

<p>1 Tuesday, 2 April 2019 2 (10.00 am) 3 Proceedings in the absence of the jury 4 THE CORONER: Just before we begin, I think it would be 5 helpful if I summarised what I felt were agreed or not 6 agreed issues. It is quite a long list, but I don't 7 think it is as bad as it sounds. 8 As I understand it -- and you don't need to respond 9 now -- the questionnaire approach is agreed. 10 Question 1, the basic facts, is agreed. 11 Question 2, on attribution: there is a suggestion by 12 Mr Johnson about a slight rewording, which seems 13 sensible, but I will hear what you say. 14 Question 3 is conclusion and unlawful killing. What 15 should happen to that? 16 Question 4, the warning call: Mr Johnson suggests, 17 as I think my team does too, that the jury should be 18 directed to answer yes to all questions. 19 Question 5, on the timings: there are suggestions by 20 Ms Williams and Mr Thomas about matters to be 21 considered. I think Mr Johnson refers to a direction on 22 a permissible range of timings. 23 Question 6, the adequacy of the warning call: 24 whether that question should be asked at all. 25 Question 7, police response to warning call: whether</p> <p style="text-align: center;">Page 1</p>	<p>1 can be completed on the form, since, as I understand it, 2 that is not going to be put before the jury in any way 3 as an issue. So I can simply direct them that they have 4 heard the evidence of Hilda Turner and there is no need 5 for further evidence on that. That is one suggestion 6 of mine. 7 Thirdly, whether they will have my summing up, 8 direction of law only. They will not have individual 9 sheets, as I understand it, which are referred to in the 10 notes. That was something used in Hillsborough, but we 11 don't need, so far as I can see. 12 Then finally, any suggested amendments to the 13 summing up directions of law. For example, Ms Williams 14 refers to deleting "significant" and replacing with 15 "a more than minimal or trivial contribution". And 16 I think Mr Johnson refers to an increased direction on 17 hindsight. 18 Finally on that aspect, I would invite any 19 observations as to whether or not it is necessary for 20 there to be duplication, as there is at the moment, of 21 my draft directions of law, with the notes to the 22 questionnaire, whether both should be given or whether 23 there should be some reorganisation. 24 So I hope that is helpful as an introduction. 25 I propose to hear you all. I remind you that I'm very</p> <p style="text-align: center;">Page 3</p>
<p>1 that question should be asked at all and, if so, what 2 relevant matters should be left to the jury, and also 3 the KRW Law submission that a second question should be 4 added in relation to planning and preparation. 5 Question 8, forewarning: whether the prison 6 conversation and Dog Pool should be left to the jury. 7 Possibly Talk of the Town if anybody wishes to make that 8 submission. And if any topic is in, what matters are to 9 be considered. 10 On questions 6 to 8, if they remain, the 11 probable/possible issue. And if possible, in relation 12 to question 6, whether the possible questions should be 13 reworded in order to match the probable questions. 14 That seems to be the essence of the submissions. 15 One or two additional points: whether the records of 16 Inquests should be completed. It is my suggestion, but 17 I am open to argument about this, that the records of 18 Inquests of the 21 should be completed for the jury, 19 except under "how", they would write "See 20 questionnaire", and would be invited to enter the 21 conclusion, which should be left blank for them to 22 conclude and then sign. 23 So the jury would have the questionnaire; 21 records 24 of Inquest, including, in relation to Tommy Marsh, 25 perhaps details of the particulars of his date of death</p> <p style="text-align: center;">Page 2</p>	<p>1 grateful for your written submissions, which are 2 very helpful. 3 I propose to give decisions today, and an oral 4 summary so that we can proceed, which will be provided 5 later in writing unless anybody says otherwise. And 6 then, depending on what I decide, I will amend the 7 summing-up directions of law this evening, for any 8 further submissions to be in writing by 9 o'clock 9 tomorrow morning. 10 The questionnaire will be amended, with any further 11 submissions to be in writing by 9 o'clock tomorrow, so 12 that tomorrow there will be final evidence and summing 13 up, which will be in the region of six hours, with the 14 jury hopefully to go out on Thursday. Those are 15 my suggestions. 16 Who is going first? 17 Submissions on behalf of the FAMILIES represented by KRW LAW 18 MR STOATE: Good morning, Sir. 19 THE CORONER: Good morning, Mr Stoate. 20 MR STOATE: I should just say very briefly, and this is just 21 by way of a brief introduction, we, as you know, Sir, 22 represent a large team, a large group of families. 23 I can assure you we are not planning an hour each 24 but more like ten minutes each. We will hopefully be 25 very brief. We have taken on board what you say about</p> <p style="text-align: center;">Page 4</p>

1 having had our submissions, and we are very grateful
 2 for that.
 3 Just by way of introduction -- I don't know whether
 4 you want us to take it in the order you took there, Sir?
 5 THE CORONER: I will take it in the order you are
 6 comfortable with.
 7 MR STOATE: Thank you, Sir. Questions 1 and 2 you said are
 8 agreed. Yes, we have no further submissions to advance
 9 on those.
 10 The question on unlawful killing --
 11 THE CORONER: Do you agree with Mr Johnson's rewording?
 12 MR STOATE: Yes. Can I just confirm Mr Johnson's
 13 new wording?
 14 THE CORONER: "Was the operation that resulted in the
 15 planting and detonation of bombs in the Mulberry Bush
 16 and the Tavern in the Town on 21 November 1974 conducted
 17 by members of the IRA?"
 18 MR STOATE: Yes, we agree.
 19 I can take the next question briefly, from our
 20 perspective, on unlawful killing if I may.
 21 THE CORONER: Yes.
 22 MR STOATE: The phrase "reluctance" has been used and
 23 stressed throughout the submissions of Ms Williams and
 24 Ms Patrick and your team, Sir. And I would adopt that
 25 phrase for what I'm about to say. And it is with some

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1 reluctance that we do make these submissions, for
 2 reasons which will be readily understandable to
 3 everybody.
 4 Your counsel's submissions at paragraph 32(b)3,
 5 page 15, effectively --
 6 THE CORONER: Yes.
 7 MR STOATE: Questions 3 and 4, I'm focusing on. Question 3,
 8 that is posed there by your team, is:
 9 "Should the jury be directed to conclude that the 21
 10 were unlawfully killed, regardless of how the questions
 11 are posed?"
 12 Your team's answer is, "Yes, we agree."
 13 Question 4:
 14 "Should the jury be left a box in which to provide
 15 an undirected explanation for their conclusion?"
 16 Your team's answer is, "No".
 17 For the same reason, we agree.
 18 THE CORONER: So just an additional question: do you agree,
 19 then, with the approach in my draft directions? I'm
 20 sorry about the numbers, which go completely haywire.
 21 But 42, under the heading "Conclusion and unlawful
 22 killings", 42, 43 and 44.
 23 MR STOATE: We do, Sir, yes.
 24 THE CORONER: Thank you.
 25 MR STOATE: Just in case it is relevant, because I suspect

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1 there will be further submissions on this, Sir -- and we
 2 will be very grateful, if it is necessary, for a brief
 3 response -- we think that the alternatives proposed by
 4 West Midlands Police and in particular what is said at
 5 their paragraph 28 of their written submissions --
 6 THE CORONER: Yes.
 7 MR STOATE: The second half, beginning:
 8 "Alternatively, if the jury are to be left ..."
 9 THE CORONER: Yes.
 10 MR STOATE: Without delving into the specifics, we suggest
 11 that there is a significant risk of overburdening the
 12 jury with unnecessary complication in light of what is
 13 otherwise a very clear direction. They have enough to
 14 think about, effectively.
 15 And if the submissions of BJC, your team and now us
 16 are correct about the need to leave manslaughter as an
 17 alternative, which they may be, then my learned friend
 18 Mr Johnson's submissions don't provide much comfort for
 19 what happens in that scenario.
 20 So we weigh in behind the other two teams, but we
 21 just would say those two points in addition.
 22 Sir, on probable causes, I went to the highest
 23 standard first, obviously, as it remains for now. There
 24 has been interesting debate about Maughan and the obiter
 25 dicta in that case but we are content to say the

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1 position is as it is now.
 2 The probable causes: we think there is a case for
 3 inclusion of these at question 7. Sir, in your team's
 4 submissions of effectively what is the case of the
 5 families as a whole, which I think begins -- sorry, Sir,
 6 I don't have this on paper yet.
 7 Ah, their paragraph 37, the crux of the argument
 8 advanced --
 9 THE CORONER: Yes.
 10 MR STOATE: -- is, if I may say, not an unfair
 11 characterisation. They would say it is necessarily
 12 simplified, given the complexity of the evidence, the
 13 number of detailed questions and what, Sir, you will
 14 have seen from our proposed bullet points, but that is
 15 not an unfair characterisation of the case in summary.
 16 But we say, not only does it reach "possible", it
 17 reaches "probable", for reasons which on that point
 18 Mr Thomas will address you very briefly.
 19 I will only pause in my part, just addressing legal
 20 issues, to address a couple of very specific issues on
 21 that front which arise. So this is in the context
 22 largely of evacuation and the --
 23 THE CORONER: To question 7?
 24 MR STOATE: Yes, on question 7, "the avoidable failure
 25 to ..." as it is put in your team's submissions.

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1 THE CORONER: Yes.
 2 MR STOATE: First, only to say, because I'm dealing with the
 3 legal points, we cannot accept and do not accept, and
 4 nor do your team, but we adopt the submissions there
 5 made that that would necessarily be a matter requiring
 6 expert evidence.
 7 For the reasons set out by your team, it is the
 8 initiative of junior officers. PC Pedersen's own
 9 evidence that if he had been informed of the code, he
 10 would have evacuated. He was the most senior officer
 11 and, as your team say, it is not disputed that he was in
 12 such a position to take that decision. And therefore we
 13 say the question of expert evidence falls away.
 14 If there is to be further, my learned friend
 15 Mr Johnson recites the case of Stenning,
 16 paragraph 63, Sir.
 17 It is a civil claim in negligence, arising out of
 18 a prisoner who was stabbed. Effectively the question
 19 was whether or not there was insufficient
 20 risk assessment.
 21 THE CORONER: 63?
 22 MR STOATE: Yes, that's the paragraph referred to in
 23 Mr Johnson's submissions.
 24 THE CORONER: Yes.
 25 MR STOATE: It is not an enormous point, Sir --

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1 THE CORONER: Just remind me which paragraph.
 2 MR STOATE: 63 of Mr Johnson's submissions --
 3 THE CORONER: The paragraph, not the page. Yes. "We accept
 4 Mr Walker's submission".
 5 MR STOATE: Yes, indeed. Mr Johnson has cited the bit in
 6 the last sentence, effectively:
 7 "It would have been quite wrong for any judge to
 8 make a finding of negligence."
 9 We say you have to read the whole context of the
 10 paragraph. The exact sentence you were just reading
 11 out, Sir: we accept Mr Walker's submissions that there
 12 may be cases where a judge can properly make a finding
 13 that experienced prison officers were negligent in
 14 carrying out a risk assessment.
 15 And so forth.
 16 THE CORONER: Yes.
 17 MR STOATE: The basis of that case was that they found, to
 18 quote the judge, "There really was no evidence which
 19 entitled the judge ..."
 20 And that was the case for the absence of expert
 21 evidence being a reason that the judge was not entitled
 22 to find. That is not the case here, for all the reasons
 23 we set out. We just pause to say that.
 24 And just very briefly, to touch upon the point of
 25 the impressiveness of the response which was elicited

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1 from the medical experts. They were just that: where
 2 the words "impressive" are used, upon my detailed
 3 analysis of the transcripts, that is in relation to
 4 medical response. And of course we are focusing largely
 5 in our discussions around question 7. And what we would
 6 like the jury to focus on -- and to be directed to focus
 7 on -- are around training, evacuation, actions that
 8 could have been taken in order to attempt reasonably to
 9 prevent serious injury and loss of life prior to
 10 the explosion.
 11 I just pause to make that point. It is important to
 12 contextualise how the word "impressive" was used.
 13 So the corollaries to all that are, we say --
 14 because this is relevant to question 6, and I hope this
 15 is not jumping around too much. We could not accept, as
 16 either lawful or a just outcome in the case, a directed
 17 answer to question 6 as it is suggested.
 18 Sir, in your team's paragraph 29, there is
 19 a reformulation of question 6.
 20 THE CORONER: Sorry, which paragraph?
 21 MR STOATE: Your team's paragraph 29, Sir, which is page 13,
 22 which says, Sir:
 23 "Were you to find that questions 7 and 8 should not
 24 be left, and 6 should be re-drafted ..."
 25 And it says, final sentence:

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1 "It is proposed that the question should be
 2 reformulated with the jury directed to answer it
 3 'yes' ..."
 4 And then the statement put there. And for the
 5 reasons we have explained at length in our submissions,
 6 and my learned friends Mr Thomas and Morgan will touch
 7 on briefly today, we couldn't accept that as a just or
 8 lawful outcome.
 9 We don't think the circumstances of this Inquest
 10 would lawfully sustain a direction of "yes" to that
 11 statement. We say the jury could decide that this was
 12 a case where there is sufficient evidence to the
 13 contrary in what is said there.
 14 But just pausing on the legal point, this is
 15 something I discussed with my learned friend Mr Hill,
 16 a point of interest, his proposition that, were you not
 17 to leave those questions, Article 2 would dissolve,
 18 effectively, and this would become a Jamieson Inquest.
 19 It is an interesting question, and we have debated
 20 it and kicked it around. No authority appears to be
 21 cited for the proposition. I would suggest, at the
 22 least -- I trespass on this case somewhat trepidatiously
 23 because it has a somewhat uncertain status with Tainton,
 24 but it would at least suggest some significant tension
 25 with Tainton -- just by way of example; I am not

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1 suggesting Tainton issues apply here -- where
 2 effectively the completing of Article 2, as well as
 3 fairness to the bereaved family, in that case required
 4 the inclusion of a record of failings by a State body,
 5 albeit in that case non-causative.
 6 THE CORONER: Did Lord Justice Leveson specifically relate
 7 that to it being an Article 2 Inquest? Or was
 8 it just --
 9 MR STOATE: Yes, I think so. I think that is a fair
 10 characterisation.
 11 THE CORONER: I don't think you need spend too much time
 12 on this.
 13 MR STOATE: Yes, I was hoping not. I can come back to that
 14 and look it up.
 15 THE CORONER: Yes.
 16 MR STOATE: But I am fairly sure it was all in the context
 17 of: does Article 2 require this?
 18 THE CORONER: Yes. Well, if we get to that situation, we
 19 will have further argument.
 20 MR STOATE: Absolutely. On Tainton we stand ready to make
 21 any submissions, but we don't think it is necessary at
 22 this stage, save to say that we don't accept the
 23 proposition that were you to not leave question 6 and 7
 24 Article 2 simply dissolves.
 25 We say it would be wrong not to leave question 7 in

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1 particular. But perhaps we can come back to that if it
 2 is likely to be a serious issue.
 3 On question 7, Sir, you will have seen -- I am not
 4 going to spend any great time on this, Sir, unless there
 5 is anything particular you wish us to say. You have
 6 seen our primary submission. The position advanced by
 7 us is that the issues of preparedness, planning and so
 8 forth, and training, are so central as to require
 9 a separate question and listed bullet-point guidance.
 10 If you accept that submission, we stand ready to
 11 refine -- we are very well aware we have put in a long
 12 list, just to show you exactly the types of issues that
 13 we think the jury should focus their minds on. we
 14 weren't under the illusion that that would go in --
 15 THE CORONER: 28 bullet points.
 16 MR STOATE: Indeed -- without the red pen. But we have the
 17 red pen, cap off, and we will make any changes -- if you
 18 were with us on that, for the reasons we express in our
 19 written submissions, we would take a sensible view on
 20 what could properly be left.
 21 If you are against us on that, our secondary
 22 position would very much be to adopt gratefully the
 23 position of Ms Williams and Ms Patrick, which is that
 24 question 7, as drafted -- which we say absolutely must
 25 go to the jury in some form -- should be formulated, and

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1 the guidance, sufficiently widely to encompass the
 2 tissue of training and preparedness generally.
 3 THE CORONER: Does that appear anywhere in the matters to be
 4 considered? Just remind me. There were so many of
 5 them. It is at 24, isn't it?
 6 MR STOATE: It does --
 7 THE CORONER: (xxiv) -- Roman 24.
 8 MR STOATE: Sir, you will have seen -- we obviously think it
 9 requires more detailed exposition to the jury of the
 10 types of issues --
 11 THE CORONER: Just remind me of what Ms Williams'
 12 submission is.
 13 It is to add, I think, to (ii) and (viii), is that
 14 right? I am sure, if I have that wrong, Ms Williams
 15 will tell me later.
 16 MR STOATE: She will. I was just trying to find it in their
 17 submissions.
 18 To address you very briefly, Sir, on the question of
 19 Lewis: I suspect it will not come as a surprise to you,
 20 Sir, that we say Lewis has a place or has a role in this
 21 Inquest.
 22 And in fact, the way in which the questions are
 23 formulated in that Hillsborough style now are, we say,
 24 the right way.
 25 THE CORONER: You mean 6, 7 and 8?

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1 MR STOATE: Yes, specifically in relation to Lewis, yes, we
 2 say that is right.
 3 With respect to your --
 4 THE CORONER: Just using short forms so that I understand
 5 you, it is your submission that questions 6, 7 and 8
 6 should remain subject to the additional question --
 7 I will call it 7 (a) for now --
 8 MR STOATE: Yes.
 9 THE CORONER: All with a possible alternative, to use
 10 short form --
 11 MR STOATE: On 6, could I pause on 6 and perhaps hear the
 12 submissions by Mr Johnson on 6, because I think he's
 13 proposing the change if I have that right.
 14 THE CORONER: We will wait and see.
 15 MR STOATE: Yes, indeed.
 16 Focusing on 7.
 17 THE CORONER: Yes.
 18 MR STOATE: We say Lewis has a place. With respect, we
 19 say -- there is a suggestion in your team's submissions
 20 that it leaves coroners in a difficult position. Sir,
 21 we don't think you would be in any difficulty. We don't
 22 think the jury would be in any difficulty. They weren't
 23 in Hillsborough, they weren't in Westminster and we
 24 don't think they would be here.
 25 Plainly, we think, in a case -- for all the reasons

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1 we have already said, we don't need to spend any time
 2 on it -- where we are looking at something from
 3 a distance in time, it has a place to assist the jury.
 4 It can assist the jury in establishing the salient
 5 central features, which I set out deliberately at
 6 length, or we set out in our submissions in relation to
 7 Middleton just how many times the importance of setting
 8 out the central salient features is stressed.
 9 Lewis has a particular place in a case like this.
 10 We agree with your team's formulation of a realistic
 11 possibility. We adopt that.
 12 THE CORONER: That is a Hillsborough phrase.
 13 MR STOATE: Yes, that is Lord Justice Goldring. There are
 14 many ways to skin that cat but that seems to be
 15 a sensible way, if we may say, with respect to --
 16 THE CORONER: That is to avoid the possibility
 17 of speculation.
 18 MR STOATE: Yes. Yes, a realistic possibility.
 19 There have been suggestions throughout the case or
 20 more than fanciful -- I can think of others, but the
 21 formulation used by Lord Justice Goldring and adopted by
 22 your team, we would agree with.
 23 We say firmly that Lewis is not -- and there is no
 24 basis in principle for it to be left only in cases
 25 involving prevention of future death reports, for all

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1 the reasons already expressed by us and by your team --
 2 THE CORONER: I don't think anybody suggests that now.
 3 Mr Johnson, you don't suggest --
 4 MR STOATE: That is dead. That is a dead issue.
 5 THE CORONER: I made an error in number 17, Guidance, which
 6 was not deliberate, it was an error, and indeed it was
 7 contrary to what I said in Lepage. But that caused
 8 a bit of a problem with Hillsborough --
 9 MR STOATE: Pausing, as an Inquest lawyer, if I could have
 10 that in writing it would be very gratefully received.
 11 Sir, we also say -- something of a passion of
 12 ours -- we say that also there is a reason for you to
 13 give the principles of Article 2 purposive effect
 14 through Lewis. That is what it is there for.
 15 We appreciate what is said and what, I suspect, will
 16 be said about Article 2 not just being the record of
 17 Inquest. But it would be quite wrong to think that
 18 families and the public do not take something from
 19 a record of Inquest which elicits as much as is possible
 20 and just, in terms of the salient features, but also
 21 gives maximum effect to the central purposes of
 22 Article 2. Uncovering and recording as many of the
 23 salient facts as the case demands.
 24 That is really important and that's why I say that
 25 that is an absolutely central feature of Lewis, which

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1 takes it far outside the PFD point.
 2 So yes, what that boils down to is question 7 as
 3 drafted. Mr Thomas will address you on why there are
 4 probable causes as well. If you are with us on that, we
 5 say both should be left in the way that they are
 6 drafted currently.
 7 On Galbraith plus, I hope you can take as read,
 8 given that that is established practice, that the issues
 9 we have submitted before to you, both in writing and
 10 anything we say today, we have applied our own Galbraith
 11 plus filter to, so we accept all of that law.
 12 There is some debate between us and your legal team,
 13 Sir, as to whether or not the jury should be guided
 14 specifically in relation to the question 7 bullet points
 15 28 and 29. My Latin briefly failed me there.
 16 THE CORONER: 28?
 17 MR STOATE: No, 18 and 19. My Latin has indeed failed me.
 18 18 and 19.
 19 THE CORONER: 18.
 20 MR STOATE: "The factors to be taken into account when
 21 deciding to evacuate a building."
 22 It is not a strong submission but we mentioned
 23 that -- we are necessarily against this because you will
 24 realise the context of our submissions generally about
 25 this being an IRA crime. But there is no positive

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1 evidence that they were taken into account.
 2 Effectively, the officers thought it was a hoax, or were
 3 not told there was a code. And that's why they
 4 didn't evacuate.
 5 So to sort of suggest to the jury in that way that
 6 there was a mind to return to a detailed exercise of
 7 weighing factors, there may well have been, but that is
 8 not the evidence of the officers. There may well should
 9 have been.
 10 I very briefly pause to say that in our submissions
 11 we suggested the points advanced by Mick Murray in
 12 relation to Mr Mullin do not satisfy Galbraith plus such
 13 that they should be left as guidance to the jury.
 14 It is not a strong point I advance, but I just
 15 suggest there is an inherent unreliability there and
 16 that they are unsafe on that basis. But I'm not going
 17 to take a strong point on those.
 18 Sir, at this point, unless I can assist you on some
 19 of the legal issues which have been raised -- which
 20 I have been focusing my own thinking for our team on
 21 where legal matters arise -- I might pause at this stage
 22 to say that my learned friend Mr Thomas obviously is
 23 going to address you briefly on points in question 7
 24 which reach both the probably and possibly standard.
 25 And then Mr Morgan, Sir, will address you briefly in

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1 relation to forewarning and the specific issues which
 2 relate to -- sorry, not forewarning, no, the specific
 3 issues in relation to Tommy Marsh. So the
 4 cordon, effectively.
 5 THE CORONER: Yes.
 6 MR STOATE: On forewarning you have our submissions,
 7 effectively --
 8 THE CORONER: Yes.
 9 MR STOATE: -- so unless you really want to push us
 10 further --
 11 THE CORONER: No. Are you saying anything about the Talk of
 12 the Town?
 13 MR STOATE: We already thought not, before we heard the rest
 14 of the evidence, if that was not premature. We didn't
 15 think it would improve, and it didn't.
 16 THE CORONER: No.
 17 Thank you very much.
 18 MR STOATE: Thank you, Sir. I stand willing to answer any
 19 further questions on that at any point.
 20 THE CORONER: Yes. It may be that other arguments will
 21 arise for further discussion.
 22 MR STOATE: Thank you, Sir.
 23 THE CORONER: Mr Thomas.
 24 Further submissions on behalf of the FAMILIES represented by
 25 KRW LAW

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1 MR THOMAS: Good morning, Sir.
 2 THE CORONER: Good morning.
 3 MR THOMAS: Sir, I am going to be brief. I'm just setting
 4 out very briefly why we say there is a sufficiency of
 5 evidence in relation to question 7, and whether or not
 6 it reaches the "possible" and the "probable" thresholds
 7 to be safe to leave to a jury.
 8 Sir, the evidence, we say, is reasonably clear. We
 9 remind you of the evidence. Sir, can I make it clear,
 10 if I am touching upon the evidence it is only so that
 11 I can make good the submissions.
 12 THE CORONER: Yes.
 13 MR THOMAS: We remind you of the evidence on Day 8, when
 14 learned counsel Mr Hill was questioning
 15 Sergeant Pedersen in relation to whether or not there
 16 would have been a difference made had he known. So
 17 can I take you in the transcript to pages 149 to 151.
 18 THE CORONER: Yes.
 19 MR THOMAS: Do you have that?
 20 THE CORONER: No, I don't.
 21 MR THOMAS: Sir, I will read it. It is very short.
 22 THE CORONER: I have my note in front of me.
 23 MR THOMAS: I am sure you will remember the evidence, in any
 24 event, from Mr Hill.
 25 THE CORONER: Yes.

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1 MR THOMAS: It is very, very short. If I can just put it --
 2 I will give you the reference: line 20 of page 150 on
 3 Day 8, which was 6 March 2019.
 4 THE CORONER: Thank you.
 5 MR THOMAS: In fact, I will go to line 18, which is the
 6 question that Mr Hill asked. Mr Hill asked:
 7 "Question: Was the approach any different if the
 8 warning that you received had a codeword attached to it?
 9 "Answer: If I been notified that there was
 10 a codeword and codewords had been used, yes.
 11 "Question: What would your approach have been?
 12 "Answer: Evacuate.
 13 "Question: That would at least have been your advice
 14 to the shop?
 15 "Answer: Yes.
 16 "Question: To all the premises?
 17 "Answer: Yes.
 18 "Question: And would you have expected that advice
 19 to be followed?
 20 "Answer: Yes."
 21 Sir, I am sure you remember that evidence.
 22 THE CORONER: Yes. There is a bit more actually. I think
 23 he said:
 24 "If I had known there was a coded warning, we would
 25 have cleared out of the building straight away and then

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1 commenced to clear the surrounding area."
 2 MR THOMAS: Exactly.
 3 THE CORONER: But he didn't know about the coded warning.
 4 Nobody told him.
 5 MR THOMAS: Nobody told him.
 6 So this is the evidence that we have heard.
 7 THE CORONER: Yes.
 8 MR THOMAS: Can I just invite you to look at the practical
 9 effects of that evidence and what it means in terms of
 10 the 'probable' or 'possible' tests that you certainly
 11 should be applying your mind to at this stage when
 12 acting as a filter.
 13 We say that there is no dispute about this. Sir,
 14 I am going to approach it in a step-by-step way if
 15 I may.
 16 The first step is, is there any evidence that had
 17 the police known about the coded warning there would
 18 have been a difference made? And the answer to that is
 19 yes, there is evidence. I have just taken you to the
 20 evidence and you have seen the evidence for yourself.
 21 Looking at that evidence, the next question that
 22 I would invite you to address your mind to, Sir, is
 23 this: had that evidence -- namely had I known there was
 24 a coded warning -- would that have made a difference to
 25 the action I took?

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1 Answer: Yes.
 2 The officer is very clear in his evidence. He says
 3 "I would have evacuated".
 4 THE CORONER: Yes.
 5 MR THOMAS: So the next question that I ask you to address
 6 your mind to, Sir, is this: applying the Dawson
 7 causation test: more than minimally, trivially,
 8 significantly, negligibly.
 9 This difference, the evacuation that this senior
 10 officer -- because remember Pedersen was one of the most
 11 senior officers at the scene at the time. He was one of
 12 the sergeants. Could it have made a difference in this
 13 case? On a balance of probabilities? So I start at the
 14 high threshold.
 15 Look at the practicalities. You have a sergeant
 16 saying, "I would have evacuated the surrounding
 17 buildings". I am paraphrasing but, Sir, you have just
 18 read your note of the evidence.
 19 Let's look at the Mulberry Bush. We know that the
 20 Mulberry Bush was a premises that had two exits. We
 21 know that the Mulberry Bush had -- I don't think we had
 22 precise numbers but I think the estimates were something
 23 between 50 to 80 persons, perhaps --
 24 THE CORONER: Less, I think. 40 to 50.
 25 MR THOMAS: 40 to 50 persons on the premises.

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1 THE CORONER: Yes.
 2 MR THOMAS: We know that Pedersen, had he been given that
 3 information when he received it, that would have been
 4 one of the very first things he would have done. The
 5 jury don't need to speculate. If they applied -- and,
 6 Sir, we ask you to apply at this filtering stage your
 7 mind to this question:
 8 Is it more likely than not that people would have
 9 been leaving the premises? In other words, moving
 10 themselves -- because we know where the seat of the bomb
 11 was in the premises -- away from the blast area, that
 12 there may have been less loss of life?
 13 And the answer to that is, we say, on probability,
 14 yes, because you have two exits, you have 40 to 50
 15 people, you have them being told to evacuate.
 16 Moving away.
 17 Now, what we can't say, and I don't say, I don't say
 18 that everybody would have been saved. That would be
 19 speculating. But what we can say, and reasonably safely
 20 say, is that the likelihood is there would have been
 21 less loss of life, and indeed less injury, although this
 22 Inquest is not concerned with those who were injured.
 23 Sir, we certainly believe, on the highest standard,
 24 on the balance of probabilities, that there is
 25 a sufficiency of evidence to leave that for the jury.

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1 But certainly -- certainly -- we say, on the lower
 2 standard, the "possible" argument, the Lewis possibility
 3 argument, this is a question that certainly should be
 4 made to the jury.
 5 So short submissions, because I did say I would keep
 6 them short. I have set out the evidence for you. Those
 7 are our submissions.
 8 THE CORONER: Thank you very much.
 9 Mr Morgan.
 10 Submissions on behalf of the FAMILY of NEIL 'TOMMY' MARSH
 11 MR MORGAN: Sir, if I may, I would like to address you on
 12 the inclusion of a bullet point in question 7(xx)
 13 regarding, in short, a cordon or perimeter. If I may
 14 put it this way: crowd control outside the
 15 Mulberry Bush. If it assists I can read it, and my
 16 reading to include the KRW amendment.
 17 THE CORONER: Just before you do, 21 and 22 have references
 18 to a cordon.
 19 MR MORGAN: The one I have -- I think the numbers have gone
 20 a little -- well, it changes depending on the draft.
 21 The one I have is "The absence of attempts to establish
 22 a cordon".
 23 THE CORONER: Yes.
 24 MR MORGAN: Then new words were added, "perimeter or other
 25 means".

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1 THE CORONER: Do you have that in writing somewhere?
 2 Otherwise I will make a note.
 3 MR MORGAN: Yes.
 4 THE CORONER: You can dictate. It is page 19, is it? That
 5 is the reference to a cordon.
 6 MR MORGAN: Yes, it will be. Yes.
 7 THE CORONER: Do you just want to add the words "and
 8 perimeter"?
 9 MR MORGAN: Yes.
 10 Yes. So at page 29 of KRW's written submissions,
 11 (xxi) and (xxii) you will see:
 12 "Utilisation of other means to keep persons away
 13 from the Mulberry Bush."
 14 THE CORONER: Yes.
 15 MR MORGAN: And (xxii), as amended, provides the context,
 16 with the primary focus, Sir, being (xxi).
 17 THE CORONER: Yes. What is a perimeter?
 18 MR MORGAN: It is, in short, crowd control as a means of
 19 keeping persons away from a bomb threat.
 20 THE CORONER: Was that the officer running up and down
 21 the street?
 22 MR MORGAN: One example, Sir. And I will address you in
 23 detail in due course as to other examples.
 24 THE CORONER: Yes. I have it.
 25 MR MORGAN: So by way of introduction, Sir, it will be clear

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1 to you that this applies to Neil 'Tommy' Marsh and
 2 Paul Davies. They were the two persons that it appears
 3 died outside the Mulberry Bush.
 4 So the issue is crowd control in the context of
 5 a confirmed IRA bomb threat, specifically the issue of
 6 applying or even attempting to apply or implement
 7 a cordon, perimeter or other means of keeping persons
 8 away from a building which is subject to a confirmed IRA
 9 bomb threat.
 10 I would suggest, Sir, respectfully, that this
 11 context -- the context of the bomb threat -- is
 12 significant, which is the depleted numbers of police
 13 personnel in Birmingham on the night of 21 November.
 14 That has possible significance, because it is clear that
 15 the evidence given by the responding police officers to
 16 the Rotunda was that they were searching the premises,
 17 the 21-storey building. And Mr Bradbury gave evidence
 18 as to likening the search for the bomb that night as to
 19 looking for a needle in a haystack.
 20 THE CORONER: Who said that?
 21 MR MORGAN: Mr Bradbury. I would suggest that is important,
 22 Sir, because one can infer from that that the search for
 23 the bomb would simply take longer, and it may take too
 24 long in the context of a bomb on a timer.
 25 For that reason, the perimeter or crowd control

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1 outside the building becomes more important. I think
 2 you touched upon it a few minutes ago, this issue of the
 3 terminology. Questions to witnesses during the Inquest
 4 have referred to cordons, perimeters or other means of
 5 keeping people away from the building. And I would say
 6 that "perimeter" and "crowd control" in my view are
 7 a better means of expressing the point, because the
 8 language focuses on effect rather than method.
 9 You see at (xxi) we suggest the introduction of the
 10 words "or the utilisation of other means to keep persons
 11 away from the Mulberry Bush".
 12 THE CORONER: Yes.
 13 MR MORGAN: I think, Sir, it would be artificial in this
 14 context to think only of a physical, formal police
 15 cordon, tape being one example, and that this would miss
 16 the point that when officers are called to a confirmed
 17 IRA bomb threat their first objective would be to
 18 protect life and limb. And there are other means of
 19 effecting people keeping away from the building rather
 20 than police tape. Examples would be police tape but
 21 would also include a police car parked in a prominent
 22 location. It could also be police officers simply
 23 warning people to stay away from certain locations.
 24 Uniformed police officers shouting "Bomb! Keep away!"
 25 Another example would be the fire alarm being triggered.

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1 Or potentially --
 2 THE CORONER: Can the police do that?
 3 MR MORGAN: They can order security to trigger it. Or --
 4 I don't want to give evidence, but it might be
 5 reasonable to conclude that the police, like members of
 6 the public, have means of triggering fire alarms without
 7 seeking formal approval of any person.
 8 I have referred to the cordon, police cars, the
 9 officers shouting warnings, the fire alarm being
 10 triggered. And perhaps even all of those or some of
 11 those measures being used in conjunction, Sir. And
 12 I have suggested this point is properly understood as
 13 keeping members of the public away from a very serious
 14 threat, namely a confirmed IRA bomb. It may be you feel
 15 that (xxi) can be better expressed.
 16 We have attempted to hit upon the central issue.
 17 Sir, if I may, now I should like to address you --
 18 I should make clear, and I think Mr Stoate has already
 19 made clear, I am only going to address you on this
 20 point. There are no further points.
 21 The first point which I think supports inclusion of
 22 our wording is the cordon, perimeter, crowd control,
 23 whatever way you characterise it, was done before.
 24 THE CORONER: I have that.
 25 MR MORGAN: Okay. So we had diversion and exclusion of

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1 members of the public from previous bombings. In the
 2 July bombings at the Rotunda the police established
 3 a cordon.
 4 THE CORONER: Before or after it?
 5 MR MORGAN: Before, Sir. There is a document -- which
 6 I don't think we need to bring up, but I can read
 7 from it.
 8 THE CORONER: Can you remind me, please.
 9 MR MORGAN: It is [INQ003938]. I will read from that
 10 document if I may:
 11 "A quick search of the area was made."
 12 This is further down.
 13 THE CORONER: Is that in the jury bundle?
 14 MR MORGAN: I'm not sure if it is, Sir.
 15 It is. Thank you very much.
 16 "A quick search of the area was made, traffic
 17 diverted from New Street and High Street, pedestrians
 18 prevented from entering the area, and the officers then
 19 withdrew to a suitable distance from the junction at
 20 11.45 hours."
 21 The point being that on previous occasions the
 22 responding police officers saw the need to keep members
 23 of the public away from the threatened building.
 24 Mr Mole also read evidence as to the Hagley Road
 25 bomb, where that warning came in at 9.25 pm, and by

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<p>1 9.30 pm a system of traffic diversion was in place. And 2 he gave that evidence on -- 3 THE CORONER: But that was after the finding of the bomb? 4 MR MORGAN: Yes, sir. 28 February, page 11, line 14. 5 THE CORONER: Yes. 6 MR MORGAN: If I may, Sir, flag a point there: in that case 7 it took five minutes to have in place traffic diversion 8 and a response to controlling the flow of persons around 9 the threat. And that is, if I may say, consistent with 10 evidence that I will refer to later from Mr Bradbury who 11 refers to being at the Rotunda for approximately 12 five minutes prior to the explosion. 13 In terms of other examples of this being put in 14 place previously, there was a Birmingham Post article -- 15 this is at [INQ003419] -- in the aftermath of the April 16 explosion at the Rotunda. And they are reporting that 17 the police were due to meet to review their response, 18 and describing issues of "prime importance", including 19 "how police can deal with crowd control and evacuation 20 during a bomb attack". 21 So the issue appears to have been live, but I would 22 say, Sir, if it was not live, this point about crowd 23 control, it should have been. 24 We also had evidence from Mr Alan Morris, the 25 fireman, on 6 March. It is page 10, line 4, where he</p> <p style="text-align: center;">Page 33</p>	<p>1 New Street, but also the Mulberry Bush. 2 It is submitted that five police officers attended 3 the Rotunda. And one of them could have gone to the 4 Mulberry Bush to assess the circumstances there, namely 5 the threat to persons that would have been likely to 6 have been there, and then to respond to such. 7 There is the opportunity, Sir. Five officers; one 8 could have been allocated not search but to identify 9 other areas of threat. PC Bradbury said in oral 10 evidence that he had been in the Rotunda for 11 approximately five minutes prior to the explosion. 12 That's at page 72, line 3, when he gave evidence. 13 Police officer Margaret Adams, when questioned, 14 agreed it would take less than ten seconds to run from 15 the lobby of the Rotunda to the Mulberry Bush. The 16 point was put to her: it would take ten seconds to run 17 from the reception of the Rotunda to the Mulberry Bush 18 and shout, "Everyone get out!" And that's at page 126, 19 line 7. 20 My point being there, Sir, that on Mr Bradbury's 21 evidence they have five minutes. One option, one 22 possible option, was that one officer would have been 23 dispatched by one of the two sergeants present in the 24 lobby to go to where the most people were likely to have 25 been located at that time of night, and that within that</p> <p style="text-align: center;">Page 35</p>
<p>1 referred to the previous bombs and a cordon of 150 yards 2 being used. 3 He also referred to: in certain circumstances a car 4 could be parked across a junction. That was at page 66, 5 line 12 of his evidence. 6 Clearly in this case officers Bradbury and Adams 7 arrived in a car, a Panda, so that was one opportunity 8 or one vehicle that could have been utilised to put in 9 place some means of communicating to members of the 10 public around the Rotunda that something was going on 11 and they should approach with caution. 12 Other options were the commandeering of a vehicle. 13 I recall that Mr Howles, the police officer, was also in 14 the vicinity in a Panda car. 15 So that's the first point, Sir: perimeters, cordons, 16 means of keeping members of the public away from areas 17 of bomb threat, had been utilised before. 18 The second point I would like to address you on, if 19 I may -- I will turn to opportunity and timing. Sir, 20 much has been made of timing, and I don't shy away from 21 the issues that surround that, and the difficulties. 22 But I would suggest that, on the police's evidence as to 23 when they arrived at the Rotunda, there was an 24 opportunity to put in place crowd control measures, 25 either at the reception to the Rotunda, facing out onto</p> <p style="text-align: center;">Page 34</p>	<p>1 five minutes this should have been effected or 2 attempted, because of the less than ten seconds Margaret 3 Adams said it would have taken. 4 My next point, Sir, is, if I can term it, 5 "Location". A factor supporting crowd control or 6 a perimeter is that the police officers responding that 7 night would not have known precisely where the bomb was 8 located. I know this has been a point that has been 9 raised on several occasions. The threat is in the 10 Rotunda, and therefore the likelihood is that the threat 11 is in the Rotunda. But they didn't know where in the 12 Rotunda, Sir. 13 In the April, July and November bombings at the 14 Rotunda, all presented different locations. Therefore 15 it is reasonable to suggest that the police officers 16 responding that night did not know where the bomb was 17 located. There was uncertainty as to the location of 18 the threat, and therefore one does not take chances 19 about the location of the threat and therefore those 20 people that may be threatened by the bomb. 21 THE CORONER: There is also the question of evacuation into 22 a dangerous area, which has been raised. I mean, there 23 are a multiplicity of factors. 24 MR MORGAN: Yes, there is a certain overlap there, Sir. On 25 this issue, Mr Mole had said, when being questioned by</p> <p style="text-align: center;">Page 36</p>

1 Mr Thomas, that you don't take chances. That was at
 2 page 23, line 3 of his evidence. He was being asked
 3 specifically a question in the context of putting in
 4 place a cordon.
 5 So due to the uncertainty of the location, and
 6 therefore the uncertainty of the direction or range of
 7 any debris, I would suggest one of the first responses
 8 would have been to have kept members of the public away
 9 from the Rotunda rather than searching for the bomb.
 10 THE CORONER: I suppose you would add that they might have
 11 done so if they had known there was a coded warning.
 12 MR MORGAN: That's the point. I mentioned this at the
 13 beginning of my submissions, Sir. (xxi) and (xxii)
 14 should be read in the context of a confirmed IRA bomb
 15 codeword, because that was the knowledge attached to the
 16 West Midlands Police on that night, not the responding
 17 officers, that they should have been told that, and if
 18 they had been told that, perhaps their response would
 19 have been different.
 20 Expanding further upon my point about the location
 21 and the uncertainties, the size of the bomb would have
 22 been unknown. At Nechells power station there was
 23 a particularly large bomb. Others were smaller. But
 24 because we don't know the size of the ordinance, we
 25 don't know the kill zone. Professor Bull had said in

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1 evidence that there was potential for debris to fly
 2 hundreds of metres. This was page 38, line 25 of
 3 his evidence.
 4 THE CORONER: But there was no space for it to go, he added.
 5 MR MORGAN: I'm not sure he said that. I think what he said
 6 was that it is a complex environment and it depends what
 7 the debris collides with.
 8 THE CORONER: Yes.
 9 MR MORGAN: It could be a wall, a building, a person.
 10 THE CORONER: It doesn't undermine your point, but he did
 11 add that, presumably because of outlying buildings,
 12 there was nowhere for the effect of the blast
 13 to dissipate.
 14 MR MORGAN: I think this relates to my point about these
 15 bullet points -- and it may be that I should have been
 16 more express in this -- only relate to the immediate
 17 vicinity of the Rotunda. And that point may be of
 18 assistance to the jury. Mr Bull referred to the complex
 19 environment. I understood that to mean buildings and
 20 other structures.
 21 My point, if I have not made it clear, is that it is
 22 only the immediate vicinity of the Rotunda that should
 23 have been subject to crowd control. I have referred to
 24 the lobby area. There were persons there, cleaners.
 25 New Street. And then a second area is the area outside

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1 the Mulberry Bush, because that's where people
 2 were located.
 3 Mr Bull also referred to the fact that debris did
 4 not have to be big to be fatal. He referred to that at
 5 page 39, line 16 of his evidence. We saw the
 6 photographs, Sir -- I don't think we need to pull them
 7 up -- of the huge debris that congregated on Worcester
 8 Street. I think this question has importance, given
 9 Mr Bull has said in his expert knowledge that you don't
 10 need big debris for that debris to be fatal.
 11 And that's why a perimeter had increased importance,
 12 and it is a point that the jury should
 13 consider properly.
 14 The next point, Sir, supporting my submissions, is
 15 that of kill zone, which relates to what I have just
 16 said, the possible kill zone emanating from the bomb.
 17 The reality is that a kill zone or the likely kill
 18 zone would not have been known by the police because
 19 they didn't know the size of the ordinance, and
 20 therefore, due to that uncertainty, a perimeter was
 21 necessary, or even attempting to implement one in the
 22 time available. It is clear that the kill zone extended
 23 outside the Mulberry Bush. One of the reasons for that
 24 is because it is on the ground floor and that it had
 25 large windows facing out onto the street in

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1 two directions.
 2 THE CORONER: I don't need --
 3 MR MORGAN: For that reason, the police should have been
 4 aware of the threat to members of the public.
 5 My next point is the members of the public who would
 6 have been likely to have been present. And therefore
 7 that supports the reasonableness and the necessity of
 8 a perimeter. The threat to life and limb in the
 9 vicinity of the Mulberry Bush was real. Mr Brown
 10 referred in his evidence to the number of people that
 11 would congregate in the general area of the Rotunda.
 12 But also we had several other factors suggesting that
 13 people would be in that area or passing in that area on
 14 the night. That includes the late-night shopping,
 15 payday, and the presence of shops, restaurants and bars.
 16 Sir, I would submit that these are factors
 17 supporting the likelihood of people being in the
 18 vicinity of the Rotunda and therefore being within the
 19 vicinity of the threat. For those reasons, that is why
 20 a perimeter was required.
 21 Then moving on to the next point, Sir.
 22 THE CORONER: How many points will there be?
 23 MR MORGAN: Two further and then I'm finished.
 24 THE CORONER: Thank you. Just so I have an idea.
 25 MR MORGAN: The number of officers available. The point has

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1 been made by Mr Bradbury that there were not enough
 2 police officers to implement a cordon. I would suggest,
 3 Sir, that his idea of a cordon was based upon a line of
 4 police officers walking down the street to keep members
 5 of the public away. That is, I would say, a narrow,
 6 artificial and impractical way of thinking about crowd
 7 control at the perimeter of the building.
 8 I have touched upon more practical options that were
 9 available and could have been utilised: the fire alarm,
 10 the shouting, one officer going. I would say that the
 11 cordon is particularly important in the context of the
 12 IRA bombing campaign in 1973/74, also the explosion
 13 which killed James McDade, and also the bombings which
 14 took place in Guildford and Woolwich in October and
 15 November 1974 and that were publicised at that time.
 16 The final point, Sir, is the distance of the
 17 perimeter. I think I deal with this by saying that the
 18 bullet point should include the words "in the immediate
 19 vicinity of the Rotunda".
 20 Mr Bradbury had said that he didn't know how you put
 21 in place a cordon over such a big area. The submission
 22 is, we weren't requiring a bigger area than in the
 23 immediate vicinity. Those two vicinities being the
 24 Mulberry Bush, obviously, but also the lobby area of
 25 the Rotunda.

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1 Those are my points, unless you have any questions.
 2 THE CORONER: Thank you very much.
 3 Were you going to say anything about date of birth?
 4 You heard my suggestion?
 5 MR MORGAN: Yes. We are in agreement to that. We have
 6 agreed a form of wording from our perspective.
 7 THE CORONER: Yes. I just wondered whether that was even
 8 necessary, if I point out that the particulars for
 9 registration include the date of birth as specified by
 10 Hilda Turner.
 11 MR MORGAN: Yes. We are in agreement with that, Sir.
 12 THE CORONER: Thank you.
 13 Ms Williams, I think we are going to take a break,
 14 if you don't mind. So we will say 11.30.
 15 (11.15 am)
 16 (A short break)
 17 (11.31 am)
 18 Submissions on behalf of the FAMILIES represented by BROUDIE
 19 JACKSON CANTER
 20 THE CORONER: May I just ask you one question before we
 21 begin, about something separate?
 22 MS WILLIAMS: Yes.
 23 THE CORONER: I have seen it at some stage in your helpful
 24 response to one of my documents, and I needed to be
 25 reminded about the evidence. What the evidence was.

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1 You don't have to answer now --
 2 MS WILLIAMS: I have Ms Patrick to look it up --
 3 THE CORONER: Yes. What the evidence was about
 4 Police Constable Bradbury and Woman Police Constable
 5 Adams clearing the mini restaurant before they went to
 6 the Rotunda. Is that evidence which comes from both of
 7 them or just one of them? And if so, which.
 8 MS WILLIAMS: It is in our submissions, Sir, so I may be
 9 able to put my finger on it straight away.
 10 THE CORONER: Thank you. I have seen it in more than one
 11 place recently.
 12 MS WILLIAMS: 113, Sir.
 13 THE CORONER: Yes.
 14 MS WILLIAMS: Yes, there are references in paragraph 113 to
 15 the evidence of both Constable Bradbury and Woman
 16 Police Constable Adams on that point. Oh, I see, we
 17 only have the reference, Ms Patrick tells me, to
 18 Bradbury. But we can provide the reference to WPC Adams
 19 as well if that will assist.
 20 THE CORONER: Yes. So they both said -- I will just get
 21 this clear in my head -- that coming out of the Rotunda,
 22 having heard the explosion, they evacuated the
 23 mini restaurant before going to the Mulberry Bush?
 24 MS WILLIAMS: That's my understanding of the evidence, Sir,
 25 yes. But I will ask Ms Patrick to turn it up.

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1 THE CORONER: I don't remember it as being quite as specific
 2 as that. I will be grateful for those references so
 3 that they can be checked.
 4 MS WILLIAMS: Yes, Sir, we will provide them. You have
 5 Constable Bradbury's reference in our text,
 6 paragraph 113. And we will provide WPC Adams.
 7 THE CORONER: Yes. Thank you very much.
 8 MS WILLIAMS: Adopting the structure, Sir, that you gave us
 9 at the outset, in relation to question 1 and question 2
 10 with the minor amendment proposed by Mr Johnson, we are
 11 in agreement.
 12 In relation to question 3, I probably need say no
 13 more than our view remains as set out in our written
 14 submissions, namely that the jury should simply be asked
 15 the question in terms of unlawful killing. And
 16 I confirm that that is our position, because in the
 17 interim we have considered Mr Johnson's submissions on
 18 that point but it doesn't affect our view.
 19 THE CORONER: And you agree with the way in which I have
 20 drafted my directions of law?
 21 MS WILLIAMS: We do.
 22 THE CORONER: Those three paragraphs?
 23 MS WILLIAMS: We do.
 24 THE CORONER: Thank you.
 25 MS WILLIAMS: Perhaps adopting the same approach as

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1 Mr Stoate, I don't propose to say anything further about
 2 that now, unless Mr Johnson were to raise anything new
 3 on that matter.
 4 THE CORONER: Yes. Thank you.
 5 MS WILLIAMS: In relation to question 4, the proposition
 6 raised by Mr Johnson and endorsed by your team, as
 7 I understand it, is that the jury be directed to answer
 8 parts 4(a), 4(b) and 4(d) in a certain way, and
 9 therefore 4(c) and 4(e) fall away.
 10 We have no objection to that course, because we
 11 accept that in this instance there is only one answer on
 12 the evidence, unlike certain other matters.
 13 THE CORONER: Yes.
 14 MS WILLIAMS: There is simply no other evidence there as to
 15 the matters contained within those questions.
 16 Turning, then, to question 5, Sir, which I don't
 17 think you have been addressed directly on thus far.
 18 THE CORONER: No.
 19 MS WILLIAMS: As we understand the proposition advanced for
 20 West Midlands Police by Mr Johnson, it is that the jury
 21 should be directed that the permissible range of their
 22 answer is simply 8.17 to 8.19 in relation to the
 23 Mulberry Bush --
 24 THE CORONER: Plus or minus a minute, yes.
 25 MS WILLIAMS: -- and 8.19 to 8.21 in relation to the Tavern.

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1 Sir, it may not surprise you to hear that we are opposed
 2 to that matter --
 3 THE CORONER: I am not keen on that at the moment. I will
 4 hear what Mr Johnson says about it.
 5 MS WILLIAMS: Perhaps I can just quickly give you the
 6 headlines, but I will be quick in light of
 7 that indication.
 8 THE CORONER: Please do.
 9 MS WILLIAMS: Sir, it will be open to the jury, and we are
 10 content with the question as drafted, subject to our
 11 suggestion of one additional bullet point. The jury may
 12 choose to express their conclusion as a range of times.
 13 They don't have to pick one particular time.
 14 In considering whether to leave it to the jury, you,
 15 Sir, must take the evidence at its highest. And there
 16 plainly is a range of evidence. It is pre-eminently
 17 a matter for the jury to consider that evidence.
 18 Mr Johnson picks certain parts of the evidence in
 19 support of his submission. But one could equally well
 20 pick other parts. For example, he picks the fact that
 21 Mr Murphy's watch stopped at 8.20, as clear evidence
 22 that that's when the bomb at the Tavern went off. But
 23 there is also the evidence of Mr McVeighty that his
 24 watch stopped at 8.20 at the Mulberry Bush.
 25 THE CORONER: Yes.

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1 MS WILLIAMS: That is simply one example. If we are just
 2 dealing with headlines, the other point I would simply
 3 make is in relation to Mr Johnson's submissions, that he
 4 says -- and this is his paragraphs 50 and 51 -- that
 5 evidence outside the three-minute range that he proposes
 6 is unreliable and the product of, as he put it, chaos
 7 and confusion.
 8 But there is potentially credible evidence outside
 9 of that very narrow range, Sir, and I refer you to the
 10 three examples that I put to Mr Mole yesterday in
 11 relation to the 8.25 pm time at the Tavern.
 12 The jury may ultimately decide to accept that as
 13 a potential time within their range or not accept it.
 14 But that is a decision for them.
 15 The three examples I gave, just to list them, Sir,
 16 without going into the details, were David Grafton, the
 17 gentleman who was a stickler for time and said 8.25;
 18 Kevin Ivins, who knew it was 8.25 because that was when
 19 he was due to meet his friends, who hadn't turned up;
 20 and Richard Hepburn-Ward who said he knew it was 8.25
 21 because he looked at the clock just before the explosion
 22 went off.
 23 Those are just examples of why, Sir, it cannot
 24 simply be said at this stage that any evidence outside
 25 Mr Johnson's very narrow three-minute window is the

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1 unreliable product of chaos and confusion, as he puts
 2 it, and these are pre-eminently matters for the jury.
 3 Sir, the other matter I wanted to draw to your
 4 attention, please, respectfully, in relation to
 5 question 5 is that we did suggest one additional bullet
 6 point, which is at paragraph 137 of our written
 7 submissions, page 34. I do not think your team have
 8 expressed a view on this point --
 9 THE CORONER: Which paragraph?
 10 MS WILLIAMS: Paragraph 137, Sir. It is nearly at the back
 11 of our submissions.
 12 THE CORONER: Yes.
 13 MS WILLIAMS: It is at the top of page 34.
 14 THE CORONER: Yes, I have it.
 15 MS WILLIAMS: The point is one that I explored to a degree
 16 with Mr Mole yesterday, that evidence as to what people
 17 describe doing between the two explosions may be of some
 18 assistance to the jury when considering timing.
 19 Certainly there is some evidence that tends to indicate
 20 that the gap between the two explosions was longer than
 21 two minutes.
 22 You will recall the examples that I canvassed with
 23 Mr Mole yesterday in relation civilians. There are also
 24 potentially examples from the evidence of the police
 25 officers, the evacuation of the mini restaurant, that we

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1 have just considered in a slightly different context.
 2 Sergeant Pedersen said that between the two
 3 explosions he spoke to the driver of the number 90 bus.
 4 THE CORONER: Yes.
 5 MS WILLIAMS: Telling him to pull in on the side.
 6 THE CORONER: Was that Sergeant Pedersen or Police Constable
 7 Yates or both?
 8 MS WILLIAMS: Shall I give you the references, Sir?
 9 THE CORONER: Yes.
 10 MS WILLIAMS: It may be that ultimately you don't need all
 11 the references. Sergeant Pedersen is Day 8, page 173,
 12 lines 6 to 9. PC Yates, whose statement as you know was
 13 read to the jury on Day 9, said that after the first
 14 explosion he told the passengers to stay on bus. He
 15 then asked the bus to move away from the Rotunda up into
 16 New Street and he then began directing people outside
 17 the Odeon to the opposite side of the road. He was then
 18 moving towards the area of the Tavern when the second
 19 explosion occurred.
 20 THE CORONER: Yes.
 21 MS WILLIAMS: Then lastly on this point, by way of example,
 22 Inspector Skitt in the statement read from him said that
 23 he was in the Bullring open market when he heard the
 24 first explosion. He then proceeded -- albeit at a pace,
 25 but that is some distance away, Sir -- and he says he

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1 was 50 yards away from the Tavern when the second
 2 explosion occurred.
 3 Sir, those are all examples of points that the jury,
 4 we say, should have the opportunity to consider. It is
 5 a matter for them ultimately what they make of them, but
 6 they should have the opportunity to consider in relation
 7 to the timings question. That is why we have suggested
 8 that additional bullet point.
 9 THE CORONER: Yes.
 10 MS WILLIAMS: So then we come on to question 6. As I have
 11 understood the various positions advanced by the
 12 parties -- and for the moment I address you on the basis
 13 that some of question 7 at least is left to the jury.
 14 I will come on to your team's separate point about the
 15 impact on the Inquest if you were to not leave any of
 16 questions 7 and 8, Sir, in a moment.
 17 But on the assumption, for the purposes of this
 18 point, that you do leave at least some of what is
 19 currently question 7 to the jury --
 20 THE CORONER: Are we on 6 or 7?
 21 MS WILLIAMS: 6.
 22 THE CORONER: 6?
 23 MS WILLIAMS: Yes. On that assumption, we respectfully
 24 suggest that question 6 is in a proper form as it stands
 25 to be left to the jury. I understand that Mr Johnson

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1 argues that the jury should be directed to answer it
 2 "no", that the police were not given adequate warning.
 3 THE CORONER: 6(a)?
 4 MS WILLIAMS: Yes.
 5 Our position is, Sir, that whilst we of course
 6 acknowledge the evidence that would support that
 7 proposition, there is some evidence, namely Mr Mullin's
 8 description of what Mr Murray said, and therefore it
 9 becomes a jury question.
 10 You will know, Sir, what my clients think about
 11 Mr Murray's account, and I don't stand here in any way
 12 as a proponent for his account. But the fact remains
 13 that there is evidence that does not all point in the
 14 same direction, and therefore it should be for the jury,
 15 consistent with usual principles, to resolve
 16 those matters.
 17 As to whether there should be a 'probably' and
 18 a 'possibly' question, I think Mr Johnson was suggesting
 19 that the 'possibly' question fell away because of his
 20 position that you should direct the jury to answer the
 21 'probably' question in a certain way. If one doesn't do
 22 that, we can see no reason why the jury shouldn't have
 23 the full opportunity to consider things on either the
 24 probably or the possibly, but we don't feel particularly
 25 strongly about it.

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1 If anyone were to advance a reason why it should
 2 only be left on a 'probably' basis, I doubt it is
 3 something we would want to address you on further, Sir.
 4 Sir, I do want to address you on the
 5 interrelationship between question 6 and question 7. As
 6 I understand West Midlands Police's submissions, for
 7 example paragraph 36 of their written submissions --
 8 although it is not the only place that they make this
 9 point -- the essence of what they say, if I have
 10 understood it, is that because the warning was
 11 inadequate it would be inconsistent for the jury to find
 12 that there was any causative or possibly causative
 13 failing on the part of the police.
 14 We respectfully submit that that is not the correct
 15 analysis, and that the jury could consistently find that
 16 the warning was inadequate but that nonetheless there
 17 were causative or possibly causative errors or omissions
 18 on the part of the police.
 19 I say that, Sir, for these reasons.
 20 THE CORONER: Just a moment.
 21 Yes.
 22 MS WILLIAMS: Once the warning was communicated to the
 23 police, they came under a duty, pursuant to the
 24 Article 2 case law, to respond to the real and immediate
 25 threat to life. The duty on them is to take reasonable

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1 steps. And it is not, we readily acknowledge, to do
 2 more than that. And question 7 in its current
 3 formulation reflects that. It is a question of what the
 4 police could reasonably do in the circumstances.
 5 So if they were given an inadequate warning, plainly
 6 that is something for the jury to take into account in
 7 deciding what was reasonable. But the fact that they
 8 were given an inadequate warning doesn't mean that the
 9 Inquiry stops there and that it relieves the police of
 10 a duty to act reasonably. Rather, Sir, the correct
 11 analysis is that that is one of the factors to take into
 12 account in deciding what the police could reasonably
 13 have done or should reasonably have done in
 14 the circumstances.
 15 Turning to question 7, Sir, which is obviously the
 16 more contentious area in light of West Midlands Police's
 17 submissions. First, if I may, briefly on the law, you
 18 have our written submissions in relation to what
 19 Galbraith plus means in this context. We would reject
 20 the suggestion that appears to be made in paragraph 10
 21 of the West Midlands Police submissions that the
 22 Douglas Williams case and Lord Woolf's judgment there
 23 gives rise to a third limb that you should consider,
 24 interests of justice.
 25 THE CORONER: Well, I don't think it does that. But

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1 hopefully I would only make a decision if it was likely
 2 to be in the interest of justice.
 3 MS WILLIAMS: Of course, Sir. All I was going say is, it is
 4 quite clear from the case law in Lord Justice Waller in
 5 the Bennett case, which we have referred to in
 6 paragraph 8 of our submissions, that those paragraphs
 7 from Lord Woolf in Douglas Williams were one of the
 8 cornerstones, which then developed the jurisprudence of
 9 the second limb of safety.
 10 So it is not some freestanding additional case, it
 11 is an earlier articulation in 1991 of what became in the
 12 later authorities -- Bennett in 2007; the Secretary of
 13 State v Eastern District of West Yorkshire case, in the
 14 judgment of Mr Justice Haddon-Cave in 2012 -- became
 15 expressed as the second limb of the safety test.
 16 THE CORONER: Curiously enough, the test rejected in the
 17 Galbraith case.
 18 MS WILLIAMS: Indeed, in criminal cases. But without
 19 rehearsing it in detail, one understands why it has been
 20 said that there is a distinction between criminal cases
 21 and inquests.
 22 THE CORONER: Yes.
 23 MS WILLIAMS: In relation to the question of leaving the
 24 jury the alternative of possibly causative matters --
 25 and I will come on to the evidence very briefly in a few

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1 moments -- we say the jury should have both
 2 alternatives: probably and possibly. You have our
 3 written submissions about the 'possibly' approach,
 4 paragraph 16 to 22 of our written submissions --
 5 THE CORONER: Yes.
 6 MS WILLIAMS: -- which I don't repeat. May I simply make
 7 this point, Sir, because West Midlands Police say at
 8 paragraph 5 of Mr Johnson's submissions that the
 9 Article 2 obligation would be discharged by the
 10 expression of a conclusion on the balance of
 11 probabilities. Sir, I am sure you have this in mind,
 12 but I just wanted to make the point that the balance of
 13 probabilities is an approach and test that is unknown in
 14 the Strasbourg jurisprudence. It is purely
 15 a domestic approach.
 16 THE CORONER: Yes.
 17 MS WILLIAMS: On the Strasbourg jurisprudence, putting it at
 18 its most favourable to Mr Johnson's clients, the
 19 causation test would be one of showing it expressed as
 20 a real prospect or a substantial chance.
 21 You will be familiar with those cases, Sir. There
 22 is also a line of case law -- the Court of Appeal in
 23 Sargeant in this jurisdiction, which suggested that
 24 causation is only relevant at all when one comes to the
 25 question of remedy, and that when one is looking at

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1 breach one simply looks at what it was reasonable for
 2 the officers in question to do or not do, judged on what
 3 they knew at the time, or ought to have known.
 4 THE CORONER: Can I ask you about your paragraph 21?
 5 MS WILLIAMS: You certainly can. Let me just turn
 6 it up, Sir.
 7 THE CORONER: You have not suggested, or perhaps you can
 8 suggest now, what factors are relevant to the exercise
 9 of my discretion.
 10 MS WILLIAMS: Yes. I thought you might ask me that, Sir.
 11 I would suggest -- and as with any discretion, it is
 12 difficult to give an exhaustive list -- but how central
 13 the issue has been to the evidence given at the Inquest.
 14 And here the matters that relate to question 7 have
 15 indeed played a central part in the Inquest.
 16 Respectfully, Mr Johnson is somewhat overstating it
 17 when he says we have spent five weeks on what happened
 18 in five minutes, because, as you will be aware, Sir, we
 19 have covered lot of other ground at the Inquest as well.
 20 But it has certainly been a substantial part of
 21 the Inquest.
 22 It would always fall squarely within scope in light
 23 of your rule, Sir. The cross-reference is paragraph 29
 24 to Mr Johnson's submissions. There is a suggestion that
 25 this area is not within scope given your previously

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1 ruling. But Sir, your earlier ruling where you said
 2 that, amongst other things, the events of the day were
 3 in scope, you had a number of subparagraphs: (b) was the
 4 Double X warning, and (c), and I quote, was the police
 5 response to the warning.
 6 THE CORONER: Can you give me the reference to that?
 7 MS WILLIAMS: The difficulty is, Sir, the one that I have
 8 pulled out in the time available was an earlier letter
 9 on the point. I am afraid I don't actually have the
 10 ruling. But what I do have here is your draft
 11 provisional list of topics dated 13 July 2017. But
 12 I know that you subsequently confirmed it. I am sure we
 13 can find the reference for that in due course.
 14 THE CORONER: Yes.
 15 MS WILLIAMS: But that is where I have taken it from in the
 16 relatively limited time that has been available to turn
 17 up the reference.
 18 THE CORONER: So the (c) reference is to the draft
 19 provisional list?
 20 MS WILLIAMS: Yes. But, as I say, my understanding and
 21 recollection is that, in relation to the events of the
 22 day, you subsequently confirmed that that was the scope
 23 of the Inquest. So this is slap-bang in the middle of
 24 your 'Events of the day' topic in terms of the scope of
 25 the Inquest. And that, we submit, is also a relevant

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1 consideration in whether these matters should be left to
 2 the jury in the alternative on the 'possibly' basis.
 3 Thirdly, Sir, we raise the point which we have
 4 touched on in paragraph 22 of our submissions,
 5 and which --
 6 THE CORONER: Yes.
 7 MS WILLIAMS: -- Mr Stoate raised with you as well a few
 8 moments ago in his oral submissions, that insofar as
 9 there have been difficulties that have arisen in terms
 10 of the 'what-ifs' that would have happened simply
 11 because of the lengthy passage of time, provided in
 12 other respects it is safe to leave the matter to the
 13 jury. Then that is something you can properly and
 14 indeed should take into account in considering whether
 15 this is a situation where the jury should be asked to
 16 consider possibly causative factors.
 17 I don't suggest that that is an exhaustive list of
 18 everything you should take into account. But those
 19 three factors are relevant.
 20 Fourthly, and again touched on both in our written
 21 submissions and by Mr Stoate earlier this morning, the
 22 question of whether it would render the jury's task
 23 confusing or unmanageable. And we say no, it wouldn't,
 24 because we have already had the benefit, for which,
 25 thank you, Sir, of seeing the clear directions you

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1 intend to give the jury. The questionnaire is clear and
 2 helpful and the jury have plainly been attentive and
 3 engaged with the detail of the evidence during the whole
 4 of this Inquest. So there is simply no reason at all to
 5 think that they will be confused if matters were to be
 6 left to them on that basis.
 7 Sir, that concludes what I wanted to say about
 8 Lewis, using Lewis as a shorthand for this area of
 9 the law.
 10 THE CORONER: Yes. Thank you.
 11 MS WILLIAMS: The last area of the law I wanted to deal with
 12 before I come on to the evidence is the suggestion made
 13 in the submissions from your team at their paragraphs 28
 14 to 29, that if you were to decide that nothing of what
 15 is currently draft questions 7 and 8 goes to the jury,
 16 then this would no longer be an Article 2 Inquest.
 17 THE CORONER: Yes. Can we put that on one side for now?
 18 MS WILLIAMS: Certainly, Sir. I am very happy to do so, but
 19 there would be matters we would want to draw to your
 20 attention in relation to that.
 21 THE CORONER: Yes.
 22 MS WILLIAMS: Perhaps I can just answer the question you
 23 asked Mr Stoate. I don't want to take up time on this,
 24 but I made a note of it. And before I forget, you asked
 25 whether the ruling in Tainton was based on the

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1 engagement of article 2.
 2 THE CORONER: Yes.
 3 MS WILLIAMS: The answer is yes. And you can see that very
 4 directly in paragraphs 74 to 75. It is a matter we have
 5 thought of overnight, and we would have some matters to
 6 say on that point were you to be going down that
 7 course, Sir.
 8 THE CORONER: Yes.
 9 MS WILLIAMS: Turning then to the evidential picture in
 10 relation to question 7.
 11 THE CORONER: Yes.
 12 MS WILLIAMS: Like those who have gone before me, we accept
 13 that your team in their paragraphs 37 to 40 have
 14 accurately summarised the essence of the point around
 15 the failing to evacuate the pubs.
 16 THE CORONER: Yes.
 17 MS WILLIAMS: We do have some points to make in relation to
 18 their paragraph 41 and suggestions of certain bullet
 19 points which shouldn't be left to the jury, which I will
 20 come on to shortly.
 21 THE CORONER: Yes.
 22 MS WILLIAMS: But in terms of the essence of question 7, we
 23 accept that, Sir, as a fair and accurate articulation
 24 of it.
 25 THE CORONER: Yes.

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1 MS WILLIAMS: If I may respond briefly to some of the points
2 that Mr Johnson has made on behalf of West Midlands
3 Police in support of his proposition that this should
4 not be left to the jury, it is essentially pages 8 to 15
5 of his submissions.
6 His suggestion that this matter could only be left
7 with expert evidence, we endorse what is said by
8 your team --
9 THE CORONER: Yes.
10 MS WILLIAMS: -- and by Mr Stoate earlier. We would also
11 point out that it would be -- it is a very late stage to
12 suggest this, and we don't recall there being any
13 earlier suggestion at PIRs that this is something that
14 should have been the subject of expert evidence.
15 Secondly, it is in this context as well that
16 Mr Johnson makes the points about the warning giving
17 police an inadequate opportunity to respond. Sir, you
18 already have my submissions on that. That is a factor
19 for the jury to consider, which as I understand it is
20 fairly reflected in the bullet points. It is not
21 a reason to altogether withdraw this issue from
22 the jury.
23 In relation to training, and your team suggest that
24 this is not something that should be left to the jury,
25 as I understand it, we don't seek a separate question in

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1 relation to training, as I believe the KRW Law
2 team do --
3 THE CORONER: Yes.
4 MS WILLIAMS: -- but we do submit that it is part of the
5 evidential picture that should be considered --
6 THE CORONER: Yes.
7 MS WILLIAMS: -- in relation to question 7. And we endorse
8 the inclusion of the current bullet point on this --
9 THE CORONER: 24?
10 MS WILLIAMS: Yes, which is expressed in fair and
11 neutral terms. And Mr Johnson, as we understand it,
12 relies on what he says is a lack of evidence. But there
13 was actually quite a deal of evidence from the officers
14 about whether they did or didn't have training in this
15 area, and we have referred to it in detail at pages 11
16 to 14 of our written submissions.
17 I don't propose to take you through that unless you
18 wish us to do so, but there is quite a detailed recap of
19 the evidence on that topic within those pages.
20 THE CORONER: Yes. Just give me a moment. What pages
21 were they?
22 MS WILLIAMS: 11 to 14, under the heading "Training". I'm
23 sorry, I don't have the paragraph reference but it
24 should be easy to locate.
25 THE CORONER: Yes.

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1 MS WILLIAMS: Mr Johnson's fourth point on the evidence,
2 which I seek to respond to briefly, is to be found in
3 paragraph 40 of his submissions. He says the police
4 response was swift in terms of getting to the Rotunda.
5 To which, in summary, Sir, we say we don't dispute
6 that it was. The question is, what the officers did or
7 didn't do when they got there.
8 THE CORONER: Yes.
9 MS WILLIAMS: That's what the evacuation is about. And
10 equally, Sir, we note -- taking the evidence at its
11 highest, as you must at this stage -- the same can't be
12 said in relation to the Tavern. Taking the evidence at
13 its highest, no officers were deployed to the Tavern
14 prior to that second explosion.
15 There is, as we have discussed in our submissions,
16 some limited evidence that PC Yates and/or
17 Inspector Skitt was, although plenty of the evidence is
18 to the contrary since they both turned up at the
19 Rotunda, and nobody else professes --
20 THE CORONER: Yes.
21 MS WILLIAMS: Neither did Yates --
22 THE CORONER: Why did Skitt -- I don't mean Skitt. Why did
23 Pedersen turn left?
24 MS WILLIAMS: Yates. It is Yates who turned left, Sir.
25 THE CORONER: Police Constable Yates, followed by which more

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1 senior officer?
2 MS WILLIAMS: By Skitt.
3 THE CORONER: By Skitt. So why did Skitt go that way?
4 MS WILLIAMS: From recollection, he said in his first
5 account that he saw Yates. Then he said -- we had the
6 slightly ambiguous passage in his evidence at trial
7 where he suggested it was in response to a message
8 received. This is a message that apparently nobody else
9 heard, because other officers already referred to
10 a message related to the Rotunda coming from the
11 Digbeth controller.
12 You will recall that both Mr Thomas and I have made
13 clear that Inspector Skitt, had he been available to be
14 questioned, we would have questioned him, therefore, on
15 that point.
16 THE CORONER: Yes. So he made his way towards the Rotunda
17 as a result of the radio message.
18 "As I reached the Bullring open market I heard the
19 sound of a loud explosion. As I arrived at the foot of
20 the Rotunda, I saw Police Constable Yates in front of me
21 running towards the Odeon."
22 Then he says:
23 "In view of the radio message I had originally
24 received, I ran after Police Constable Yates in
25 the direction of ..."

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1 MS WILLIAMS: Yes, which is a slightly curious passage
 2 because he had said he was going to the Rotunda up until
 3 that point.
 4 THE CORONER: Yes.
 5 MS WILLIAMS: But it does seem as if seeing Yates going in
 6 the direction that he was, which was because of the
 7 Odeon clientele, not because of the message to go to the
 8 Tavern, it seems --
 9 THE CORONER: Yes. Just let me make a note. Yes.
 10 MS WILLIAMS: As regards whether non-evacuation was an error
 11 or omission in turn likely to have caused some loss of
 12 life, we rely, without repeating, on the submissions
 13 made to you by Mr Thomas, which indeed are on all fours
 14 with what we have said in our written submissions.
 15 Mr Thomas, I think, addressed you specifically in
 16 relation to the Rotunda, but the same can be said in
 17 light of in particular Sergeant Pedersen's evidence in
 18 relation to the Tavern: had a codeword been
 19 communicated, and had officers been dispatch to the
 20 Tavern, then there is sufficient evidence for a jury to
 21 conclude it is likely at least that some loss of life
 22 would have been avoided, given Sergeant Pedersen said
 23 the approach he would have adopted towards evacuation.
 24 And it is in our written submission, Sir, but he
 25 confirmed -- I think in answer to a question from

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1 Ms Patrick -- that he would have taken the same approach
 2 to the Tavern had he been deployed there. Namely, that
 3 if he had been told there was a codeword --
 4 THE CORONER: Pedersen?
 5 MS WILLIAMS: Yes. I will turn up the reference in our
 6 submission, Sir, to assist. Paragraph 89, Sir.
 7 That is immediately after, in the paragraphs prior
 8 to that, 86 to 88, we dealt with Sergeant Pedersen's
 9 evidence in relation to the Rotunda, essentially the
 10 points that Mr Thomas made to you already this morning.
 11 Then at paragraph 89 we have pointed out that
 12 Sergeant Pedersen in his evidence also confirmed that he
 13 had been sent to King Edward House in possession of
 14 a positive code warning, he would have evacuated the
 15 building and the premises nearby, and one of the first
 16 places he would have evacuated would have been
 17 the Tavern.
 18 And we have the evidence as well -- and we have
 19 reminded you of it in our submissions, that there were
 20 in fact three exits at the Tavern.
 21 THE CORONER: Yes.
 22 MS WILLIAMS: There was a doorman, and that would have been
 23 evident to officers upon attendance and so forth. And
 24 so it could safely be concluded by the jury that had
 25 officers been informed that an IRA codeword had been

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1 used and had officers been dispatched to the Tavern,
 2 that it was likely that some loss of life at least would
 3 have been avoided.
 4 Mr Johnson makes a number of points about the
 5 practicality, or not, as he would have it, of conducting
 6 evacuation. Essentially, it is his
 7 paragraph 42 onwards.
 8 In our respectful submission, they are classically
 9 jury points. There are points that have come out in the
 10 evidence that support the proposition that officers
 11 could have initiated an evacuation of at least some if
 12 not more than some of those in the premises in the time
 13 available. There are points that no doubt Mr Johnson
 14 would deploy if this was the kind of case where he was
 15 making a jury speech, that point the other way. But
 16 those are all matters for the jury to consider.
 17 Obviously at this stage you must approach matters taking
 18 the evidence at its highest.
 19 In relation to the particular suggestion that
 20 Mr Johnson makes, that if people were evacuated it could
 21 be dangerous or problematic because the officers at the
 22 time did not know the specific location of the device,
 23 firstly we adopt what Mr Morgan has said to you this
 24 morning, Sir, in effect that in any event to evacuate
 25 would have been to move people away from the building

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1 where the warning indicated the device in each instance
 2 had been planted.
 3 But second, Sir, that in fact was not the evidence
 4 of the officers. It is a point that Mr Johnson explored
 5 with Dr Hamill, but no doubt I will be corrected if I'm
 6 wrong, but Mr Johnson's footnote in relation to this is
 7 only in regard to Dr Hamill's evidence.
 8 None of the officers said, "Well, the reason why
 9 I didn't evacuate is because I thought I might be moving
 10 people closer to the danger rather than further away
 11 from it". It simply was not something that featured in
 12 their thinking at the time.
 13 Indeed, as I have already reminded you, the evidence
 14 of Sergeant Pedersen is explicitly to the contrary, that
 15 he would have evacuated had there been provision of
 16 a codeword and he had been told there had been an IRA
 17 codeword. And he, as you have already been reminded,
 18 was one of the senior officers there at the time.
 19 In light of the fact that none of the officers
 20 specifically said that they didn't evacuate because they
 21 were worried about leading people towards the danger, we
 22 would join with the KRW in expressing some reservation
 23 about subparagraphs 18 and 19.
 24 THE CORONER: Of ...?
 25 MS WILLIAMS: Of the question 7 bullet points

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1 being included.
 2 THE CORONER: Yes. Just let me --
 3 MS WILLIAMS: The point you looked at with
 4 Mr Stoaate earlier. We didn't put this in our written
 5 submissions. I fairly accept it had not occurred to us
 6 until we saw the KRW Law submissions. But having had an
 7 opportunity to reflect on the point --
 8 THE CORONER: Question 7.
 9 MS WILLIAMS: The bullet points, Sir --
 10 THE CORONER: Bullet points?
 11 MS WILLIAMS: -- for question 7.
 12 THE CORONER: Numbers?
 13 MS WILLIAMS: I'm just double-checking. Yes, it is 18
 14 and 19. As I say, simply no evidence that that was
 15 something that influenced the officers in their thinking
 16 at the time.
 17 And potentially 20 as well.
 18 THE CORONER: Just let me read those again.
 19 MS WILLIAMS: Sorry, it is 19 and 20, not 18 and 19. My
 20 error. I think 18 and 19 was mentioned to you earlier.
 21 So in the interest of clarity, I think the point relates
 22 to 19 and 20.
 23 THE CORONER: Yes. I need to revise my note.
 24 Can we just go back? Who was it that raised 18 and
 25 19, remind me?

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1 MS WILLIAMS: It was Mr Stoaate.
 2 I'm just confirming for you, Sir.
 3 THE CORONER: Yes. Is that right, Mr Stoaate? It is 19
 4 and 20?
 5 MR STOAATE: Yes.
 6 THE CORONER: You didn't make a very firm submission on it,
 7 I noted, but it is not 18 and 19, it is 19 and 20?
 8 MR STOAATE: This is when my Latin failed me, Sir, yes.
 9 THE CORONER: Yes.
 10 MR STOAATE: Is the firmness of the submission in question?
 11 THE CORONER: It is still a submission.
 12 MR STOAATE: Yes.
 13 THE CORONER: And it has been supported by Ms Williams.
 14 MR STOAATE: For which I am very grateful. But yes.
 15 THE CORONER: Which gives it a firmer look.
 16 MR STOAATE: I am always grateful for that.
 17 THE CORONER: Just let me catch up with the note.
 18 So that is (xix) and (xx).
 19 MS WILLIAMS: Yes.
 20 THE CORONER: Yes.
 21 MS WILLIAMS: Sir, I'm sorry to slightly jump around, but
 22 I have been handed the evidence references in relation
 23 to the question you asked at the outset about evacuation
 24 of the mini restaurant. Can I just give them to you now
 25 so I don't forget?

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1 THE CORONER: Yes.
 2 MS WILLIAMS: We have a slightly fuller reference in
 3 relation to Constable Bradbury, fuller than in our
 4 written submissions. So for him it is Day 6, page 74,
 5 line 4, to page 75, line 21.
 6 For Woman Constable Adams, it is Day 8, page 93,
 7 line 8, to the same page, line 18.
 8 THE CORONER: Yes. I will ask if my team could provide that
 9 to me.
 10 MS WILLIAMS: Thank you, Sir.
 11 THE CORONER: Today, please.
 12 MS WILLIAMS: Coming back, then, to Mr Johnson's points
 13 about the sufficiency of evidence, or lack of
 14 sufficiency as he would have it, in relation to
 15 question 7.
 16 THE CORONER: Yes.
 17 MS WILLIAMS: He makes a point about Mr Brown. This is his
 18 paragraph 43. In effect he is saying -- slight
 19 paraphrase -- that Mr Brown's evidence about evacuation
 20 can be discounted or should be seen through the
 21 perspective that Mr Brown gave his answers under
 22 the misapprehension that a bomb warning would
 23 necessarily indicate the specific location.
 24 We don't accept that he did give his evidence under
 25 any such misapprehension. The reference in the evidence

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1 to where Mr Johnson put that suggestion to him, is
 2 Day 15, page 125, line 18, to page 126, line 22.
 3 All that was said, in response to Mr Johnson's
 4 suggestion that he had misunderstood in relation to
 5 that, is that he said that he would hope that hopefully
 6 a bomb warning would be reasonably precise. But he
 7 didn't say that his answers about evacuation had been
 8 dependent upon that proposition.
 9 Sir, you may recall that at the end of Mr Brown's
 10 evidence, I think it was, you asked him a series of
 11 questions to clarify what his understanding was of the
 12 approach that he and his colleagues had taken in
 13 relation to evacuation, and in our submission that sets
 14 out the position very clearly. The reference for that
 15 is Day 15, page 96, line 7, to page 98, line 20.
 16 He also did not say, as Mr Johnson suggests, that he
 17 had a target to evacuate in eight minutes. He
 18 volunteered that an evacuation had taken about seven to
 19 eight minutes. But in the event, that was for the whole
 20 21 floors and 1,000 people. So in our respectful
 21 submission, no objection to the jury being reminded of
 22 it but it is certainly not a definitive point against
 23 this area being left to the jury.
 24 In relation to available resources, Sir, because
 25 both West Midlands Police and your team suggest that the

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1 jury should not be asked to consider the depletion of
 2 resources consequent upon the deployment to the McDade
 3 operation, Mr Johnson says there is no evidence or that
 4 the officers positively said that this reduction in
 5 their numbers made no difference.
 6 We respectfully say that the evidence was both ways
 7 on that. At paragraph --
 8 THE CORONER: So that was Inspector --
 9 MS WILLIAMS: There were a number of officers, Sir, who did
 10 say it made no difference.
 11 THE CORONER: Yes.
 12 MS WILLIAMS: Certainly some of those called to the Rotunda.
 13 I was about to give you the officers who said it did
 14 make a difference. I am afraid I don't have --
 15 THE CORONER: I was thinking in particular of
 16 Superintendent Jones.
 17 MS WILLIAMS: Superintendent Jones certainly did, in his
 18 after-the-event report.
 19 THE CORONER: Yes. Does anybody know what the date of
 20 Superintendent Jones' document was?
 21 MS WILLIAMS: I have the document, Sir. I am not sure if it
 22 says it.
 23 THE CORONER: I have the front cover, and it doesn't say.
 24 MS WILLIAMS: Yes, there is a date on -- no, sorry, it is
 25 a series of appendices. Let me just check, Sir.

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1 No, I think it is the body of the report. It has
 2 a date of 21 November 1974, by a signature of Chief
 3 Superintendent Brown --
 4 THE CORONER: On the very day of the 21st?
 5 MS WILLIAMS: Yes, that doesn't --
 6 THE CORONER: That can't be right.
 7 MS WILLIAMS: Yes, I fully accept that that can't be right.
 8 Can you see if there is a date at the end of
 9 the introduction.
 10 No, I was looking at the wrong document there. The
 11 body of the report is page 9, and there is not a date
 12 within that part, Sir. I am afraid I'm not able to
 13 assist you. Certain other documents such as the
 14 Brannigan report were within the appendices, and it must
 15 have been after that. If we can find it, we will let
 16 you know.
 17 THE CORONER: Thank you very much.
 18 MS WILLIAMS: In any event, in the interests of clarity --
 19 and I'm grateful for Mr Hill who has just made this
 20 point sotto voce, and I readily adopt it -- the Jones
 21 report was dealing with whether after the explosion
 22 there was an impact from the reduced number of officers
 23 in the city centre. He was not addressing the question
 24 of whether, between the receipt of the bomb warning and
 25 the bombs' detonating, there was any impact from the

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1 reduced number of officers.
 2 THE CORONER: Say that again, Ms Williams, please, if you
 3 don't mind.
 4 MS WILLIAMS: Yes.
 5 Insofar as Superintendent Jones was addressing the
 6 point, he was looking at the police response -- the
 7 emergency response if you like -- to deal with
 8 casualties after the bombs had exploded. He was saying
 9 that in that respect there had been no adverse impact
 10 from the reduced number of officers in the city centre.
 11 He was not addressing the question of whether more
 12 could have been done if more officers had been available
 13 in the time between the bomb warning and the bombs'
 14 exploding. Indeed, there is nothing in his report, Sir,
 15 to suggest that he would have had all the requisite
 16 information on that topic.
 17 You will appreciate, it is essentially a report
 18 about the McDade operation.
 19 THE CORONER: Yes.
 20 MS WILLIAMS: But be that as it may. I accept that there
 21 were officers who, when questioned on the point, said it
 22 didn't make a difference. From memory, PC Bradbury was
 23 one of those. But I am sure Mr Johnson will address you
 24 on that.
 25 THE CORONER: Yes.

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1 MS WILLIAMS: But equally, Sir, there were officers who
 2 indicated that their reduced number did have an impact.
 3 We have set out that evidence at paragraphs 62 to 63 of
 4 our submissions.
 5 THE CORONER: Yes.
 6 MS WILLIAMS: So again, these are matters for the jury to
 7 consider, in our submission. And of course, from our
 8 Tavern-focus perspective, because of where our clients'
 9 loved ones died, it is particularly noteworthy, this
 10 point, in a context where no officers --
 11 THE CORONER: 62 to --
 12 MS WILLIAMS: 63. It is particularly noteworthy in
 13 a context where no officers were deployed to the Tavern
 14 prior to the explosion, on the evidence, taken at
 15 its highest.
 16 I think I have dealt with the other evidential
 17 points. There is quite some overlap with the points
 18 I have already covered.
 19 Rounding off, your team propose in their paragraphs
 20 41 and 42, Sir, that certain other of the question 7
 21 bullet points should be removed.
 22 I think, if I may say so, there is a typo in the
 23 Roman numerals that they refer to to denote the
 24 subparagraphs that they have in mind.
 25 THE CORONER: It is not helpful to have Roman numerals at

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1 some length, I have to say.
 2 MS WILLIAMS: It was done that way, but yes. I think they
 3 have referred to subparagraph (xx) onwards, but it is
 4 actually, if one looks at the topics, they are referring
 5 to it as 21 to 38, are the ones that they propose should
 6 be excised from the draft.
 7 THE CORONER: You don't mean 38.
 8 MS WILLIAMS: Sorry, 28. I put an extra X in my notes, yes.
 9 THE CORONER: Yes, (xxviii). It is a good job we have not
 10 gone up to 50.
 11 MS WILLIAMS: It is.
 12 THE CORONER: Is that C or L?
 13 MR THOMAS: L.
 14 THE CORONER: Thank you.
 15 MS WILLIAMS: So it is eight bullet points they are
 16 suggesting be excised.
 17 THE CORONER: Yes.
 18 MS WILLIAMS: In relation to those, if I can just -- some of
 19 it will be apparent from what I have already said, but
 20 if I can just give you our response.
 21 In relation to the lack of calls to the pubs from
 22 the police, which is in effect (xxvi) to (xxviii) if
 23 I have my numbering right --
 24 THE CORONER: Yes.
 25 MS WILLIAMS: -- we don't express a particularly strong view

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1 on that. Put shortly, if anything had to go, we would
 2 not be going to the wall on that point.
 3 THE CORONER: No.
 4 MS WILLIAMS: I'm not positively inviting you to delete it,
 5 but we can see there is some speculation that would be
 6 involved there.
 7 THE CORONER: Yes.
 8 MS WILLIAMS: In relation to the bullet points that relate
 9 to cordons that --
 10 THE CORONER: So telephone calls is -- I'm sorry to be slow
 11 about this. Telephone calls is --
 12 MS WILLIAMS: It is 26 to 28 from my note, Sir. I will turn
 13 it up to check.
 14 THE CORONER: So (xxvi), (xxvii) and (xxviii), yes.
 15 MS WILLIAMS: Cordons, which is (xxi) to (xxiii), Mr Morgan
 16 has already dealt with, and they affect his clients'
 17 family members as opposed to ours, so I don't say
 18 anything specifically about that.
 19 Training, I have already addressed you on, Sir, as
 20 to why we say that should stay. That is 24 and 25.
 21 THE CORONER: Just a moment.
 22 (xxiv). Yes.
 23 MS WILLIAMS: And then police resources, which in fact comes
 24 earlier. It is (iv), I believe, looking at the
 25 subparagraphs. We say that should remain, for the

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1 reasons that I have just addressed you on.
 2 THE CORONER: That is (iv)?
 3 MS WILLIAMS: Yes. That is also, in my understanding, being
 4 suggested as a candidate for deletion but, for the
 5 reasons I have just addressed you on, we respectfully
 6 submit that that should remain.
 7 THE CORONER: Yes. Thank you.
 8 MS WILLIAMS: And your team, at paragraph 38, propose that
 9 question 7 only be left on the 'possibly' basis.
 10 I think I have covered it sufficiently already, Sir.
 11 But just so there is no element of doubt, we submit it
 12 should be left on both the 'probably' and the
 13 'possibly' bases.
 14 THE CORONER: Yes.
 15 MS WILLIAMS: Sir, in relation to question 8, forewarning,
 16 we don't propose that Talk of the Town be left to the
 17 jury. In relation to Winson Green Prison we have dealt
 18 with that in our written submissions. And unless there
 19 is anything I can assist in relation to it, I don't
 20 propose to add to it orally.
 21 THE CORONER: No. Thank you.
 22 MS WILLIAMS: I think that is my hour, almost exactly. So
 23 unless there is anything else I can assist on, Sir?
 24 THE CORONER: No, that is very helpful. Thank you.
 25 Mr Johnson.

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1 Submissions on behalf of WEST MIDLANDS POLICE
 2 MR JOHNSON: Sir, thank you. I would like to make three
 3 submissions on behalf of West Midlands Police.
 4 The first is that the jury should, we say, be
 5 directed to return a short form conclusion of unlawful
 6 killing, on the basis of murder.
 7 If we are wrong about that, then we say they should
 8 be left the alternative of manslaughter, and conclusions
 9 should be expressed in such a way that the basis on
 10 which they have found unlawful killing is clear.
 11 That is for the reasons we give at paragraphs 16 to
 12 28 of our written submissions.
 13 THE CORONER: Is it one way or the other? Is it murder or
 14 manslaughter? You say it is murder, for --
 15 MR JOHNSON: Yes.
 16 THE CORONER: -- the arguments that you make.
 17 MR JOHNSON: Yes.
 18 THE CORONER: But in the alternative, murder or
 19 manslaughter.
 20 MR JOHNSON: Yes. It has to be unlawful killing.
 21 THE CORONER: Yes, but either way, murder or manslaughter,
 22 it is unlawful killing?
 23 MR JOHNSON: Yes.
 24 THE CORONER: There is no other route?
 25 MR JOHNSON: No.

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1 THE CORONER: Yes.
 2 MR JOHNSON: I am going to come on to it in a bit of detail
 3 in a moment.
 4 THE CORONER: Yes.
 5 MR JOHNSON: That is question 3.
 6 THE CORONER: Yes.
 7 MR JOHNSON: Our second submission is that the jury should
 8 not be invited to return a conclusion in respect of
 9 emergency response, for the reasons we give at
 10 paragraphs 29 to 64 of our written document, which again
 11 I will supplement in a moment. That is question 7.
 12 Our third submission is that the jury should not be
 13 invited to return conclusions in respect of the
 14 forewarning issues. That is for the reasons given at
 15 paragraphs 65 to 87 of our written document, and also
 16 for the reasons given at paragraphs 46 to 49 of your
 17 counsel's written submissions. We respectfully agree
 18 with those paragraphs. That is question 8.
 19 Nobody has developed submissions orally in relation
 20 to forewarning, and I am not going to do so, either.
 21 I am going to focus on the first two points.
 22 THE CORONER: Yes.
 23 MR JOHNSON: On all other matters we rely on our written
 24 submissions.
 25 So can I turn to murder?

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1 THE CORONER: Yes.
 2 MR JOHNSON: Everyone agrees that it is open to the jury to
 3 return a verdict of unlawful killing on the basis that
 4 the deceased were murdered. The issue is whether it is
 5 open to the jury to find that this was not a case of
 6 murder but was rather an accident, in the sense that
 7 there may not have been an intention to kill or cause
 8 GBH. I am using "accident" in the sense that it was
 9 used by members of the IRA.
 10 Our submission is that that conclusion is not open
 11 to the jury on the evidence applying the Galbraith plus
 12 test.
 13 Everybody agrees, your counsel agree, that there is
 14 a powerful case for murder. The issue that has given
 15 your counsel pause for thought is the question of intent
 16 to kill or cause GBH. And of course that is an
 17 essential element of the offence.
 18 In order to return a conclusion of unlawful killing
 19 based on murder, the jury would have to be satisfied so
 20 that they were sure that at least one of those involved
 21 in the bombing had at some point intended to kill or
 22 cause GBH.
 23 We say that is the inevitable conclusion to be drawn
 24 from the placement of very large high-explosive devices
 25 in crowded pubs, timed to detonate when those pubs are

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1 full. The issue gave the judge at the original criminal
 2 trial no difficulty at all.
 3 THE CORONER: Times were a little different in 1975.
 4 MR JOHNSON: The ingredients of the offence were the same.
 5 THE CORONER: Yes.
 6 MR JOHNSON: If we look at his ruling --
 7 THE CORONER: Yes.
 8 MR JOHNSON: -- my submission is when he was applying -- he
 9 didn't have to go through the Galbraith plus filter.
 10 THE CORONER: No.
 11 MR JOHNSON: My submission is that it is helpful, and it
 12 shows how straightforwardly the jury can and should be
 13 instructed in relation to this.
 14 THE CORONER: I am speaking out loud so that you know what
 15 I feel about Nedrick and Maloney and the other cases --
 16 MR JOHNSON: Yes.
 17 THE CORONER: -- how judges do their very best to avoid them
 18 at all costs generally in the criminal courts, because
 19 foreseeability and anything relating to it has caused
 20 such difficulty. Indeed, if you read Archbold, it says
 21 only exceptionally can you go down the Nedrick route
 22 when the simple route of intent is not sufficient.
 23 That is your submission?
 24 MR JOHNSON: Yes. Indeed, my submission is the simple route
 25 is sufficient --

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1 THE CORONER: When it is not sufficient. When the simple
 2 route is not sufficient.
 3 MR JOHNSON: Indeed. But, in my submission, it can be dealt
 4 with very simply. Mr Justice Bridge, I think it was,
 5 wasn't it, gave his summing up before Nedrick --
 6 THE CORONER: Yes.
 7 MR JOHNSON: -- in a very simple way --
 8 THE CORONER: Yes.
 9 MR JOHNSON: -- but incorporating the concept.
 10 If I may, I would just like to show it to you very
 11 briefly.
 12 THE CORONER: I have seen it recently. Is it in your
 13 bundle?
 14 MR JOHNSON: No.
 15 THE CORONER: Somewhere else?
 16 MR JOHNSON: No. If we can put it on screen, it is
 17 [INQ003792], if we pick it up at page 15, letter C is
 18 where he introduces the elements of the offence of
 19 murder.
 20 THE CORONER: Yes.
 21 MR JOHNSON: He says:
 22 "... I can avoid all technicalities in explaining to
 23 you what are the ingredients of the crime of murder,
 24 because it is really so simple."
 25 THE CORONER: I did read it, yes.

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1 MR JOHNSON: I will take it very briefly then. If we go
 2 over the page, he first deals with the act of murder --
 3 THE CORONER: If we go back a page --
 4 MR JOHNSON: I'm so sorry.
 5 THE CORONER: It is all right. So he goes on to say, after
 6 the words "really so simple":
 7 "Murder is committed when any person does some
 8 unlawful act, particularly an act of violence, which
 9 causes the death of another person, intending by his
 10 unlawful act to cause death or serious bodily injury
 11 either to the victim who actually dies or to anybody
 12 else."
 13 That is probably the simple version.
 14 MR JOHNSON: Yes.
 15 THE CORONER: "It does not matter who is aimed at ... If the
 16 unlawful act is done with the intention of causing death
 17 or some really serious bodily harm and death results ...
 18 then the crime is murder."
 19 So that is the simple route.
 20 MR JOHNSON: Very simple.
 21 THE CORONER: Which is then complicated by -- some might
 22 say, you might say not in your submissions -- by the
 23 adding of the Nedrick-type route.
 24 Let's have a look --
 25 MR JOHNSON: When we look at it, my submission is it is not

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1 made particularly complex at all. If we go over the
 2 page, at letter B:
 3 "But I must say a short word by way of amplification
 4 on what the law means by the words in the definition I
 5 have given you -- 'intending to cause death or serious
 6 bodily injury'. The law gives a somewhat extended
 7 meaning in this context to the word 'intention'. There
 8 are two possibilities to be considered ... "
 9 The first one is the obvious one, the stabbing,
 10 where that is what you intend. Letter D:
 11 "That man in every sense ... intended to cause
 12 death."
 13 But then this, at letter E:
 14 "A man may plant a bomb, which is unquestionably an
 15 unlawful act of violence, and he may do so having no
 16 desire at all to cause death or injury to anybody. He
 17 may even hope that nobody will be hurt, but if he knows
 18 full well that in the circumstances in which he plants
 19 his bomb there is a high probability that the explosion
 20 will in fact kill somebody or seriously injure somebody,
 21 then he is guilty of murder if death results,
 22 notwithstanding that death was not the object which he
 23 desired to produce. In other words, if you do some
 24 unlawful act deliberately and knowingly which subjects
 25 other people to a high degree of risk of death or

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1 serious injury, for example, by planting a bomb -- it is
 2 the most obvious example one could think of -- it is no
 3 answer ... to say 'I did not want anybody to get hurt
 4 ...'
 5 "Members of the jury, I bring that aspect of the law
 6 to your attention because we do know, do we not, that in
 7 this case a warning was given before these bombs went
 8 off, a warning which was so late and so imprecise in its
 9 terms that of course it was utterly useless to prevent
 10 the terrible carnage which followed when bombs went off
 11 in these two public houses; but a warning was given.
 12 That is the first reason why I draw this ... extended
 13 meaning to your attention ...
 14 The second reason relates to responses that
 15 defendants had given in interview where they had said
 16 "... this was never meant to be. There was supposed to
 17 be a warning."
 18 "Supposing [says the judge] you [members of the
 19 jury] come to the conclusion that this never was meant
 20 to be and that there was supposed to be a warning but
 21 that something went wrong with the arrangements. Where
 22 does that leave you in this case? It is a matter for
 23 you. It is matter for you to ask in relation to each
 24 defendant if you are satisfied that he was a party to
 25 the planting of the bombs. That is the first issue, but

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1 if you get to the point of considering the mental
 2 element, you will have to ask yourselves the question,
 3 'Did he realise? Am I satisfied that he knew the high
 4 degree of risk of death or serious bodily injury which
 5 was necessarily involved in the explosions he was
 6 assisting to cause?
 7 "You may think the answer to that question is
 8 inevitably 'Yes', but it is a matter for you to decide,
 9 not for me, because even if there had been a timely and
 10 precise warning of the presence of these bombs at the
 11 Tavern in the Town and the Mulberry Bush, it might very
 12 well have been, might it not, that the process of
 13 evacuation would not have been completed before the
 14 bombs went off, and even if the pubs had been
 15 successfully evacuated in response to a timely and
 16 precise warning, the planting of any device of this
 17 kind, you may think, obviously involves a high degree of
 18 risk of death or grievous injury to the loyal and
 19 dedicated men who are members of what we used to call
 20 ... the bomb disposal units ..."
 21 And so on. Letter G:
 22 "If you are satisfied in relation to any defendant
 23 that he was a party to the planting of a bomb or bombs
 24 but did not realise the high degree of risk of death or
 25 injury ... It is only then and in those circumstances

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1 that you would appropriately return the alternative
 2 verdict of guilty of manslaughter."
 3 Then, at letter B:
 4 "... I explain that because I have to, but you may
 5 think that that is really far-fetched, and you may think
 6 that the real issue here on the murder charges ..." is
 7 identity.
 8 THE CORONER: Yes.
 9 MR JOHNSON: And "really far-fetched" in our language equals
 10 not passing the Galbraith plus stage. We say that the
 11 only possible verdict is that of unlawful killing by
 12 murder.
 13 Your counsel rightly point out --
 14 THE CORONER: Yes.
 15 MR JOHNSON: I am so sorry --
 16 THE CORONER: No, no, go ahead. I will come back to it.
 17 MR JOHNSON: I am moving on to another point so that can
 18 come off the screen.
 19 Your counsel rightly point out that there is some
 20 hearsay evidence which was not before Mr Justice
 21 Bridge -- was not before the Birmingham Six trial, but
 22 was the analogue of what was said in interview -- there
 23 is some hearsay evidence that one of those said to be in
 24 involved, Murray, disavowed an intention to kill.
 25 The best evidence of that is the evidence of Chris

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1 Mullin, who says that Murray told him that he had not
 2 intended to kill, that he had intended to give
 3 a sufficient warning, but that his attempt to do so was
 4 thwarted by vandalism to telephone boxes.
 5 THE CORONER: Yes. And the young planter refers to it too.
 6 MR JOHNSON: Yes. That is supported by Conway's account to
 7 similar effect, although Conway is probably more than
 8 one stage removed. So the best it really gets is
 9 Mullin.
 10 If that evidence were capable of showing an absence
 11 of an intent to kill or cause GBH, then it would not be
 12 open to you to direct the jury to return a conclusion of
 13 unlawful killing based on murder alone, and you would
 14 have to give them the option of manslaughter.
 15 So on that hypothesis, that the Mullin evidence is
 16 sufficient to pass the Galbraith plus threshold, we
 17 accept the consequence that the jury would have to be
 18 given the option.
 19 But we say there are a number of reasons why that
 20 hypothesis is flawed -- the hypothesis being that this
 21 is sufficient evidence to pass Galbraith plus muster --
 22 and why we say that, on analysis, the Mullin evidence
 23 does not allow an escape from the inevitable conclusion
 24 of murder.
 25 The first is that the evidence is simple not

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1 credible. I accept, of course, that there is strong
 2 evidence that Murray said that which Mullin attributed
 3 to him. Mullin is a reputable investigative journalist,
 4 he had no motive to dissemble and his evidence as to
 5 what Murray said is corroborated by Conway, so that the
 6 hearsay aspect is not a particular problem. Certainly
 7 not insuperable. The jury could safely conclude that
 8 Murray did say that.
 9 But we submit that the underlying account that
 10 Murray gave is simply not credible, and it is
 11 obviously -- as you put it -- an orchestrated lie.
 12 THE CORONER: I asked a question. I didn't put it from
 13 myself, I asked the question.
 14 MR JOHNSON: You put it in the terms of the question. You
 15 asked whether it could be an orchestrated lie. I am
 16 going to come to exactly what you said in a moment, Sir.
 17 THE CORONER: Thank you.
 18 MR JOHNSON: I'm just using your words rather than anything
 19 else.
 20 There are a number of reasons why we say that is
 21 inescapable. First, Murray is the only one, or the
 22 principal one, who gives this account -- we have the
 23 young planter as well -- and there is no other
 24 corroboration from any independent source.
 25 There is direct evidence to contradict the

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1 suggestion that there was no working telephone box. In
 2 particular, there is positive evidence that there were
 3 working telephone boxes in the vicinity, and we have
 4 made reference to the evidence of John Boyle and Douglas
 5 Hughes in our written submissions, and we have given the
 6 references. Both of those men made telephone calls in
 7 close proximity to the pubs in the immediate aftermath
 8 of the explosions.
 9 Murray has been inconsistent. He gave a different
 10 explanation to Witness O. He didn't tell Witness O that
 11 the telephone box was not working. Instead, he claimed
 12 that he had given the requisite warning but that MI5 had
 13 let the bombings happen.
 14 Murray's telephone box story was not given in
 15 isolation. It was part of a much more elaborate account
 16 which involved watches being synchronised and the
 17 bombers retrospectively confirming with each other that
 18 the detonations happened at 8.28 pm. That cannot be
 19 correct, even allowing Ms Williams the widest possible
 20 margin she wants on timings, not least because the 999
 21 calls responding to the bombs occurred before 8.28.
 22 And the 8.28 story simply cannot be an honest
 23 mistake. That is because of the level of detail and
 24 precision involved in the account that was given. The
 25 only sensible explanation is that it was a deliberate

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1 falsehood.

2 Murray had a clear motive to lie. The bombs were --

3 as the IRA put it -- a disaster for the IRA; his own

4 life was at risk unless he came up with an explanation

5 for the grossly inadequate warning.

6 Mullin is the only person who has given evidence who

7 has directly heard and tested the telephone box story.

8 Whilst he was prepared to believe Murray on other

9 matters, on this issue about the warning, he himself

10 came to the conclusion, for the detailed reasons he

11 gave, that Murray was being, as he put it, self-serving.

12 So for all those reasons, we submit the only

13 credible explanation, and the only conclusion the jury

14 could reach to a Galbraith plus standard, is that this

15 was an orchestrated lie in order to avoid disciplinary

16 sanction. Even Conway was prepared to accept that as a

17 possibility when you raised the question -- it was

18 a question -- with him, and the evidence, we say, admits

19 of no other explanation.

20 If, as I submit is inescapable, it was a lie, then

21 it directly follows that civilian deaths must have been

22 intended. Conway himself volunteered that inescapable

23 conclusion when you put that question to him, the

24 question about the orchestrated lie. That is page 151

25 of the transcript for 21 March.

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1 You asked, going back to the same question:

2 "... could the telephone box story have been

3 a well-orchestrated lie on the part of the Birmingham

4 team?"

5 Conway responded:

6 "It is conceivable, yes."

7 But he then added this:

8 "That is to draw the conclusion that they caused

9 civilian casualties deliberately."

10 And we respectfully submit that that is inescapable.

11 Sir, a second reason is this. Even if you consider

12 that it would be open to the jury safely to believe the

13 telephone box story, all that would show is that Murray

14 may not have wanted there to be civilian casualties at

15 the point the bombs were placed and at the point he, on

16 his account, intended to give an adequate warning.

17 But one shouldn't simply isolate consideration of

18 this to that point in time: leaving ticking time-bombs

19 in crowded pubs is a continuing act. A person's

20 intention does not simply equate to what they want.

21 From the moment the ticking time-bombs were in those

22 pubs it was, see Mr Justice Bridge, highly probable that

23 one way or another they would detonate and cause

24 civilian casualties. That, we say, was the inevitable

25 outcome, and as soon as Murray realised that there was

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1 insufficient time, because of the telephone boxes or

2 whatever, to give an adequate warning, he must have

3 known that. And that, again, we say is an inescapable

4 conclusion.

5 A further point is the content of the warning call,

6 which is completely inconsistent with an intention to

7 avoid casualties. If the bombers were not going to

8 remove or deactivate the bombs, or themselves to cause

9 an evacuation, there was at that point -- so at 8.11,

10 when detonation was minutes away -- a desperate need

11 directly to tell the authorities precisely where the

12 bombs were and when they would detonate.

13 It is only that information that would have given

14 any prospect of avoiding catastrophe. Yet the call was

15 utterly hopeless: it did not say where the bombs were,

16 it was misleading, it did not say when they would

17 detonate, and the call was made to a newspaper rather

18 than the police.

19 That, we submit, is utterly inconsistent with

20 a desire to avoid civilian casualties. It is only

21 consistent with a cynical intent to minimise the chance

22 of effective intervention and to maximise the prospect

23 of death and mayhem.

24 Finally, we say that on any view -- and again it is

25 a point made by Mr Justice Bridge -- on any view there

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1 was an intention to draw the authorities into the

2 location of the bomb and therefore to kill any officers

3 or army servicemen who responded to the call. Under the

4 doctrine of transferred malice, that gives rise to the

5 necessary mens rea.

6 For all of those reasons, our primary submission is

7 that this is, as the trial judge said, as clear a case

8 as one can think of, of murder. The only residual

9 issue, which is not a matter for these Inquests, is who

10 the perpetrators were.

11 But on the question of short form conclusion, the

12 jury should, we submit, be directed to find unlawful

13 killing on the basis of murder.

14 THE CORONER: He did leave manslaughter.

15 MR JOHNSON: He did. No, he did.

16 THE CORONER: After a fashion.

17 MR JOHNSON: After a fashion. But when you look at the

18 after a fashion bit and you translate that into Inquest

19 speak and the extra -- there is obviously a difference

20 between a judge leaving a matter to a jury in a criminal

21 trial --

22 THE CORONER: Yes.

23 MR JOHNSON: -- and a Coroner in an Inquest. Evidence has to

24 reach a higher threshold in order for it to be safe to

25 leave it to the jury.

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1 When you look at his language -- I can't remember
 2 the exact terminology -- but he says he was only telling
 3 the jury this because he had to, and that it was far
 4 removed from reality, or words to that effect. That
 5 translates, in Galbraith plus language, to it is not
 6 safe, the only proper verdict is one of murder.
 7 If I'm wrong about that --
 8 THE CORONER: Yes.
 9 MR JOHNSON: -- then there is the alternative of unlawful
 10 killing on the basis of manslaughter.
 11 Your counsel suggest that it is open to you to avoid
 12 leaving the alternative routes to unlawful killing, and
 13 instead to adopt -- my word not theirs, and I apologise
 14 for the pejorative word -- but to adopt a fudge and
 15 simply to direct the jury that one way or another it
 16 must be unlawful killing, and they can simply reach
 17 their conclusion without specifying how they reach their
 18 conclusion.
 19 Their reason for that approach, for which no
 20 precedent has been offered, is in effect -- this is how
 21 I read their paragraph 32(b)(2) -- in effect that it
 22 would be unpalatable to the families to allow the jury
 23 to reach a conclusion of manslaughter rather than
 24 murder.
 25 I don't want to do them a disservice, so just so

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1 that I --
 2 THE CORONER: 32(b)(2), on page 14.
 3 MR JOHNSON: Yes. Bottom of page 14:
 4 "Our primary submission is that it should not do
 5 either of these things, as it would risk a finding of
 6 manslaughter or a negative finding on the intentions of
 7 the IRA, both of which we recognise would be highly
 8 unwelcome to the families, and would not represent an
 9 appropriate determination for an Inquest."
 10 So the primary position is what I respectfully call
 11 a fudge, and the rationale is that it would be highly
 12 unwelcome to the families.
 13 Now I entirely accept that it would be unwelcome to
 14 the families. Their representatives have made that
 15 clear to you, and I entirely respect and understand why
 16 that is. The last thing my client would want to do is
 17 for the families to suffer additional upset or distress.
 18 For what it is worth, I'm not for a moment
 19 suggesting that it is an outcome that my client would
 20 welcome. I have made it very clear what my primary
 21 submission is.
 22 But without wanting to overdramatise this, asking
 23 the jury to find unlawful killing, without explaining
 24 whether they reach that by murder or manslaughter, in
 25 circumstances where the alternatives have been offered,

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1 is, I respectfully submit, unprincipled.
 2 THE CORONER: Unlawful?
 3 MR JOHNSON: And unlawful.
 4 It would run contrary to fundamental principles of
 5 the independence of the judiciary, and principles that
 6 are encapsulated in the judicial oath to do what is
 7 right under the law without fear or favour.
 8 We submit it would be wrong in principle and
 9 unlawful to leave or to withdraw something from the jury
 10 simply because the conclusion might be unwelcome or
 11 unpalatable. What matters is securing the jury's
 12 conclusions on the relevant matters that are in issue,
 13 not securing the jury's conclusions on those matters
 14 that Interested Persons want to hear and not on those
 15 that they do not want to hear.
 16 In any event, the proposal is, we submit,
 17 self-defeating. It would mean that you would be
 18 mandating an outcome that is consistent, ie unlawful
 19 killing but we are not telling you why, but it is left
 20 on an alternative of manslaughter; you would be
 21 mandating an outcome that is consistent with claims made
 22 by some members of the IRA that this was an accident, in
 23 their terms, and it would enable it to be said that no
 24 conclusion of murder has been reached, the very outcome
 25 which is said to be so unpalatable.

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1 We say two things about this. The first is that
 2 the, I accept, very unpalatable unwelcome nature of that
 3 possible outcome should cause the court critically to
 4 examine whether it really is open to the jury to reach
 5 a finding of manslaughter rather than murder --
 6 THE CORONER: You are saying they can be directed that it is
 7 murder?
 8 MR JOHNSON: Yes, that is my primary submission.
 9 THE CORONER: Yes. Are you saying -- or would you disagree
 10 with -- a simple direction which tells them in effect
 11 that that is murder, and it may be a matter for them
 12 but -- I will give you a draft, which you can consider
 13 over lunch.
 14 MR JOHNSON: Yes.
 15 THE CORONER: I am not sure whether it falls into your fudge
 16 box or is separate.
 17 I'm just thinking of possible alternatives. It is
 18 two sides of a piece of paper. One side ignore, because
 19 that is a Nedrick approach, for now anyway.
 20 MR JOHNSON: I understand.
 21 THE CORONER: But the other is what I have ahead "Simpler
 22 agreed approach", avoiding Nedrick. I am not saying
 23 I have this in mind to do or not, but it is simply
 24 a possibility.
 25 MR JOHNSON: I would be very happy to look at that.

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1 THE CORONER: Yes. And I have copies for everybody.
 2 MR JOHNSON: Sir, just one further point. As I said,
 3 I wanted to say two things in conclusion on this point
 4 before I come to one authority.
 5 THE CORONER: Yes.
 6 MR JOHNSON: The first is that actually where the
 7 unpalatable, unwelcome nature of this drives one to is
 8 to look back as to whether this really is an option, and
 9 the answer is that it isn't.
 10 The second is that if I'm wrong then you shouldn't
 11 fudge the issue: you have face up to it and leave both
 12 options to the jury.
 13 The authority is the Wilkinson case. I hope you
 14 have been given a copy.
 15 THE CORONER: Yes.
 16 MR JOHNSON: The primary issue in the case was whether or
 17 not -- it was, as I understand it, an issue that was
 18 causing trouble up and down the countries --
 19 THE CORONER: I do remember it.
 20 MR JOHNSON: -- about the circumstances in which you can
 21 reach an unlawful killing verdict in a driving case.
 22 THE CORONER: Yes.
 23 MR JOHNSON: That was the principal issue.
 24 But the Coroner had left unlawful killing on two or
 25 three different bases, see paragraphs 3 and 13 to 14.

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1 The jury had come back with an unlawful killing
 2 verdict -- this is paragraph 14 -- with no further
 3 details given, so nobody could tell on what basis they
 4 had reached the unlawful killing verdict.
 5 Sir, you and Mr Justice Foskett dealt with the
 6 principal issue about the circumstances in which it was
 7 appropriate to leave unlawful killing in a driving case.
 8 But then this at 83, I accept it is obiter.
 9 "Had it been relevant we would also have taken the
 10 view that the Coroner was wrong to leave the three
 11 offences to the jury for consideration as unlawful
 12 killing. While there is significant difference in this
 13 case between manslaughter and causing death by careless
 14 driving, the way in which the three possible offences
 15 were left to the jury meant that the jury's verdict of
 16 unlawful killing did not express which offence they
 17 found proved and whether they were agreed upon it."
 18 So that's why I say not only is it unprincipled, it
 19 is also unlawful: you need to know how the jury have
 20 reached their conclusion.
 21 Sir, I'm more than halfway through. Is that
 22 a convenient moment?
 23 THE CORONER: It is. I will hand down these drafts.
 24 Yes, thank you. 2 o'clock.
 25 (1.00 pm)

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1 (The short adjournment)
 2 (2.00 pm)
 3 MR JOHNSON: Thank you very much for you two-sided
 4 alternative drafts. We like and very much prefer the
 5 simpler agreed approach, and we submit, with respect,
 6 that that is entirely appropriate.
 7 THE CORONER: That would involve asking a question.
 8 MR JOHNSON: With a directed answer.
 9 THE CORONER: Yes.
 10 MR JOHNSON: Yes.
 11 THE CORONER: Thank you.
 12 MR JOHNSON: And it would address everything I said
 13 before lunch.
 14 THE CORONER: Yes. But avoid the Bridge direction.
 15 MR JOHNSON: It would.
 16 THE CORONER: Which, I have to say, I wonder how strong that
 17 is today if, in a criminal case, for example, that faced
 18 the Court of Appeal.
 19 MR JOHNSON: I understand. In my submission, in this
 20 jurisdiction it is entirely appropriate to put it in the
 21 way it is put on under this direction.
 22 THE CORONER: Yes. Well, it is a very
 23 different jurisdiction.
 24 MR JOHNSON: It is. It is.
 25 THE CORONER: Yes.

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1 MR JOHNSON: Sir, I have finished my submissions on
 2 question 3.
 3 THE CORONER: Yes.
 4 MR JOHNSON: My second submission concerns the emergency
 5 response, question 7. And our submission is that that
 6 should not be left to the jury. There are two
 7 components to consideration of the emergency response:
 8 one is whether there was any legally significant error
 9 or fault on part of the police. The second is what
 10 impact that fault had, and questions of probability,
 11 Lewis, possibility and so on.
 12 So I am going to deal with each of those in turn.
 13 As to the question of fault, we are here dealing with
 14 the positive operational or Osman duty under Article 2
 15 of the convention. At the point that Mr Cropper
 16 informed the police of the warning, sometime after 8.11,
 17 there was an obligation on the police to take reasonable
 18 steps in response.
 19 And as Osman tells us, we must consider that. See
 20 paragraphs 115 and 116 of Osman. We must consider that
 21 in a way that is realistic and does not impose an
 22 unreasonable burden on the authorities. And the
 23 question of whether the steps taken by the police were
 24 reasonable falls to be judged by the standards of 1974
 25 and without the benefit of hindsight. And you have my

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<p>1 written submissions about hindsight.</p> <p>2 Our submission is that the evidence does not reach</p> <p>3 the Galbraith plus test for a finding that the police</p> <p>4 failed to take reasonable steps. It has been pointed</p> <p>5 out, correctly, that Police Sergeant Pedersen said in</p> <p>6 evidence that if he had been told that it was a coded</p> <p>7 warning he would have commenced evacuation.</p> <p>8 But that, we submit, is nothing to the point. What</p> <p>9 is important is whether Sergeant Wilson was in breach of</p> <p>10 his Osman duty by failing to tell Police Sergeant</p> <p>11 Pedersen that it was a coded warning, and whether</p> <p>12 evacuation was the required response such that it was</p> <p>13 unreasonable not to immediately implement an evacuation</p> <p>14 without knowing where the bomb was.</p> <p>15 Just unpicking those, and dealing first with the</p> <p>16 question of coded warning, there is, we submit, no</p> <p>17 evidence that Sergeant Wilson should have told</p> <p>18 Police Sergeant Pedersen that a code had been used.</p> <p>19 These Inquests have simple not investigated what</p> <p>20 instructions Sergeant Wilson had about whether or not to</p> <p>21 pass on a code. And the jury, we say, are simply not in</p> <p>22 a position to conclude that Sergeant Wilson was wrong</p> <p>23 not to pass on the code.</p> <p>24 There are obviously coherent reasons for not passing</p> <p>25 on a code. First, if you want officers to treat all</p> <p style="text-align: center;">Page 105</p>	<p>1 this morning.</p> <p>2 But on any view, the bombs exploded within a matter</p> <p>3 of a small number of minutes of the time when Mr Cropper</p> <p>4 was called. Within those small number of minutes,</p> <p>5 Mr Cropper dialled Central 5000, to get through to the</p> <p>6 switchboard. He was put through to the control room.</p> <p>7 The inspector was informed. The control room at Digbeth</p> <p>8 was informed. Sergeant Wilson got in touch with several</p> <p>9 units on the ground. And if you accept the evidence of</p> <p>10 the assistant caretaker, then he, who was the key-holder</p> <p>11 for the Rotunda, was also informed. A number of</p> <p>12 officers arrived at the Rotunda and spoke to those at</p> <p>13 the foyer.</p> <p>14 That is, we submit, a quite remarkable response and</p> <p>15 well within the bounds of what is reasonable.</p> <p>16 The issue is whether it would be safe to leave an</p> <p>17 option to the jury of finding that it was unreasonable</p> <p>18 not to go further and immediately evacuate the</p> <p>19 Mulberry Bush and the Tavern in the Town without knowing</p> <p>20 where the bombs were or, alternatively, and we would</p> <p>21 submit inconsistently, whether, as Mr Morgan would have</p> <p>22 it, rather than evacuating they should have immediately</p> <p>23 put up a cordon outside the Mulberry Bush.</p> <p>24 We submit these are not matters upon which the jury</p> <p>25 can safely reach a conclusion.</p> <p style="text-align: center;">Page 107</p>
<p>1 warnings seriously, and all warnings as if they were</p> <p>2 real, then it would run counter to that to pass on the</p> <p>3 fact that there was a code in some cases and not in</p> <p>4 others, because it would risk the latter cases being</p> <p>5 given a less serious response.</p> <p>6 Second, if officers have not been trained on the use</p> <p>7 of codes, then to tell them that a code has been used</p> <p>8 may be positively misleading, because they will not be</p> <p>9 in a position to assess what to make of that.</p> <p>10 Third, the evidence of Dr Hamill shows that the fact</p> <p>11 that a code is given is actually pretty meaningless in</p> <p>12 terms of the reliability of the information that is</p> <p>13 conveyed. In other words, you cannot rely on the IRA to</p> <p>14 provide you with accurate information as to whether</p> <p>15 there is a bomb and where it is.</p> <p>16 Precisely because Sergeant Pedersen had not been</p> <p>17 trained in the use of codes, his evidence as to what he</p> <p>18 would have done if he had known that there was a code is</p> <p>19 not evidence as to what should have been done.</p> <p>20 I am not going to rehearse orally the submissions</p> <p>21 I have made in writing about timings. It will be, Sir,</p> <p>22 for you to decide on the basis of the written</p> <p>23 submissions what latitude it is appropriate to give to</p> <p>24 the jury in terms of their findings about the timings.</p> <p>25 And you have the submissions that Ms Williams advanced</p> <p style="text-align: center;">Page 106</p>	<p>1 There are a number of reasons for that. First, the</p> <p>2 decision for the officers on the ground involved</p> <p>3 a difficult, possibly an impossible, judgment. It was</p> <p>4 a life-or-death decision to be made within a very short</p> <p>5 space of time when the officers' own lives were at risk</p> <p>6 and when they had no way of knowing the location of the</p> <p>7 bombs or when they would detonate.</p> <p>8 Without that information, if they started an</p> <p>9 evacuation procedure, they had no way of knowing whether</p> <p>10 they would be moving people into harm's way rather than</p> <p>11 out of harm's way. The officers, or a number of them,</p> <p>12 said as much in evidence.</p> <p>13 As Dr Hamill explained, it was all too tragically</p> <p>14 demonstrated at Omagh what the potential consequences</p> <p>15 are of evacuating when you have not located the bombs.</p> <p>16 Sir, we submit it is very far from clear that this was</p> <p>17 the right decision.</p> <p>18 Second, the jury do not have, we submit, sufficient</p> <p>19 evidence to reach a conclusion on this matter. They</p> <p>20 don't have evidence from Sergeant Wilson as to why he</p> <p>21 didn't pass on the fact that it was a coded warning.</p> <p>22 They don't have all the policies and procedures that</p> <p>23 were in place. They don't have evidence from senior</p> <p>24 officers as to the training or as to any rationale</p> <p>25 behind the policy that was in place at the time.</p> <p style="text-align: center;">Page 108</p>

<p>1 Third, we do have some evidence as to policies which 2 were in place at the time which do not suggest that 3 evacuation was required in this situation and which in 4 fact support the approach that was adopted by the 5 officers of first trying to locate the bombs before 6 deciding on evacuation. 7 Sir, I'm not going to turn them up. We looked at 8 them yesterday afternoon. The references are 9 [INQ005084] at page 14, starting three lines from the 10 bottom, and [INQ005107] page 5. 11 The first of those references explicitly states that 12 one should not assume that evacuation is the right 13 response. Our submission is that that is because 14 a layperson who is not tutored in the use of codes might 15 instinctively consider that evacuation is the 16 appropriate response. 17 That is why the policy says, or the instruction that 18 we looked at yesterday says, "Don't assume that", and 19 that is why we submit it would be dangerous for the 20 jury, relying on their own untutored instinct, to reach 21 a conclusion on this sort of issue. 22 But the very fact that there are contemporaneous 23 policies in place which appear to support the response 24 that was adopted, in our submission shows that it would 25 be unsafe to reach a conclusion that the police</p> <p style="text-align: center;">Page 109</p>	<p>1 the response to the bombings rather than the response to 2 the warnings. And I have referenced your ruling in our 3 submissions at paragraphs 30 and 36 of our submissions. 4 It may be my failing, but the first time it became 5 apparent that there was any suggestion of evacuation was 6 when the officers were being -- how shall I put it -- 7 robustly challenged by Mr Thomas two or three weeks ago. 8 But the fact is, we submit, that this is the sort of 9 matter that requires expert evidence rather than a jury 10 just simply deciding for themselves. 11 I am not going to ask you to turn it up. I have 12 cited the Stenning authority. You have that tab 7, 13 page 57 of my bundle of authorities. 14 That was an inmate-on-inmate assault in a secure 15 prison. The judge found that the prison had been 16 negligent in its management of a dangerous prisoner 17 called Purkiss, and that that had enabled Purkiss to 18 attack the claimant. And the judge found that he should 19 have been moved. 20 Moving that prisoner is the analogue to evacuation 21 here. And he found that the prison had therefore been 22 negligent. That is paragraph 39 of the judgment. 23 The Court of Appeal disagreed. See paragraph 63. 24 Mr Stoate rightly points out that at the beginning of 25 paragraph 63 the Court of Appeal recognised that there</p> <p style="text-align: center;">Page 111</p>
<p>1 acted unreasonably. 2 That was the third point. The fourth point is that 3 it cannot be said that those policies or guidance that 4 we looked at yesterday are obviously flawed. They were 5 promulgated at a high level by central government, and 6 they seem to have been consistent over a period of some 7 time. I think the band of time -- and I may be wrong 8 about this -- ran from around April 1973 to sometime in 9 1975. So you had documents predating and post-dating 10 the November 1974 bombs. 11 Fifth, we do not have any expert evidence to provide 12 a reliable guide as to what would and would not have 13 been a reasonable response on the part of the police. 14 In particular, there is no expert evidence to suggest 15 that it was wrong or unreasonable to follow the broad 16 lines set out in the documents we looked at yesterday, 17 of searching for the device and locating it before 18 evacuating, so that you knew where the device was before 19 you risked putting people in harm's way. 20 We submit that that is a matter for expert evidence, 21 and it is not safe for a jury to reach an untutored view 22 by reference to their own instincts in 2019. 23 Ms Williams complains that I did not raise this at 24 a PTR. But at the PTRs the point on emergency 25 response -- certainly as I understood it -- concerned</p> <p style="text-align: center;">Page 110</p>	<p>1 are cases where the evidence is so overwhelming -- 2 "overwhelming" is the word they used -- that the Court 3 of Appeal recognised that there are cases where the 4 evidence was so overwhelming as to what should happen 5 that expert evidence is unnecessary. 6 But here we say that that threshold is very far from 7 being met, for all the reasons I have given. What the 8 Court of Appeal said in Stenning is that it was quite 9 wrong in that case for any judge -- any judge -- to make 10 a finding of negligence in that case without the help of 11 an expert witness. And we submit that this reads across 12 to our case. Indeed, our case is a fortiori. The 13 issues here for officers were much more complex than the 14 more one-dimensional case of a closed prison where you 15 know where the risk emanates from and is much 16 more tangible. 17 So for all those reasons, we submit it is not safe 18 to leave to the jury a conclusion on whether or not the 19 police acted unreasonably in the very short time that 20 they had available. 21 If I am right about that, that is the end of 22 question 7. If I'm wrong about that, then the next 23 issue is, what, if anything, the jury can safely find in 24 terms of causation. 25 We respectfully agree with your counsel that it is</p> <p style="text-align: center;">Page 112</p>

1 not safe to find that if the police had decided to
 2 evacuate then this would, on the balance of
 3 probabilities, have made a difference. The timescales
 4 are just too short.

5 I will come to the Lewis point in a moment, but even
 6 assuming that it would otherwise be appropriate to leave
 7 an issue on causation to a lower standard of proof than
 8 balance of probabilities, that sort of conclusion would
 9 not, in the circumstances of this case, be safe.

10 And that is because, on the timings, there were only
 11 a very few minutes available. The warning was so very
 12 vague, and it would not be safe to conclude that it
 13 might possibly have made a difference.

14 I think all of my learned friends for the
 15 families -- Mr Morgan, Mr Thomas and Ms Williams -- have
 16 all focused their arguments on evacuating the
 17 Mulberry Bush and the Tavern in the Town, or putting
 18 a cordon around the Tavern in the Town in
 19 Mr Morgan's case.

20 It is, of course, understandable that they should
 21 have focused their submissions in that way, because they
 22 know what the officers did not know: they know that that
 23 is where the bombs were.

24 But if an evacuation had been attempted, then
 25 leaving aside the Rotunda itself, it would logically

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1 have started with the mini restaurant. And given that
 2 the explosion happened within a very short time of
 3 arrival at the Rotunda, it simply cannot be said that
 4 there was a real prospect -- taking the Lewis line -- of
 5 evacuating not just the Rotunda proper but also the
 6 mini restaurant and then the Mulberry Bush within the
 7 time available.

8 All of the officers said -- all of the officers who
 9 were asked about this said that that was completely
 10 unrealistic. And there is nothing to contradict their
 11 evidence on that. There is no evidence that it was
 12 remotely practicable to carry out a safe and controlled
 13 evacuation within the very few minutes that
 14 were available.

15 That's the Rotunda. The same, in our submission,
 16 can be said of the Tavern in the Town. Again, the
 17 submissions of my learned friends have focused on the
 18 Tavern in the Town. But the one thing that certainly
 19 was not mentioned in any of the messages to the officers
 20 was that that was where the bomb was. They were told:
 21 Tax Office, King Edward House.

22 Mr Yates arrived at the general location within
 23 five minutes or so of the original call, the original
 24 call to Mr Yates. Again the response was impressive in
 25 terms of timing of officers on the scene.

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1 The location, as I have said, was said to have been
 2 the tax office in the upper floors of King Edward House.
 3 Even if an evacuation had been attempted, that would
 4 logically have required an evacuation of not just King
 5 Edward House -- I appreciate that might not have taken
 6 very long if the doors were closed, but you didn't know
 7 if there were people inside or not -- but also I think
 8 it was the Hasty Tasty cafe and the Pancake Cafe as well
 9 as the offices themselves, and then the Tavern in
 10 the Town.

11 Again, there is no evidence that it was remotely
 12 practicable to carry out a safe and controlled
 13 evacuation within the very few minutes. In fact zero
 14 time, because Mr Yates arrived there as the bomb
 15 detonated. But there is no evidence that even if he had
 16 arrived a minute or two earlier there was any time
 17 available to carry out an evacuation of those premises.

18 So given the timings, whatever ultimately you leave
 19 to the jury in terms of the boundaries on the timings,
 20 we submit it is unsafe to leave to them the option of
 21 finding that it would have been possible to carry out an
 22 evacuation within the time available.

23 We therefore submit that the Galbraith test is not
 24 met and question 7 should not be left.

25 Even if I'm wrong about all of that, and it might be

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1 safe to leave a conclusion on question 7 to the Lewis
 2 standard, it doesn't follow that that should be left.
 3 Everyone accepts that there is no requirement to leave
 4 a conclusion to a threshold below balance of
 5 probabilities. The courts have consistently said that
 6 that is not required. See Lewis and see the
 7 subsequent authorities.

8 Here, there is, I submit, no question of needing
 9 a Lewis direction for PFD purposes -- preventing further
 10 deaths purposes. I accept that is not the end of the
 11 matter. But the issue then is whether, having regard to
 12 Article 2, you should exercise your discretion to leave
 13 a Lewis-type question.

14 As to the factors that are relevant to your exercise
 15 of discretion, you must, we submit, approach that as
 16 a matter of principle. It is not, we submit,
 17 appropriate to exercise your discretion simply by
 18 reference to those factors that counsel have chosen to
 19 ask questions about. That would be delegating your
 20 responsibilities to counsel.

21 We submit that the principal factors are the extent
 22 to which Article 2 is engaged. There is a difference,
 23 we would submit, between a case where Article 2 is
 24 centrally engaged, as in the case of someone being
 25 killed by a State agent, and a case where engagement of

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<p>1 Article 2 is more marginal. 2 So one needs to focus on the nature of the alleged 3 state failing. And where one is concerned with the core 4 rights protected by Article 2, the prohibition on the 5 taking of life, that is a factor, we would submit, in 6 favour of exercising your discretion so as to ask 7 a Lewis-type question. 8 But where one is concerned with the Article 2 9 bolt-ons, so Osman for example, there is less of a need 10 to do so. You are not in core Article 2 territory. 11 It is also relevant, we submit, to your discretion 12 to look at the quality of the evidence, and to look at 13 how strongly it can be said that there was 14 a state failing. 15 That is the Tainton point. And where you have an 16 admitted failing or very strong evidence of a failing, 17 that might be a reason to ask the jury to work through 18 the consequence of it. But where the evidence is much 19 more marginal and you are less able to reach a confident 20 conclusion as to the consequences, that is a factor, we 21 submit, in favour of not leaving a Lewis-type question. 22 Then finally, and perhaps as an overarching feature 23 drawing on what is at the heart of the purpose of an 24 Inquest, one should look, we submit, at how closely the 25 factor is to the circumstance of the deaths.</p> <p style="text-align: center;">Page 117</p>	<p>1 leave that sort of question where really the jury are 2 left doing little more than speculating and guessing. 3 Where you have a much stronger evidential 4 framework -- and reference has been made to 5 Hillsborough, and there was much greater evidence about 6 the contemporaneous events, which were largely caught on 7 camera, literally on camera -- then the position may be 8 different. But here, we submit, it is not safe or 9 appropriate to leave a Lewis-type question. 10 So our submission is that question 7 should not be 11 left to the jury. 12 Sir, those are my submissions, unless there is 13 anything else on which I can assist. 14 THE CORONER: No. Thank you very much. 15 Yes, Mr Skelton. 16 Submissions by COUNSEL TO THE INQUEST 17 MR SKELTON: Sir, now that the evidence is concluded, it is 18 necessary to look dispassionately at the totality of it, 19 to consider what the jury can properly and safely find 20 in their conclusions. 21 It is at this point, we submit, that it must be 22 remembered, inescapably, that 44 years have passed since 23 the events in question. And this has inescapably 24 affected the availability and quality of the evidence 25 now available to these Inquests.</p> <p style="text-align: center;">Page 119</p>
<p>1 Where it is likely that the factor under 2 consideration may have been a direct and immediate cause 3 of a death, but there are difficulties over establishing 4 causation on the balance of probabilities, then that may 5 well be a powerful factor in favour of leaving 6 a Lewis question. 7 But where it is a much more secondary factor, such 8 as failing to prevent the consequences of the criminal 9 actions of a third party, we submit that it is less of 10 a reason to leave a Lewis-type question. 11 So far as our case is concerned, once it is 12 recognised that it is not safe to leave a conclusion on 13 emergency response to the balance of probability test, 14 any residual role that Article 2 has to play is greatly 15 attenuated, and does not, we submit, require an answer 16 to the lower standard of proof contemplated in Lewis. 17 If you were to leave a Lewis-type question, then you 18 would, we submit, leave the jury multiplying and 19 compounding matters that are extremely marginal. You 20 have first the extremely marginal question as to whether 21 Sergeant Wilson got it wrong in not passing on the code 22 or whether PS Pedersen got it wrong in not evacuating. 23 And then you have the very marginal questions on timings 24 and causation. 25 It is not, we submit, in the interests of justice to</p> <p style="text-align: center;">Page 118</p>	<p>1 Key witnesses, in particular senior officers from 2 West Midlands Police, are dead, or too infirm or too 3 traumatised to give evidence. Memories have been lost 4 or have faded or have become confused or have fossilised 5 into artificial clarity. Documents that were once 6 available for scrutiny have been lost or kept for a time 7 and then at some point destroyed. 8 That last point about documents was exemplified 9 yesterday afternoon when Mr Mole introduced the jury to 10 some of the guidance and procedures that have been found 11 by the government and the police, an introduction that 12 was by any standards conspicuously limited and partial. 13 In short, Sir, much relevant evidence that may once 14 have been available to be tested is now incomplete, 15 unreliable or otherwise untestable. 16 There is no law, in the Coroner's courts, of 17 limitation. There is no statute that governs which 18 cases should or should not proceed and how Coroners 19 should assess that question. But the paramount 20 principles of justice and fairness, which underpin the 21 whole of English law, remain important. 22 Any court, including this one, must be wary in 23 allowing determinations to be made based on incomplete 24 or unreliable evidence, particularly where those persons 25 who would be expected to answer those criticisms or the</p> <p style="text-align: center;">Page 120</p>

<p>1 criticisms made against them or their employers are no 2 longer in a position to do so. 3 The court must proceed with care when it is known 4 that there are additional facts and alternative 5 explanations whose existence can be inferred and which 6 might have negated such criticisms but whose substance 7 cannot now be known with any certainty. 8 We strike these notes of caution without any 9 enthusiasm. Our job as Counsel to the Inquest is to 10 help you, the Coroner, and ultimately the jury, to 11 uncover the truth, as difficult and unpalatable as that 12 may sometimes be for those who may not want that truth 13 to be covered. 14 If there are relevant facts and failings to be 15 exposed, then, without fear or favour, we must ensure 16 that this is done, but we can only do so insofar as the 17 law allows. 18 And it is on that issue, the application of the law, 19 where, unwelcome as it might be, we are obliged to 20 depart in some significant respects from the positions 21 advanced by the Interested Persons. 22 So far as the legal principles are concerned, Sir, 23 most of these are uncontroversial. As to the standard 24 of proof, there is general agreement on this issue. The 25 standard for unlawful killing remains "beyond reasonable</p> <p style="text-align: center;">Page 121</p>	<p>1 part any difference between us are of application not of 2 principle. These Inquests are one of those cases, 3 perhaps a rare one, where the "plus" in the 4 Galbraith plus is important, where the critical issue is 5 not whether the evidence is sufficient but whether, 6 looked at in the round, and in recognition of what is 7 missing or unanswered, it is safe to make a finding 8 based on it. 9 May I turn now to unlawful killing. We agree, all 10 of us, I think, that there can be no room for doubt the 11 21 victims of the bombings were unlawfully killed. 12 The two questions for your consideration are, first, 13 is murder the only permissible legal pathway to the 14 conclusion of unlawful killing? And second, if that is 15 not the case, then the jury should be given 16 an alternative pathway, should they be asked to express 17 a conclusion on which pathway they have chosen. 18 As to the first question, despite the compelling 19 evidence of the IRA's actions in planning and 20 perpetrating the attacks, we must say no. West 21 Midlands Police -- 22 THE CORONER: Sorry, which question are you answering? 23 MR SKELTON: Is murder the only permissible legal pathway to 24 the conclusion of unlawful killing? 25 THE CORONER: Right.</p> <p style="text-align: center;">Page 123</p>
<p>1 doubt". Whether that will change at some point in the 2 future remains to be seen. 3 The Court of Appeal decision in Lewis, less than 4 entirely satisfactory as it may be, is now settled law 5 and is applicable to these Inquests. You have an 6 obligation to ask the jury for their findings on matters 7 that it can be said may probably, more than minimally, 8 negligibly or trivially contributed to the deaths of the 9 21 victims. You have a discretion to ask the jury to 10 make findings that may possibly have done so. 11 There is no proper principled basis for rejecting 12 the existence of your discretion on this latter point. 13 It would be wrong of you, in our submission, to do so. 14 We don't accept, however, that Article 2 has little 15 weight in this context, either because the Osman duty 16 is, as Mr Johnson put it, a bolt-on, or because the duty 17 to protect life is somehow attenuated by the criminal 18 actions of a third party. 19 That is a dangerous conclusion in the context of 20 this Inquest, which was set up primarily to look at the 21 acts or omissions or potential failings of State bodies, 22 in particular the police, and you may feel that the 23 opposite conclusion should be reached, that conclusions 24 on such issues, if they are possible, should be reached. 25 As to sufficiency of evidence, again for the most</p> <p style="text-align: center;">Page 122</p>	<p>1 MR SKELTON: West Midlands Police make a very powerful case 2 for concluding that the IRA intended to kill or 3 seriously injure the innocent civilians in the pubs, and 4 that intention continued past the warning call in which 5 critical information was omitted, right up to the point 6 when the bombs exploded. 7 Mr Johnson's dissection of Mr Murray's apparently 8 self-serving and mendacious accounts to Mr Mullin is 9 compelling. But it doesn't, in our view, so completely 10 destroy that evidence that it would be unsafe for the 11 jury to consider it. In our view, the jury should be 12 allowed to consider it and make up their own minds. 13 THE CORONER: In what way? How? I mean, in relation to 14 unlawful killing? 15 MR SKELTON: Yes. 16 THE CORONER: How? 17 MR SKELTON: Well, you will sum up the evidence that is 18 given to them as to the intention of a person who -- 19 THE CORONER: Yes, but -- 20 MR SKELTON: -- confessed to be involved in the bombings and 21 explained what his intentions were. And you will set 22 that in the context of the bombs themselves, the warning 23 message that was given, the size of the bombs, the 24 position, all of the evidence that bears upon what is 25 known about the attacks.</p> <p style="text-align: center;">Page 124</p>

<p>1 Mr Johnson, I think, has already summarised and 2 indeed summarises in his written submissions the 3 evidence that bears upon the question of intention. 4 THE CORONER: What do you say about my latest draft? 5 MR SKELTON: I have not had the opportunity to consider it. 6 May I do so at the end when I have conferred? 7 THE CORONER: That is unfortunate. 8 MR SKELTON: The difficulty, I think, Sir, is that there is 9 no agreement between us as to the position as yet, and 10 therefore the draft does not necessarily bite. 11 THE CORONER: Yes. 12 MS WILLIAMS: Sir, I rise intending only to assist and not 13 to cause unnecessary interruption, but the various 14 counsel for the families -- the two legal teams -- we 15 have considered over lunchtime and discussed it 16 amongst ourselves. 17 And I will be corrected if I'm wrong, but I think 18 our collective position is that whilst our primary 19 submission remains as this morning, if you were to 20 disagree with that submission and you took the view that 21 the evidence was such that the jury should be directed 22 that murder was the only option, then we are content 23 with your shorter form of wording. 24 I hope that makes sense. We still have reservations 25 about your being able to direct the jury that murder is</p> <p style="text-align: center;">Page 125</p>	<p>1 straightforward and would be the form of wording 2 to adopt. 3 THE CORONER: Yes. 4 Mr Stoate? 5 MR STOATE: Only if it was appropriate to say, yes, just for 6 the avoidance of any doubt, we considered your draft and 7 agreed what is said there. So there is no doubt on our 8 position. We do not budge an inch, obviously, on the 9 appropriateness of leaving a question 7 -- we of course 10 say 2 -- but those issues to the jury. We say there is 11 no incompatibility between any unlawful killing 12 conclusion and that. But if you are going to leave 13 a directed murder, we would be content with that option. 14 But it is the secondary submission. 15 THE CORONER: Yes. Thank you. 16 MR STOATE: Thank you, Sir. 17 THE CORONER: Yes. 18 MR SKELTON: Sir, I have considered it -- we had not 19 conferred. I think I should have made that a bit 20 clearer. We just had not had an opportunity to speak to 21 the Interested Persons. 22 THE CORONER: I understand. I beg you pardon. 23 MR SKELTON: I think generally speaking there is agreement. 24 If you were minded to go down the route advocated by 25 Mr Johnson, with the attendant risks that I have</p> <p style="text-align: center;">Page 127</p>
<p>1 the only option. But if you feel, having heard 2 Mr Johnson, that that is the appropriate course to take, 3 then we have no concerns about the wording that you have 4 put forward as a means of expressing that. That is to 5 say the shorter form of wording, Sir. 6 THE CORONER: Yes. 7 Would you welcome it, with a question which ends 8 with murder? Yes? 9 MS WILLIAMS: Sir, it may be as to the more substantive 10 point we need to hear Mr Skelton first, having heard 11 Mr Johnson, we did still have -- 12 THE CORONER: Mr Skelton has not read it. 13 MS WILLIAMS: In relation to the substantive question as to 14 whether you are in a position where you should direct 15 the jury that murder is the only option? 16 THE CORONER: Yes. 17 MS WILLIAMS: That is what I had anticipated that Mr Skelton 18 would be addressing you on, one way or the other. 19 THE CORONER: Yes. 20 MS WILLIAMS: So I don't think he needs to have read your 21 draft, respectfully, to address you on that. 22 THE CORONER: No. 23 MS WILLIAMS: Our point is that if you reach the stage where 24 you take the view that murder is the only option, we 25 accept that your draft text is commendably</p> <p style="text-align: center;">Page 126</p>	<p>1 identified, then you could foreclose debate using 2 this guidance -- agreed by Interested Persons, who -- as 3 I understand it there is some agreement. I don't know 4 if Mr Johnson -- 5 MR JOHNSON: I think I said right at the start of my 6 submissions I completely agree with the short forms -- 7 MR SKELTON: So far as the Interested Persons are concerned, 8 there is some agreement. 9 THE CORONER: And the attendant risks, would you like to 10 summarise that again? 11 MR SKELTON: There is a small but significant risk that were 12 you not to give an alternative to the jury but you were 13 still to require them to run through the constituent 14 elements of the offence of murder, then when it came to 15 the question of intention they may find themselves 16 unable to be sure beyond reasonable doubt of the 17 intentions to kill or seriously harm. That is 18 a position which we have to advise may be a possibility, 19 remote as it may be. 20 Of course, it is open to you -- perhaps not 21 necessarily following the example of Mr Justice Bridge 22 as he then was -- to direct them accordingly in order to 23 minimise that risk. But you can't necessarily foreclose 24 it entirely if the option is being given. 25 The risk, of course, just to be absolutely clear, is</p> <p style="text-align: center;">Page 128</p>

1 that they don't make a finding of murder, and therefore
 2 there is no conclusion of unlawful killing, which is
 3 something we all agree would be wrong.
 4 THE CORONER: Yes. My directions are slightly differently
 5 worded, but they are probably as strong as
 6 Mr Justice Bridge's --
 7 MR SKELTON: Yes.
 8 THE CORONER: -- although I have not used the word
 9 "manslaughter", which I think he did. But having
 10 introduced it, he brushed it aside fairly strongly.
 11 MR SKELTON: Yes.
 12 THE CORONER: Yes. Thank you.
 13 MR SKELTON: We are only on that issue sounding a note of
 14 caution, Sir, rather than, as it were, mandating
 15 a particular view.
 16 THE CORONER: Yes. Thank you very much.
 17 MR SKELTON: As to the second question, as to whether, if
 18 the jury are given alternative pathways, they should be
 19 asked to express a conclusion on which pathway they have
 20 chosen, we say this:
 21 First, as you are aware, the perpetrator issue is
 22 not and never has been central to these Inquests. By
 23 "central" I mean a matter which has been exhaustively
 24 investigated and upon which it was expected, subject to
 25 the requisite tests of evidential sufficiency, that the

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1 jury should express a conclusion.
 2 The issue of some or all of the individual IRA
 3 Volunteers' intentions is not one, we submit, upon which
 4 the jury must reach a conclusion in answering how and in
 5 what circumstances the 21 victims died.
 6 THE CORONER: They don't have to.
 7 MR SKELTON: They don't have to.
 8 THE CORONER: Although there is argument about this.
 9 Mr Johnson says, if you have unlawful killing, you
 10 have to know how you get there.
 11 MR SKELTON: You do. But just applying the Article 2
 12 jurisprudence --
 13 THE CORONER: As in Wilkinson.
 14 MR SKELTON: Yes. But usually with a jury who are directed
 15 on unlawful killing, the workings or the means by which
 16 they get that to that point are not made explicit. You
 17 may end up with a short-form verdict or conclusion of
 18 unlawful killing without knowing precisely how they
 19 arrived at that route. And often there will be
 20 a multiplicity of potential people whose conduct they
 21 have considered, none of whom of course will be named in
 22 the conclusion. There would simply be the two words.
 23 And we say this is an analogous position to that.
 24 You do not necessarily need to know the workings by
 25 which the jury get to the conclusion. If the conclusion

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1 is legally sound, it is legally sound, and it is
 2 unlawful killing.
 3 THE CORONER: Yes. Just as in a criminal case you don't
 4 know what the workings of the jury are in relation to
 5 a verdict, although they will be directed on it --
 6 to it.
 7 MR SKELTON: Indeed.
 8 THE CORONER: To the workings.
 9 MR SKELTON: And we say Article 2 certainly does not mandate
 10 the kind of finding advocated by Mr Johnson; in other
 11 words the specific constituent elements of the offence
 12 as found by the jury in this case.
 13 That has not been, so far, a central issue. If you
 14 disagree and those intentions are now central, then we
 15 of course accept and advocate the conclusion that they
 16 should be answered by the jury in an appropriate
 17 question, ie an alternative, murder or manslaughter.
 18 THE CORONER: Does it have to be an alternative --
 19 MR SKELTON: It depends --
 20 THE CORONER: -- if I'm going to direct them.
 21 MR SKELTON: If it is all pinned on the question
 22 of intention --
 23 THE CORONER: Yes.
 24 MR SKELTON: -- then effectively it is an alternative. If
 25 you find intention, then you will find murder. If you

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1 don't find intention, based on these constituent
 2 elements, you will necessarily find manslaughter.
 3 If you decide just to simply direct them to find
 4 a particular offence made out, then that is of course
 5 a different matter; there is no alternative.
 6 The obiter comments by the High Court in Wilkinson,
 7 we submit should be viewed in the specific context of
 8 that case -- you, of course, were in that case -- and
 9 not as articulating a principle of law which so far as
 10 we are aware has no jurisprudential pedigree in
 11 coronial law. You must consider what is right, that is
 12 legally permissible, in this case. And reference to
 13 your judicial oath of office is, in our view,
 14 wholly unjustified.
 15 We, as your counsel, are not saying it would be
 16 impermissible to elicit the jury's explicit findings on
 17 the offences of murder and manslaughter. We are simply
 18 saying that it is not appropriate to do so in
 19 circumstances where the IRA members' intentions have not
 20 been a central issue throughout the investigation.
 21 In asking you to bear in mind the views of the
 22 families, we are not abandoning in any way -- if that is
 23 being said -- our independence and neutrality. We are
 24 simply recognising and bringing properly --
 25 THE CORONER: How would those intentions become

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1 a central issue?
 2 MR SKELTON: Well, it could have been decided, for example,
 3 that the perpetrator issue was a central issue in the
 4 Inquest. You rejected that some years ago now. But had
 5 that been the case, then the issue of intentions,
 6 planning et cetera may well have become important. We
 7 may have been obliged to go down very different
 8 investigative pathways and may have been here for some
 9 time doing so.
 10 In asking you to bear in mind the views of the
 11 families, we are not abandoning in any way, if that is
 12 said, our independence and neutrality. We are simply
 13 recognising and bringing to your attention what we
 14 consider to be a relevant factor in circumstances where
 15 you are exercising your discretion on an issue which is
 16 now before you.
 17 We must, conversely, recognise that an open finding
 18 of murder would undoubtedly be very welcome to all of
 19 the interested persons, and may, it could be said,
 20 ensure that some form of justice is done for
 21 the victims.
 22 In this context, were you to determine that the jury
 23 should be asked to reach explicit findings on
 24 alternative pathways of unlawful killing, then, as
 25 I have said, you may direct them accordingly and

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1 as appropriate.
 2 Sir, that was all I was intending to say on the
 3 question of unlawful killing, unless you would like me
 4 to develop or add any points.
 5 So far as the police response to the warning call is
 6 concerned, this issue was the subject of detailed
 7 examination during the hearings.
 8 THE CORONER: Question 7.
 9 MR SKELTON: Yes. And of course it was a heading within the
 10 witness lists that were circulated: police response. It
 11 has always been an issue within the scope, whether in
 12 the draft provisional list of issues circulated or
 13 topics list circulated many months ago or in the witness
 14 lists circulated during the course of these hearings.
 15 For the reasons we have articulated in writing, our
 16 position is that you are not obliged in law to ask the
 17 jury to make a finding on whether there are any failings
 18 in the police response which caused or contributed to
 19 the deaths.
 20 We accept that there is sufficient evidence,
 21 satisfying Galbraith plus --
 22 THE CORONER: Sorry, just let me read that again.
 23 Yes.
 24 MR SKELTON: This is the Lewis discretion point, Sir.
 25 THE CORONER: Right, thank you. If you could flag up

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1 each topic.
 2 MR SKELTON: Yes. So the Lewis discretion, when it applies
 3 to the police warning, does not mandate you asking the
 4 jury to make a finding on it. It allows you the
 5 discretion to do so, endorsed, as we say, by Article 2,
 6 contrary to what Mr Johnson says.
 7 We accept that there is sufficient evidence
 8 satisfying Galbraith plus for the jury to make a finding
 9 that some failings occurred in response to the bomb
 10 warning received by Mr Cropper. In particular, we
 11 consider that the issue of urgent evacuation of the pubs
 12 is an option that could or perhaps should have been
 13 taken. There is evidence to support that suggestion.
 14 But based on the preponderance of evidence as to
 15 timing of the IRA warning, the timing and practicalities
 16 of the police response, the timing of the explosions --
 17 THE CORONER: Sorry, the preponderance of evidence on ...?
 18 MR SKELTON: Timing.
 19 THE CORONER: Timing of the warning. Yes.
 20 MR SKELTON: Timing and practicalities of the police
 21 response. And the timing of the explosions themselves,
 22 we say it cannot be safely said on the balance of
 23 probabilities that the deaths could have been prevented
 24 by prompt evacuation. It doesn't get, in other words,
 25 to the point that --

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1 THE CORONER: That is a matter of weight.
 2 MR SKELTON: Well --
 3 THE CORONER: Or volume.
 4 MR SKELTON: It is Galbraith plus.
 5 THE CORONER: Or volume of evidence, and safety. Which
 6 element are you saying is absent?
 7 MR SKELTON: It is Galbraith plus. It is effectively there
 8 is sufficient evidence to conclude that it is
 9 a possibility but the evidence is not sufficient, and
 10 nor is it safe to say that it is a probability.
 11 THE CORONER: Yes.
 12 Have you ever come across a case where the Lewis
 13 possible aspect has been left but not the
 14 probable aspect?
 15 MR SKELTON: Well, Lewis itself, I suppose, is one such
 16 case, in which the Court of Appeal said that was
 17 a failure.
 18 I gather that Mr Hill is telling me Westminster
 19 Bridge. Westminster Bridge, I gather, had the similar
 20 situation where the possible outcome, based on, I think,
 21 the armed police response that should have occurred, was
 22 determined by the Coroner.
 23 I'm getting whispers from all sides --
 24 THE CORONER: You can all whisper, if you wish to. I am
 25 sure Mr Skelton will not mind being interrupted. It

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1 sometimes helps. Helps me, anyway. Perhaps not
 2 Mr Skelton.
 3 MR SKELTON: So we say, at best, in conclusion on that
 4 issue, that it is a possibility --
 5 THE CORONER: Yes.
 6 MR SKELTON: -- on which you may exercise your discretion
 7 and allow the jury to make a finding.
 8 THE CORONER: Yes.
 9 MR SKELTON: As to the question of forewarning, six topics
 10 have been exhaustively investigated. Of the six, three
 11 have, of course, fallen away to a large extent --
 12 THE CORONER: Yes.
 13 MR SKELTON: -- by the silence of the Interested Persons.
 14 Views differ on the remaining three. And you will see
 15 our position set out in writing.
 16 In summary, however, none of the remaining three
 17 issues, we say, satisfy Galbraith plus. And our views
 18 on that issue are specifically articulated in our
 19 written submissions, but are informed by two overarching
 20 concerns: one is that the evidence is manifestly
 21 incomplete in each case. So 44 years after the event,
 22 critical witnesses -- Mr Catton, for example -- he
 23 is dead. Likewise, police officers who may have
 24 received important information forewarning of the
 25 attacks, and could or should have acted on that

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1 information, have not been identified or are also no
 2 longer alive. Again, with the example of Mr Catton, the
 3 Tally Ho officer, unidentified, unproofed, untested.
 4 The second problem is that in each case there are
 5 grave difficulties with causation. Absent specific
 6 evidence as to what could have happened and how what
 7 could have happened might have prevented the bombings,
 8 the jury can do no more than speculate on the question
 9 of whether the deaths on 21 November 1974 could have
 10 been avoided. There are too many unknowns.
 11 In particular, who perpetrated the bombings, and how
 12 those individuals, however many there were, might have
 13 been stopped.
 14 Certainly such findings could never reach the
 15 balance of probabilities. In other words, the jury
 16 could not get to the point where they could say with
 17 sufficient confidence that it is likely that particular
 18 actions could have been taken which would have prevented
 19 the attacks. And that applies to each of the residual
 20 three issues.
 21 It is not clear, for example, that Mr Catton
 22 overheard the bombers, we say. It doesn't get to the
 23 point where the jury could safely reach that finding.
 24 And that applies equally to the other issues.
 25 But we recognise, Sir, that interpretations of the

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1 evidence by us, by Interested Persons, their advocates,
 2 and indeed by the jury, may differ. And the
 3 possibilities that may be inferred or intuited based on
 4 that evidence may also differ.
 5 Therefore, you may conclude -- notwithstanding the
 6 position we take -- that the evidence is sufficient and
 7 safe. If you do so, there is no obstacle in law to your
 8 putting those issues before the jury. But as we say, we
 9 do not consider that that threshold has been met in the
 10 context of any of the forewarning issues that we have
 11 exhaustively investigated.
 12 So to clarify again, this is an exercise of your
 13 discretion which you may make if you take
 14 a different view.
 15 Sir, there were some small points that arose in
 16 respect of some of the issues that were raised this
 17 morning, just about what should or shouldn't be included
 18 in the infamous Roman numeral list.
 19 THE CORONER: Yes.
 20 MR SKELTON: Our position on that, I think, is set out in
 21 our written submissions for the most part --
 22 THE CORONER: Yes.
 23 MR SKELTON: -- at paragraph --
 24 THE CORONER: Just remind me.
 25 MR SKELTON: -- 41.

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1 THE CORONER: Just remind me, since everybody else has
 2 reminded me about this.
 3 So we are on question 7 now, are we?
 4 MR SKELTON: Yes, the police response issue,
 5 I think, primarily.
 6 We, I think, maintain that, for example,
 7 number 19 --
 8 THE CORONER: Don't give me examples. Just be specific.
 9 For example.
 10 MR SKELTON: Number 19.
 11 THE CORONER: Number 19. (xix).
 12 MR SKELTON: Factors to be taken into account when deciding
 13 to evacuate a building, including the question of where
 14 people go.
 15 THE CORONER: Yes.
 16 MR SKELTON: This is really trying to get the jury to put
 17 themselves in the position of the officers who are
 18 exercising their judgment. And of course it is correct
 19 that having not made the decision to evacuate, they, by
 20 definition, do not appear to have ever got to the point
 21 where they went through this exercise. But the jury are
 22 still obliged to hypothesise about what would have
 23 happened had they thought about it, because that is
 24 a relevant consideration to the outcome.
 25 If you are saying someone should have done

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1 something, you have to say there is a basis for them
 2 doing so and you have to work out what they actually do,
 3 what they think about, what factors they weigh up in
 4 reaching that decision.
 5 You can't say it was a failing unless you consider
 6 the factors that have not been considered.
 7 Likewise, the safety or otherwise of the location to
 8 which people may have been moved, had the Mulberry Bush
 9 and/or the Tavern in the Town been evacuated.
 10 That is number 20. Evidence was adduced, for
 11 example, from Mr Brown as to where he thought people
 12 would have been evacuated to outside of the
 13 Mulberry Bush, and whether or not that was within
 14 a sight-line, and therefore within a line in which
 15 debris could conceivably have exploded, of the
 16 Mulberry Bush itself. And that of course is a relevant
 17 consideration when it comes to determining whether or
 18 not any difference would have been made or whether or
 19 not people would still have been injured
 20 notwithstanding evacuation.
 21 So far as number 24 is concerned --
 22 THE CORONER: What do you say about cordon?
 23 MR SKELTON: The cordon?
 24 THE CORONER: Yes, 21 and 22.
 25 MR SKELTON: Our view on the cordon, which I think we have

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1 put in our submissions, is we would propose -- I think
 2 it was number 21 we proposed removing because we simply
 3 thought it was not a practical proposition.
 4 THE CORONER: And --
 5 MR SKELTON: And 28, I think, also.
 6 THE CORONER: Just a moment. One by one. So I understand
 7 all of this. 21 and 22. And 23.
 8 MR SKELTON: All of which related to cordon issues.
 9 THE CORONER: Cordon. And you are saying that is out,
 10 not in?
 11 MR SKELTON: Yes, out, on the basis that we didn't think the
 12 evidence established that it was a practical proposition
 13 to establish it in that time.
 14 On that subject, I think Mr Morgan put before you
 15 the report in the jury bundle about the July bombing, if
 16 you recall?
 17 THE CORONER: Yes, yes.
 18 MR SKELTON: And I think it was important to recognise that
 19 in that case there was a warning given that: you have 30
 20 minutes to clear the area. I think, if I remember, it
 21 was at 19 minutes past the hour that steps were
 22 initiated. And by quarter to, the cordon or perimeter
 23 had been successfully set up.
 24 So you may consider that the timing of that
 25 process -- I think it also included a small or

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1 swift search.
 2 THE CORONER: Is that July or April?
 3 MR SKELTON: I think it was July.
 4 THE CORONER: Give me the timings again, please.
 5 MR SKELTON: It is in the jury bundle under tab 6, page 5.
 6 It is at 23.19 that the call comes in.
 7 THE CORONER: The call, yes.
 8 MR SKELTON: And it says, "There is a bomb at the corner of
 9 New Street and High Street. It will explode at
 10 12 o'clock. You have more than half an hour to clear
 11 the streets".
 12 And that excerpt said:
 13 "Inspector Bradley and officers on night duty from
 14 Steelhouse Lane attended the scene immediately. A quick
 15 search of the area was made. Traffic diverted from New
 16 Street and High Street, pedestrians prevented from
 17 entering the area, and officers then withdrew to
 18 a suitable distance from the junction at 2345 hours."
 19 So that whole process takes quite
 20 considerably longer.
 21 I think Hagley Road was also mentioned by Mr Morgan.
 22 Hagley Road you may wish to recognise was a different
 23 situation in that the specific device had of course been
 24 located, and it was not an area which was highly
 25 populated, and nor was it an area where there was

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1 particular complexity about the buildings or the
 2 surrounding areas or streets. A contrast, of course, to
 3 the Rotunda.
 4 THE CORONER: Yes. So coming back to the Romans.
 5 MR SKELTON: The Roman numbers.
 6 THE CORONER: Yes.
 7 MR SKELTON: The other one I think we need to identify our
 8 disagreement with is the training and instructions given
 9 to West Midlands Police.
 10 So we accept that this is a relevant issue for the
 11 jury to bear in mind.
 12 THE CORONER: Just -- I'm sorry to be particular.
 13 MR SKELTON: Yes.
 14 THE CORONER: There is a lot of small detail here.
 15 MR SKELTON: There is.
 16 THE CORONER: I would just like to get the numbers.
 17 Are you referring to 24?
 18 MR SKELTON: Yes. (xxiv).
 19 THE CORONER: Yes. And what do you say about that?
 20 MR SKELTON: We say it is appropriate for the jury to
 21 consider that issue so far as they can as a matter of
 22 fact, but not to make critical findings in respect of
 23 it. By "critical", I mean findings that criticise the
 24 training that those officers had given or received.
 25 THE CORONER: You mean no separate question?

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1 MR SKELTON: Yes. But the jury will have picked up that
2 there was some training given. Indeed, Mr Buck, who is
3 said to have passed a card, for example.
4 THE CORONER: Yes, I remember the evidence.
5 And the last three, telephones?
6 MR SKELTON: Telephones --
7 THE CORONER: What do you say about that?
8 MR SKELTON: Out, we say.
9 THE CORONER: Thank you.
10 MR SKELTON: We say, again, that fails on the grounds of
11 practicality. It simply has not been demonstrated on
12 the evidence that that was an opportunity which could
13 have been taken.
14 There was an issue, I think, about the resources
15 available. I'm just asking Mr Hill to identify that,
16 but you will recall the issue, Sir.
17 Again we take the same position in respect of
18 resources as we do in respect of training: that it is
19 a relevant factual issue how many officers were in fact
20 available in the city centre of Birmingham on the night.
21 This is (iv), page 6.
22 So the fact of the number of officers available on
23 the night, and why those numbers were what they were,
24 because of the McDade arrangements, is
25 a relevant factor.

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1 THE CORONER: Yes.
2 MR SKELTON: But again, we do not think it would be
3 appropriate for the jury to make a finding that is
4 critical of the police in respect of that issue.
5 THE CORONER: What are you suggesting? That there shouldn't
6 be another question, or what? In practical terms.
7 MR SKELTON: Yes. I am responding to the family's view that
8 this should be the subject of a jury question, and
9 rejecting that proposition, but instead advocating that
10 it remains included in the question 7 points --
11 THE CORONER: Yes.
12 MR SKELTON: -- as a matter of fact and not a matter
13 of criticism.
14 And on that issue you may wish to direct the jury
15 not to make a critical finding, were they minded to do
16 so. It would not be right for them to do so.
17 THE CORONER: But they can still make a finding. If it is
18 a fact -- I'm not quite following your submissions.
19 Just let me finish. There is a document -- I don't
20 have it with me, but it is called "Police resources",
21 which I understood to be an agreed document by now,
22 because everybody has had their say about it. And
23 rather than my having to read it out, if I could give it
24 to the jury as an agreed document --
25 MR SKELTON: Yes.

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1 THE CORONER: There is no objection to that, is there? It
2 just sets out, on a factual basis, what everybody said
3 about it.
4 MS WILLIAMS: Sir, again, not to interrupt but just to
5 answer your question. We have no objection. It would
6 no doubt assist the jury. But just to clarify, I think
7 the last iteration we saw of that document there were
8 still competing views being advanced, but it was only
9 over one very minor point.
10 I am sure we could clarify that with your team
11 rather than take up time with submissions. But I just
12 wanted to introduce that caveat.
13 THE CORONER: Yes. As long as I get a final version.
14 MS WILLIAMS: I will speak to Mr Hill and Mr Skelton --
15 THE CORONER: Yes.
16 So just coming back to your point, that is
17 factual evidence?
18 MR SKELTON: Yes.
19 THE CORONER: They can make findings about fact.
20 MR SKELTON: Yes.
21 THE CORONER: Any factual evidence.
22 MR SKELTON: Yes.
23 THE CORONER: It doesn't in itself have to be
24 a central issue.
25 MR SKELTON: No.

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1 THE CORONER: They can make findings from which they draw --
2 as per Chief Coroner's guidance number 17 -- draw
3 inferences, conclusions, which lead them to give answers
4 in a questionnaire.
5 MR SKELTON: Yes. What they can't do --
6 THE CORONER: Central issues.
7 MR SKELTON: -- we say, and I think Mr Johnson would agree
8 with this, is that there was a failure on the part of
9 the police to properly resource the city centre on the
10 night of 21 November.
11 THE CORONER: Why not?
12 MR SKELTON: Because we have not investigated that issue.
13 We have not investigated whether or not the numbers of
14 police that went to the McDade cortege and to the
15 airport were appropriate, the risk assessments
16 surrounding that particular issue, the risk assessments
17 that took place in respect of the city centre on that
18 night, whether or not it was just an ordinary night.
19 If you look at paragraph 41 of our submissions, you
20 will see the --
21 THE CORONER: 41?
22 MR SKELTON: Page 18.
23 THE CORONER: So 41(a), (b) or (c) or all of them?
24 MR SKELTON: (c).
25 THE CORONER: But we have investigated them, have we not, in

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1 order to see how many police were available on the
 2 night?
 3 MR SKELTON: Yes, but that is a very different issue. The
 4 fact of how many police were in Birmingham --
 5 THE CORONER: It is pretty close --
 6 MR SKELTON: -- and why is significant. We say that is
 7 significant because it explains what the limits were, if
 8 there were limits --
 9 THE CORONER: I am struggling. I am sorry. It is me. I am
 10 sure it is me. It is gone 3 o'clock and I have been
 11 listening to submissions all day, but I am struggling to
 12 find the significant difference between --
 13 MR SKELTON: There is a difference between a fact and
 14 a failing. So there is a fact that the police numbers
 15 were different on the night, it would appear, of
 16 21 November, because of the decision to deploy a large
 17 number of uniformed officers in particular to the McDade
 18 funeral arrangements, or arrangements to transport his
 19 body in and around Coventry and Birmingham City Airport.
 20 THE CORONER: Yes.
 21 MR SKELTON: It is whether or not you would go further than
 22 that mere fact, which is relevant to the policing on the
 23 night, and say that there was a failure to properly
 24 resource the city centre.
 25 Because that is an issue: whether or not it was

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1 reasonable of the senior officers to redeploy uniformed
 2 officers to McDade --
 3 THE CORONER: Yes.
 4 MR SKELTON: -- and to deplete the city centre. Whether or
 5 not that is reasonable is not something that has been
 6 investigated.
 7 THE CORONER: But look at it a different way. If question 7
 8 were to stand -- I am not saying it would, but just
 9 hypothetically for a moment -- if question 7 were to
 10 stand:
 11 "Was there any error or omission in the police
 12 response to the warning?" et cetera.
 13 Then (iv) relates to the police resources: a factor
 14 to be taken into account.
 15 MR SKELTON: Yes. But not when it comes to a failing. It
 16 is a fact which may limit the ability of the police to
 17 respond reasonably; but it is not a fact which is in
 18 itself unreasonable.
 19 I'm sorry if that is unclear. The police have to be
 20 judged on the basis of the resources available on the
 21 night.
 22 THE CORONER: Yes.
 23 MR SKELTON: If those resources were depleted, they should
 24 be judged about what was reasonable on the basis of that
 25 position.

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1 What we say is inappropriate is to judge the
 2 reasonableness of the resourcing of the city centre,
 3 because these Inquests are not in a position to assess
 4 that. We have not, for example, elicited evidence as to
 5 what are the appropriate number of officers to safely
 6 deal with a city on a routine Thursday evening?
 7 THE CORONER: Well, why can't the jury say, for example, in
 8 this context, in answer to question 7, if it is put
 9 before them, and note (iv) on police resources: they
 10 sent all the police to Coventry and to the airport,
 11 which had an effect of depleting the local subdivision
 12 by 50 per cent, or whatever it was --
 13 MR SKELTON: Yes.
 14 THE CORONER: -- and there was a failure to recognise what
 15 might have been warning indicators in Birmingham -- such
 16 as the bombing campaign, escalation in the bombing
 17 campaign, more and more incidents -- and that it was, to
 18 put it in ordinary language, unwise to deplete, or
 19 "denude" to use the word used by various police
 20 officers, to remove so many?
 21 MR SKELTON: I don't think, Sir, and Mr Johnson will, I am
 22 sure, come to my assistance if he needs to -- or his own
 23 assistance should he need to --
 24 THE CORONER: Yes.
 25 MR SKELTON: -- that we have properly investigated that

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1 issue.
 2 THE CORONER: All right. That is your view.
 3 MR SKELTON: So the fact is relevant, but it is
 4 impermissible to reach a finding that is critical of
 5 that fact.
 6 THE CORONER: So if, let's say, all police officers at
 7 Digbeth went to Coventry, except a police sergeant who
 8 doesn't usually leave the police station, and so
 9 resources were depleted to that extent, would that not
 10 be a relevant decision? A relevant factor that they had
 11 only left one man to do the whole job of the Digbeth
 12 estate?
 13 MR SKELTON: We might have chosen to go down a pathway of
 14 trying to work out whether there are witnesses who could
 15 explain why that course was appropriate, and whether or
 16 not that meant that the city centre was, in fact,
 17 underpoliced.
 18 THE CORONER: But that is a fact. I mean, that would be
 19 a fact.
 20 MR SKELTON: You have to --
 21 THE CORONER: Could the jury not come to a conclusion on
 22 that basis, if there was one officer, that --
 23 MR SKELTON: That you simply can't police --
 24 THE CORONER: -- that was a daft decision?
 25 MR SKELTON: They might be able to. And the whole place

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1 presumably could have been burgled, with one officer
 2 running around like a headless chicken. I can imagine
 3 that scenario.
 4 THE CORONER: Yes, but we are talking about deaths.
 5 MR SKELTON: We are, and it is a much more serious
 6 situation. But I don't think the evidence was such that
 7 you can conclude without more investigation that it was
 8 a failing.
 9 THE CORONER: So is it a question of numbers? If it was
 10 only one officer left there, that would be an obvious
 11 failure; but at some stage it becomes a less obvious
 12 failure?
 13 MR SKELTON: Yes, I think that is fair.
 14 THE CORONER: Yes, thank you.
 15 Thank you very much. Does anybody else want to say
 16 anything?
 17 Can I just come back to one or two points I made
 18 right at the beginning? Mr Skelton, can you help?
 19 MR SKELTON: Yes.
 20 THE CORONER: Ms Williams suggested that in the summing up
 21 directions of law, I delete the word "significant" and
 22 replace it with a "more than minimal or trivial
 23 contribution."
 24 Do you agree with that?
 25 MR SKELTON: We do agree with that.

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1 THE CORONER: Thank you.
 2 Anybody disagree with that? No.
 3 Another question I raised -- this is more for me,
 4 I suppose, in a sense -- which was about the duplication
 5 of the notes and the summing up. Do you have a view
 6 about that? Do you want to express a view that there
 7 should not be duplication or --
 8 MR SKELTON: I think the notes, insofar as they stand as
 9 a guide on very particular pertinent topics, are
 10 helpful.
 11 THE CORONER: Yes.
 12 No, I don't mean the observations. I mean the notes
 13 at the beginning, the directions notes.
 14 MR SKELTON: Yes. Well, to some extent if those points are
 15 woven into your summing up, they become otiose when it
 16 comes to the jury --
 17 THE CORONER: And it is not necessary for them to have
 18 notes.
 19 MR SKELTON: No, but they are a useful aide-memoire.
 20 THE CORONER: Yes.
 21 MR SKELTON: But, obviously, if there is not continuity
 22 between them and your summing up, they may not provide
 23 a full and sufficient guide in the jury room.
 24 THE CORONER: Yes. Originally when I did my draft,
 25 I incorporated the Hillsborough notes with a few minor

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1 amendments. Not disagreeing with Sir John, but perhaps
 2 rephrasing one or two things, but that is all.
 3 MR SKELTON: Yes. Hillsborough was, of course, an immensely
 4 complicated inquest by comparison. It may be that the
 5 model used in Hillsborough is not necessarily one you
 6 want to read across.
 7 THE CORONER: No, I don't disagree with the model. I think
 8 it is a very helpful model.
 9 MR SKELTON: I don't think there is a strong view on our --
 10 THE CORONER: No. Does anybody else have a strong view?
 11 No, I thought not.
 12 Yes, well, it is quarter past 3. I will need half
 13 an hour, at least. So will you be available, please, at
 14 3.45?
 15 Thank you all very much for your submissions. If
 16 I have grappled with some more than others, it is only
 17 because I am probably interested and helped by doing so.
 18 Thank you.
 19 (3.16 pm)
 20 (A short break)
 21 (3.53 pm)
 22 RULING
 23 THE CORONER: I have heard submissions from all
 24 Interested Persons and from my legal team about a number
 25 of issues which relate to my summing up and to the

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1 questionnaire which will be put before the jury.
 2 I am hugely grateful for the submissions which have
 3 been made.
 4 I received extensive submissions in writing, which
 5 were well argued and extremely helpful, as were the oral
 6 representations which followed. It was, for me at
 7 least, a very focused and positive process. Thank you.
 8 I am also grateful to the discussions which all
 9 counsel have had, all positively, from time to time
 10 about these issues. I should add that I provided in
 11 advance my draft directions of law, and Counsel to the
 12 Inquest had provided a draft questionnaire for
 13 discussion and comment. And I shall refer to the
 14 questions in that draft questionnaire and to the numbers
 15 of those questions.
 16 So I shall now summarise my decision so that we can
 17 progress swiftly to the summing up. I will provide
 18 a fuller and more reasoned written ruling in due course.
 19 The questionnaire approach is all agreed. I agree,
 20 too, that it will be the best way in order to obtain
 21 from the jury their findings on the central issues in
 22 the case as an answer to the "How" question.
 23 Question 1 in the draft questionnaire is agreed.
 24 That will stand.
 25 Question 2 is agreed. It will stand, in the amended

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<p>1 form as suggested by Mr Johnson. 2 Question 3, unlawful killing: it is agreed that the 3 jury should be directed that it is the only 4 conclusion available. 5 I shall direct the jury accordingly. I shall also, 6 in accordance with my recent draft, direct the jury that 7 the necessary intention for murder is made out as in 8 my draft. 9 I shall not explain that further to the jury, but 10 I am satisfied, from the submissions that I have heard 11 on the law and on the relevant evidence, that murder is 12 made out on the criminal standard of proof. A further 13 question therefore needs to be drafted. I will leave 14 that to counsel for now. 15 Question 4, the warning call, will remain. I shall 16 direct the jury to answer "Yes" to all five 17 sub-questions, on the evidence there are no 18 alternative answers. 19 Question 5, on timings, is agreed. I do not amend 20 the list of matters for the jury to consider, the bullet 21 points. The suggested addition by Ms Williams in 22 paragraph 137 of her written submissions will not be 23 made, although I shall remind the jury of some 24 such evidence. 25 The suggested removal by Mr Thomas of the bullet</p> <p style="text-align: center;">Page 157</p>	<p>1 should be left to the jury if they answer "no" to the 2 'probable' question. 3 Looking at the matters for the jury's consideration, 4 the bullet points, all should remain except for the 5 following amendments: 6 (xix): delete the words "including the question of 7 where people should go". 8 (xx): delete. 9 (xxi), (xxii) and (xxiii) in relation to cordon: in 10 all three, retain the bullet points. Add after 11 "cordon", "or other means of crowd control". And in 12 (xxi) also amend, by deleting "the Mulberry Bush" and 13 replacing with "the immediate vicinity of the Rotunda". 14 (xxvi), (xxvii) and (xxviii) -- that is 26, 27 and 15 28 -- in relation to telephone calls: delete. 16 Question 8, forewarning, will remain. I am 17 satisfied that there is sufficient evidence on 18 a Galbraith plus basis for the question to be left to 19 the jury on the following two topics: the prison 20 conversation and the Dog Pool conversation. 21 I rule that, in the exercise of my discretion, the 22 alternative Lewis question, the 'possible' question, 23 should be left to the jury if the answer is "no" to the 24 'probable' question. 25 The bullet points will need to be added for</p> <p style="text-align: center;">Page 159</p>
<p>1 point (viii) will not be made. I do not propose to 2 direct the jury on a permissible range of times. But 3 obviously I will say a few words to them about extremes 4 of times. 5 Question 6, on the adequacy of the warning call, 6 will remain. I am satisfied that there is evidence on 7 a Galbraith plus basis for the question to be left to 8 the jury. I do not accept that I should direct the jury 9 to answer the questions in a certain way. 10 I rule that, in the exercise of my discretion, the 11 alternative Lewis question, the 'possible' question, 12 should be left to the jury if they answer "no" to the 13 'probable' question. 14 Subject to any further submissions that anybody 15 wishes to make, questions 6(c) and (e) should be 16 reworded for clarity in order to match questions 6(b) 17 and (d). 18 I will return to that. 19 Question 7, the police response to the warning call: 20 that question will remain as drafted. I am satisfied 21 that there is sufficient evidence on a Galbraith plus 22 basis for the question to be left to the jury on a 23 'probable' basis. That is questions 7(a) and 7(c). 24 I rule that, in the exercise of my discretion, the 25 alternative Lewis question, the 'possible' question,</p> <p style="text-align: center;">Page 158</p>	<p>1 question 8. 2 Further points: 3 The questionnaire will not have notes by way of 4 directions. My summing up will contain all the 5 necessary points. And I will amend paragraph 34 of my 6 directions of law in accordance Ms Williams's submission 7 so as to delete the word "significant" and further 8 words, and rewrite "as a more than minimal or final 9 contribution". 10 I said I would come back to questions 6(c) and (e). 11 The drafting, for example, between (b) and (c) does not 12 quite match. So "Did The inadequacy of the warning call 13 cause or contribute to the loss of life resulting from 14 the explosion in the Mulberry Bush?", or "May the 15 inadequacies of the warning call have caused or 16 contributed to the loss?" 17 I don't like the words "do you think". Jurors 18 should not "think". They should make decisions. But 19 I will leave that for counsel to re-draft. 20 So just coming back to the timetable, I will amend 21 my summing up accordingly this evening. 22 MR SKELTON: Sir, a small point about "do not think". 23 Perhaps we will revise other questions in which that 24 phrase is included. 25 THE CORONER: Yes.</p> <p style="text-align: center;">Page 160</p>

<p>1 MR SKELTON: I think it pops up elsewhere. 2 THE CORONER: It may do. 3 MR SKELTON: So we will change it throughout. 4 THE CORONER: Yes. That will be very helpful. 5 So the questions will be re-drafted and my 6 directions of law will be re-drafted and circulated 7 tonight, for written representations, if any -- and the 8 fewer the better, please -- by 9 o'clock 9 tomorrow morning. 10 Bear in mind these things have to be printed and 11 made available and so on. 12 Mr Morgan, your application. Do you still 13 pursue it? It doesn't amount to much, if I may say so. 14 MR MORGAN: Yes. 15 THE CORONER: And I don't think we should use the name, if 16 you don't mind. 17 MR MORGAN: That is no problem. 18 THE CORONER: We will call it a witness, if you want to. 19 MR MORGAN: You had said perhaps about moving it to tomorrow 20 morning. All I would say is I can move it. 21 THE CORONER: No, no, I want the application now, please, as 22 to whether or not this is relevant evidence. 23 MR MORGAN: Okay. Just bear with me. 24 THE CORONER: If you wish to make it. 25 MR MORGAN: In light of your rulings already on forewarning,</p> <p style="text-align: center;">Page 161</p>	<p>1 verdicts until the afternoon. And if the jury come back 2 of an afternoon, that you will not take the verdicts 3 until the following morning. 4 I do that because of the difficulties in terms of 5 travelling that some of my clients have. Otherwise the 6 alternative is that everybody has to be here throughout. 7 THE CORONER: Yes. 8 MR THOMAS: Sir, that is my application. 9 THE CORONER: I understand that. And I'm sympathetic to it. 10 I have to think also of the jury. So if they were, 11 for example, to come back with their findings and 12 conclusion on Friday, I would not wish them to go away 13 until Monday, for obvious reasons. 14 The thought of something going wrong between Friday 15 and Monday is extremely unattractive. And the jury 16 would have come to the position: well, we have finished 17 now, perhaps I can go and talk about it to somebody. 18 MR THOMAS: Sir, I certainly can see that in relation to 19 the weekend. 20 THE CORONER: Yes. 21 MR THOMAS: But subject to that ... 22 THE CORONER: Yes. I think Thursday and Friday we will be 23 here. And obviously Monday if required. I can send 24 them away for the weekend and then they can come back 25 and continue their deliberations.</p> <p style="text-align: center;">Page 163</p>
<p>1 I don't think I need to now. 2 THE CORONER: No. I thought not. Thank you very much. 3 Anything else? 4 MR THOMAS: Only to say, Sir -- no discourtesy on my part -- 5 I will not be here tomorrow. I will be back 6 on Thursday. 7 THE CORONER: Yes. Thank you. 8 MR THOMAS: Can I just raise one issue that the families 9 have asked me to raise? 10 THE CORONER: Yes, of course. 11 MR THOMAS: That just relates to when the jury go out. 12 THE CORONER: Yes. 13 MR THOMAS: When you will take their -- forgive me if I use 14 the old language -- "verdicts", but you know what 15 I mean. 16 THE CORONER: Yes. 17 MR THOMAS: Sir, as you know, some of our families come from 18 as far as away as Yorkshire. 19 THE CORONER: Yes. 20 MR THOMAS: The one thing I think we can agree on is that 21 the jury are unlikely come back on Thursday, given the 22 tasks that they have. You know, how long is a piece of 23 string, when a jury is out? 24 What I have been asked to ask you is whether, if the 25 jury come back of a morning, you will not take the</p> <p style="text-align: center;">Page 162</p>	<p>1 But I will certainly think about Monday and Tuesday, 2 if we -- 3 MR THOMAS: Perhaps we can give it some thought. I think in 4 the interim I will advise my clients to be here on 5 Thursday and Friday. 6 THE CORONER: I think so, yes. 7 MR THOMAS: I'm grateful. 8 THE CORONER: Thank you. 9 (4.07 pm) 10 (The Inquests adjourned until 10.00 am 11 on Wednesday, 3 April 2019) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 164</p>

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