lights was not mentioned to the French police or in a television interview.

(e) M Levistre gave evidence about seeing a blinding flash as a motorcycle overtook the Mercedes. However, his evidence plainly falls into the category of 'inherently weak evidence' (in *Galbraith* terms). He spoke about seeing the riders of the motorcycle dismounting and making mysterious signals to each other; a description which is not supported by any other witness. He gave inconsistent accounts about what he saw, and gave an account of his own speed and angle of vision which was difficult to accept. After giving evidence, he contacted the Inquests secretariat with a bizarre story involving bullet casings at the scene of the crash. In short, his evidence could not be a proper foundation for the jury to form any view.

(f) A large number of witnesses did not see any flashing light, despite being specifically questioned on the point. The Metropolitan Police have listed 17 such witnesses. Mr Mansfield points out that some (though not all) of these witnesses would not, or might not, have had a view of the Mercedes after it had actually entered the tunnel. However, some of the witnesses on whose evidence Mr Mansfield relies concerning bright lights (such as Partouche) did not have a view into the tunnel either.

(g) The jury have been shown a video of vehicles entering and leaving the Alma tunnel. The headlamps of vehicles can appear as bright lights as they ascend the slope.

18. In any event, as Mr Mansfield concedes, one cannot look at the circumstances of the collision in isolation from the immediate preparations for the journey of

the Mercedes. This is because the jury could only be sure that there was a plot if they were sure that the supposed plotters knew in advance where to stage the crash. In other words, they would have had to know in advance that the Princess and Dodi Al Fayed would be driven in a single car along the embankment road, and not in a convoy of two vehicles (as was usual) or on some different route. The most direct route to the apartment was not along the embankment road, although there was evidence that professional drivers would use it to avoid heavy traffic in the Champs Elysées. Only one source has been or can be suggested for the plotters' knowledge of the decoy plan and route: Henri Paul.

19. Henri Paul's movements cannot be accounted for between when he went off duty and left the Ritz at 7pm and when he returned at 10pm. However, this period of time is of little relevance. M Paul could not have imparted the information to the supposed plotters during that period. The incontrovertible evidence is that when he went off duty he was not expecting to return. Neither was it expected that Dodi and Diana would return to the Ritz. Their plan was to have dinner at a restaurant called Chez Benoit and then return to the apartment. It was as a result of the attentions of the paparazzi when they set off for the restaurant that Dodi diverted the convoy to the Ritz at the last moment. Henri Paul was then called back. He was first told of the plan to use a third car from the rear of the hotel at 10.30pm. The plan was conceived by Dodi Al Fayed, and communicated at that time by Thierry Rocher to Henri Paul. That is the evidence of M Rocher, it is supported by CCTV evidence and it has been accepted by all Interested Persons.

20. Between that conversation with Rocher and the departure of the Mercedes from the rear of the Ritz, Henri Paul is visible on CCTV footage for all the time except 8 ½ minutes. Shortly after 10.30pm, he is seen to make one of his several walks out into Place Vendome and he cannot be located on the screen for those few minutes. However, Henri Paul could have been in the Place Vendome and outside the range of the cameras. Equally, he could have been within the range of the cameras and indistinct because his movements could not be followed in the darkness. It is theoretically possible that he could have made the three-minute walk to a call box, telephoned 'the plotters' and walked back, but this is pure speculation, unsupported by any kind of evidence. That is the difficulty with this hypothesis. There is nothing from which the jury could properly infer that Henri Paul had passed on information about the plan to leave

from the rear of the Ritz in a third car. The distinction between a legitimate inference and speculation or guesswork is important.

21. For this hypothesis of Henri Paul aiding the assassins to be accepted, the jury would also have to conclude that Henri Paul assured them that the Mercedes would be driven along the embankment road. In other words, Henri Paul must have told the assassins that he would drive the car and he must then have ensured that he would do so. Mr Mansfield does not say that this was a suicide mission, but that Henri Paul had been paid and duped into believing that he was giving information to allow others to arrange protection for the Princess. It is true that Henri Paul had money on him that has not been accounted for and also that in the months before the crash (it is to be noted before Diana and Dodi were even together) Henri Paul was in receipt of income from somewhere other than his Ritz wages. But it is again a matter of speculation, not proper inference, that the source of the money on the evening (about £1,250 in French Francs) was someone interested in the movements of Dodi and Diana and interested in a sinister sense.

22. One also has to consider the inherent difficulties with the plot thesis. On any view, a staged crash would have had to be arranged at less than two hours' notice. As conceived, it would have been an extremely risky operation for the assassins, especially if it was not calculated to kill. The two vehicles supposedly involved in the plot could so easily have been involved in the collision. Additionally, everything that occurred was likely to be seen, especially in view of the considerable paparazzi interest. There were many potential witnesses who give evidence of the various vehicles they saw in addition to the Mercedes (albeit, as it turned out, confused and conflicting). Had the deceased occupants of the car survived, or Trevor Rees not lost his memory as a result of a serious head injury, the prospects of clear evidence of anything untoward being available through the occupants of the car were strong.

23. I take full account of the fact that the assessment of witnesses is the province of the jury. But I also bear in mind that the decision on what verdicts to leave must be taken in the light of all the evidence and that it must not be fudged. I confess that I was strongly tempted to leave this verdict so that the jury could pronounce upon the matter; but I have decided that for me to do so would be unlawful. It became apparent that this was not a viable option when I asked myself what evidence I could identify to the jury on which they could safely conclude this was a staged accident. I have concluded that, on the evidence taken at its

highest, a jury properly directed could not properly be sure that this was a staged crash. In those circumstances, it is my clear legal duty to withdraw the verdict.

24. That is not to say that I shall not sum up to the jury the evidence elicited in relation to the conspiracy allegations. I propose to direct them to consider all the verdicts I leave, in the proper order. Then, if they are unable to reach one of those verdicts, they should return an open verdict. If, on the evidence, the jury were to conclude that there may be something in the staged accident thesis that conclusion might, for example, impact on whether they considered that the crash was, on balance of probability, an accident.

Unlawful Killing: Driving of the Paparazzi

25. Should the verdict of unlawful killing be left to the jury on the basis of the driving of the following vehicles? I shall refer to these as the paparazzi, because the only identified following vehicles are paparazzi and, with the exception of the motorcycle considered above, there has been no submission that the driver of any chasing vehicle was trying to do anything other than get photographs. In relation to these vehicles, I need to consider two possible legal footings for the verdict: gross negligence manslaughter and unlawful act manslaughter. It does not matter that there are now statutory road traffic offences in this country to deal with conduct of this kind; the ordinary law of manslaughter must still be applied for the purposes of these inquests.

Gross Negligence Manslaughter

26. The leading authority on this species of manslaughter is *R v Adomako* [1995] 1 AC 171. Lord Mackay LC set out the ingredients of the offence in the following passage:

> 'On this basis in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether the breach of duty caused the death of the victim. If so, the jury must go on to consider whether the breach of duty should be characterised as gross negligence and therefore a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal…
> The essence of the matter which is supremely a jury question is whether having regard to the risk of death involved, the conduct of the defendant

> was so bad in all the circumstances as to amount in their judgment to a criminal act or omission.' (p187B-E)

In this case, the drivers of the chasing vehicles plainly owed a duty of care to other road users. All advocates were agreed that the jury could properly conclude that those drivers had breached that duty by driving at speed and too close to the Mercedes. All were also agreed that these breaches could be regarded as having contributed to Henri Paul's excessive speed and/or loss of control. The remaining question is whether or not the jury could be sure that the breaches would be so serious as to be criminal.

27. In this regard, I should remind myself that gross negligence manslaughter requires something more than even a very bad error. It requires very serious misconduct amounting to disregard of a serious risk to life. See: *R v Misra and Srivastava* [2005] 1 Cr App R 21. Before leaving this verdict to the jury on this basis, I would have to conclude that the jury could properly form the view that one or more specific paparazzi drove in a criminally negligent fashion which contributed to the crash, or that the actions of a group of paparazzi combined to cause the crash and that they were part of a joint enterprise.

28. The features of the evidence which could support such a conclusion are as follows. First, there is evidence that individual paparazzi drove or rode very close to the Mercedes, thereby limiting its freedom of movement and restricting Henri Paul's options at the critical time. M Hackett recalled at least 2-3 motorcycles riding close to the Mercedes in the Alexandre III tunnel (11/10/07, p6). He was scared when he saw them. M Partouche recalled a 'compact group' of vehicles, including motorcycles 'just behind' the Mercedes (24/10/07, p8). M Gooroovadoo remembered one motorcycle following 'very closely' (12/3/08, p83, p101).

29. Secondly, there is evidence that the paparazzi continually accelerated to follow the Mercedes, while it must have been plain that Henri Paul intended to outrun them. Also, M Lucard gave evidence that Henri Paul, at the rear of the Ritz, told the paparazzi there not to try to follow him, because they would not keep up. There is evidence that a number of paparazzi vehicles followed the Mercedes to the Place de la Concorde and that a number were still behind it in the Alexandre III tunnel and on the approach to the Alma tunnel. Speed was plainly an important factor in the causes of the crash and also in the deaths.

30. Thirdly, it is necessary to take account of the scene. This was a challenging urban road environment at night. As the driver approaches the Alma underpass, there is a turn to the left which causes many drivers to go off their line. There is a slip road from the right, described by one witness as the most dangerous junction in Paris. There is a significant incline down. The wall and pillars in the tunnel present particular hazards, as the road traffic experts accepted. Because of the darkness, visibility would have been limited.

31. In view of all those features, I consider that the driving of certain paparazzi could be regarded by the jury as criminally negligent. This is a borderline case in *Galbraith* terms, but the verdict should be left to the jury. On one view of the evidence, the conduct could be fairly characterised as participating in a race through the centre of Paris at twice the speed limit. Some statements of the paparazzi themselves could lead to this conclusion. In addition, the cross-examination of M Darmon provided some support for a conclusion that, after the crash, the paparazzi continued to seek the best picture without regard to helping the injured. This could be relied upon by the jury as indicative of their state of mind before the crash.

Unlawful Act Manslaughter

32. In the written submissions of the Ritz on verdicts, a second, and novel basis for leaving the verdict of unlawful killing in relation to the chasing vehicles was advanced. This basis is unlawful act manslaughter based upon an offence under section 1 of the Protection from Harassment Act 1997. The Act had come into force in June 1997.

33. That section provides as follows:

> '(1) A person must not pursue a course of conduct –
> (a) which amounts to harassment of another, and
> (b) which he knows or ought to know amounts to harassment of the other.
> …
> (2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of another.'

Section 2 makes such conduct a criminal offence. The term 'harassment' is not defined in the Act, although section 7 contains some guidance as to interpretation. Section 7(2) provides that references to harassment include alarming a person or causing distress to a person.

34. The argument of Mr Croxford QC is that the conduct of the paparazzi, from the arrival at Le Bourget airport, can properly be characterised as harassment. He submits that that conduct can then be regarded as the basis for an offence of manslaughter by an unlawful and dangerous act, as set out in *DPP v Newbury* [1977] AC 500 at 506-7. The principal reason he urges me to leave a verdict on this basis is that a verdict of unlawful killing could be returned in relation to the paparazzi without the jury having to find a criminal degree of negligence in the way in which one or more of the paparazzi drove at or about the time of the crash.

35. There is certainly evidence that a number of the paparazzi followed Diana and Dodi for some hours that day. There is evidence that some pursued them by road. There is evidence that some of the paparazzi were involved in a stand-off with security staff outside Dodi's apartment. Mr Horwell QC argued that this conduct could not be 'harassment' for the purposes of the Act. He made reference to *Tuppen v Microsoft Corporation* [2000] QBD, where Douglas Brown J concluded that the Act was directed at conduct such as stalking, persistent anti-social conduct by neighbours and racial harassment. In the event, it is not necessary for me to determine whether the conduct of specific paparazzi could amount to harassment, because I have decided that the verdict should not be left on this basis for other reasons.

36. In *Andrews v DPP* [1937] AC 576, the House of Lords considered the inter-relation of unlawful act manslaughter and gross negligence manslaughter in the context of 'motor homicide'. At 585, Lord Atkin said:

> 'There is an obvious difference in the law of manslaughter between doing an unlawful act and doing a lawful act with a degree of carelessness which the Legislature makes criminal. If it were otherwise a man who killed another while driving without due care and attention would ex necessitate commit manslaughter.'

As Archbold puts the matter at paragraph 19-100: 'an act which is otherwise lawful (such as driving a vehicle) does not become an unlawful act for these purposes if it contravenes the criminal law merely by the manner of its execution'. To be the foundation of the offence, an act must be inherently unlawful and objectively dangerous.

37. Mr Burnett QC submits that the conduct of the paparazzi (following people using vehicles and taking photographs) was not inherently unlawful. If it was criminal, that was by virtue of the manner of its execution (persistent and liable to distress). He says that this course of conduct is *a fortiori* Lord Atkin's driving

analogy. I accept his submissions. Where a series of acts, some not dangerous and all individually legal in themselves, are rendered criminal because they form a course of conduct and are performed in a particular way, that cannot form the basis of unlawful act manslaughter. If two paparazzi drove in exactly the same way on the final journey, why should one be guilty of manslaughter and the other not guilty, simply because the first took photographs with greater zeal earlier in the day?

38. Mr Burnett also submits that, even if there were a legal basis for leaving the verdict to the jury on this ground, I could have regard to the residual discretion to withdraw a verdict which would confuse the jury (referred to by Lord Woolf in the passage from *Douglas-Williams* quoted above). Mr Croxford responds that that discretion only exists in 'marginal' cases. I disagree. Lord Woolf said in terms that 'the strength of the evidence is not the only consideration' and that 'in relation to *wider issues*, the coroner has a broader discretion'. He was not limiting his remarks to marginal cases. He was recognising that the need not to confuse and overburden the jury is a factor in some decisions on verdicts.

39. In this case, it would be confusing to leave a single verdict of 'unlawful killing (following vehicles)' on two different bases. The jury would have to be directed, when considering the first basis (gross negligence), to focus upon the driving of the chasing vehicles identified by witnesses on the final journey only, and to apply a standard of gross, criminal negligence. In that exercise, they would not have to identify the vehicles concerned with any specific paparazzi. When considering the second basis (harassment), the jury would have to consider in respect of each individual paparazzo: where he had been and what precisely he had done over the course of the day (to enable the question whether there was a course of conduct to be answered); and whether or not his actions amounted to harassment. Additionally, the questions would arise whether the harassment in question was objectively dangerous and whether it was causative of death.

40. It seems to me that, even if I were wrong in my conclusion that this is not a basis for unlawful act manslaughter at all, it would not be appropriate to leave unlawful killing on this basis.

Unlawful Killing: Driving of the Mercedes

41. This verdict should only be left to the jury if they could properly find that Henri Paul's driving was grossly negligent (in the sense considered above) and

caused the crash. In the course of argument the question arose whether, if unlawful killing by gross negligence were left on the part of the paparazzi, it logically should also be left in respect of Henri Paul. To put it simply, as I have already indicated, the jury could conclude that Henri Paul and a number of paparazzi were engaged in a race through central Paris. Each could have broken off the chase at any time. It seems to me that, although there may be differences when the jury comes to consider questions of culpability, when one considers whether the verdict should be left at all there is, in truth, no great difference. I understood Mr Croxford to accept that on behalf of the Ritz. The essential features of the driving of Henri Paul that go to the question of his culpability are as follows.

42. First, M Paul undoubtedly drove at around twice the speed limit on a busy urban road. There is evidence that he did so as a result of a deliberate decision to outrun the paparazzi. He could have slowed down at any time, without risking anything worse than some photographs being taken. By driving at this speed, he knowingly impaired his ability to react to situations in the road, such as the presence of the Fiat Uno ahead. The presence of the paparazzi behind could be regarded as an aggravating factor. It may be thought more dangerous to drive fast when one knows that other vehicles will be driven close behind. The jury could conclude that he was racing. I am quite unable to accept the submission of Mr Keen QC that speed was not a causative factor in the crash.

43. Secondly, there is evidence on which the jury could conclude that Henri Paul had consumed alcohol up to twice the UK drink driving limit. There were real flaws in the chain of custody of samples and the recording of results by the French pathologists and toxicologists. Furthermore, the results of tests for carboxyhaemoglobin were difficult for anyone to explain. On the other hand, only one of the four experts called to give evidence thought the test results for alcohol were probably unreliable (as to the other three, see: (i) 22/1/08, p54 (Forrest ‘comfortably satisfied’ as to reliability); (ii) 30/1/08, p158 (Vanezis had ‘nagging doubts’ but preferred not to answer questions about probability); (iii) 31/1/08, p41 (Oliver thought that the combination of toxicology findings was ‘strongly indicative’ that the samples came from Henri Paul)). After they gave their evidence, further evidence was called which could be regarded as establishing that the sample tested for carboxyhaemoglobin was matched with Henri Paul by DNA profiling (see 6/3/08, p124-9). It will be for the jury to consider all that evidence in the round, and in the context of witness evidence about Henri Paul’s demeanour at the Ritz and about his medical history. In any

event, the toxicological evidence has to be considered in the context of the whole of the evidence concerning his consumption of alcohol.

44. If the jury formed the view that Henri Paul had drunk something like that amount of alcohol, they could certainly decide that he had behaved negligently in choosing to drive a car. Given the speed of events on the approach to the Alma underpass, it is open to the jury to find that Henri Paul's reactions were impaired and that this contributed to his loss of control of the car.

45. Thirdly, as with the paparazzi, the jury is entitled to take account of the features of the road environment which presented additional hazards (see above).

46. Overall, while one has to distinguish the supposed negligence of the paparazzi and the supposed negligence of Henri Paul, there would be something unrealistic about my determining that one could be viewed as criminal while the other could not be so viewed. All these drivers were facing the same road conditions. All were free agents and had the choice to slow down, without any real adverse consequence.

47. For all these reasons, I have decided that this verdict should also be left to the jury.

Form of Verdicts to be Left

48. As I said at the outset, the jury will be left the following short-form verdicts in each case:

(1) Unlawful killing (grossly negligent driving of the paparazzi);

(2) Unlawful killing (grossly negligent driving of the Mercedes);

(3) Unlawful killing (grossly negligent driving of the paparazzi and grossly negligent driving of the Mercedes);

(4) Accidental death;

(5) Open verdict.

From the oral submissions made, it seems that there is no objection to the use of words in brackets to distinguish the first three verdicts. It is important that the meaning of any unlawful killing verdict should be clear. As recommended in *R v Wolverhampton Coroner, Ex Part McCurbin* [1990] 1 WLR 719 at 728C-D (Woolf LJ), I shall direct the jury to consider the first three verdicts, applying the criminal standard of proof, before they move on to consider the fourth verdict,

for which they would apply the civil standard. If the jury are not sure that the evidence justifies one of the first three verdicts and do not think it probable that the crash was an accident, they will return an open verdict.

49. As the court in *Douglas-Williams* suggested, I shall be producing a written set of legal directions on the short-form verdicts, which will reflect the legal approach taken in this Ruling.

Narrative Conclusion / Questions

50. As I mentioned at the outset, all Interested Persons agree that the jury should be asked to supplement their verdict on each Inquisition with a narrative conclusion of some kind. This is because a bare verdict might be unsatisfactory or uninformative. The written submissions of Mr Al Fayed suggest that the supplementary conclusions of the jury should be elicited by means of a questionnaire consisting of 41 questions. I would not accept the use of such a detailed questionnaire, since it would seriously complicate the task of the jury and would encourage them to express views on matters outside the ambit of the statutory questions, in breach of Rule 36(2).

51. Mr Croxford puts forward a much more realistic questionnaire, which seeks to elicit the jury's views of the immediate causes of the crash. I accept that many of the points addressed in the questionnaire need to be put to the jury, but am reluctant to ask them to answer questions involving concepts such as 'predominant cause'. Also, his questionnaire includes one question (no. 3) which is best addressed through legal directions on gross negligence manslaughter.

52. I have decided that the best course is to ask the jury to supplement the short-form verdict with an expanded narrative conclusion, which would be written in section 3 of each Inquisition. This would be drafted as follows:

> '[Diana Princess of Wales / Dodi Al Fayed] died [details of time and place of death], as the result of a motor crash in the Alma Underpass in Paris on 31 August 1997 at around 12.22am. The crash was caused or contributed to by [delete as appropriate]:
>
> (i) the speed and manner of driving of the Mercedes;
>
> (ii) the speed and manner of driving of the following vehicles (paparazzi);

(iii) the manner of driving of a white Fiat Uno ahead of the Mercedes;

(iv) the impairment of the judgment of the driver of the Mercedes through alcohol;

(v) one or more bright lights.

In addition, the death of the deceased was caused or contributed to by [delete as appropriate]:

(i) the fact that the deceased was not wearing a seatbelt;

(ii) the fact that the Mercedes struck the pillar in the Alma tunnel (rather than colliding with something else);

[In Diana's case only -]

(iii) the loss of an opportunity to render medical treatment.'

53. The jury will be asked to complete this narrative conclusion whatever verdict they enter in section 4 of each Inquisition.