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Subversion of Due Process: The Death of Dr. David Kelly

Open Letter to Britain's Prime Minister David Cameron

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Dear Prime Minister,

SUBVERSION OF DUE PROCESS AND INSUFFICIENCY OF INQUIRY IN THE INVESTIGATION INTO THE DEATH OF DR DAVID KELLY

When Lord Hutton reported on 28 January 2004, many said “whitewash”. The Hutton Report was indeed a “whitewash”, not so much because Lord Hutton wrongly found the BBC and not the Government responsible for Dr Kelly’s “suicide” but much more importantly because Lord Hutton failed adequately to address the cause of death itself and the manner of death. The invocation by Lord Falconer, in his role as Lord Chancellor, of Section 17a of the 1988 Coroners Act to replace the statutory inquest by a non-statutory ad hoc judicial inquiry was highly irregular, as was the Coroner’s decision not to re-open the inquest following Hutton’s report. Not only did Lord Falconer, in his role as Minister for Constitutional Affairs, commission the Hutton Inquiry and determine its very narrow remit but he also decided, in his role as Lord Chancellor, that it would be an adequate replacement for a statutory inquest, when it was clearly no such thing. Given all this meddling with due process of the law it is perhaps not surprising that the death itself was not properly investigated.

Thus, not only was the form of inquiry inappropriate but the inquiry itself was clearly insufficient. There can be little doubt now that Lord Hutton presided over a blatant insufficiency of inquiry and the evidence to support that view is overwhelming. Some of that evidence, but for practical reasons not all, has been presented to Dominic Grieve QC, the present Attorney General.

Lord Hutton’s finding of suicide is clearly unsafe and may, especially given the extraordinary context of Dr Kelly’s death, represent one of the gravest miscarriages of justice to occur in this country. Many people in our country have known to a greater or lesser degree that that was the case but it was left to a few doctors, and latterly one journalist, to pick up the pieces of a huge jigsaw puzzle and to assemble a picture clear enough to present to the Attorney General. The doctors are requesting that an inquest be ordered through their lawyers, Frances Swaine and Merry Varney of the London law firm Leigh Day & Co. and Dr Michael Powers QC, in the form of a formal application to the Attorney General for his “fiat” to apply to the High Court to order an inquest as allowed under Section 13 of the 1988 Coroners Act.

Under Section 13 there are six reasons why the Attorney General may grant such "fiat". These are:

1) insufficiency of inquiry

2) irregularity of proceedings

3) rejection of evidence

4) new facts or evidence

5) fraud (in this context deception)

6) refusal or neglect to hold an inquest when one ought to be held

The doctors have provided abundant evidence to satisfy all six of these reasons; the Attorney General needs evidence of only one reason to grant his "fiat".

Further, the Attorney General is not required to satisfy himself that the verdict of suicide *would* change, only that it *might* change.

Accordingly, in September 2010, Leigh Day & Co. delivered a 34 page legal document called the Memorial to the Attorney General. On 28 February 2011, an Addendum to the Memorial was also provided to and at the request of the Attorney General. Both documents may be viewed in full on the BBC Online website. The doctors and Leigh Day & Co. have had sight of many other submissions to the Attorney General. It seems to the doctors and their lawyers that the case for an inquest is unanswerable.

It is surely in the public interest, and in the interests of justice, that an inquest into this death now takes place. The laws of this country, and indeed of Europe, require that the death of any British citizen dying in the manner in which Dr David Kelly is said to have died is investigated at an inquest, at which the Coroner possesses statutory powers. These include the power to hear evidence under oath, the power to subpoena witnesses, the power to have witnesses aggressively cross-examined and the power to call a jury. Lord Hutton possessed none of these powers, but the public was led to believe that Lord Hutton was better equipped to investigate Dr Kelly's death than was the Coroner. Further, Lord Hutton heard medical evidence for just one half of one day out of twenty four days of evidence, and found that Dr Kelly had committed suicide; no coroner in the land would have reached a suicide verdict on the evidence which Lord Hutton heard. The level of proof required for a coroner to reach a verdict of suicide is very high, since a suicide verdict closes the case for ever and automatically stops any murder investigation, in addition to permanently smearing the deceased (when he can no longer argue back) and his family. The Coroner is required to hear evidence which constitutes proof beyond reasonable doubt that the deceased killed himself and that he intended to kill himself, before he may return a verdict of suicide. Lord Hutton did not hear evidence which came near to satisfying that test.

We write to you asking that you endorse the request that an inquest be ordered. You will be aware that this important death, especially in the context in which it occurred, and the long subsequent fight for an inquest has been observed with mounting interest worldwide. Many will regard the response to the request for an inquest as a litmus test as to the good

intentions and credibility of your government.

It is unfortunate that your government inherited this case from the preceding three governments, all of which did all they could to stop thenecessary inquest. But, now surely is the time to begin the attempt to restore the tarnished reputation of our country around the world by holding a full, frank and fearless inquest into Dr David Kelly's death, so that "the truth, pure and simple", of what happened can finally be established "however complex, painful or unacceptable to whomsoever that truth may be" (Christopher Clarke QC, in his opening statement as Leading Counsel to the Saville "Bloody Sunday" Inquiry).

If an inquest is denied, despite all the evidence carefully provided to the Attorney General, there is a real and grave risk that your government will be seen as continuing, and being complicit in, an enormous conspiracy to pervert the course of justice.

Further, any "no" decision will be vigorously contested in the courts via judicial review by the doctors' lawyers.

Finally, while the wishes of the family may be taken into account by the Coroner as to whether or not an inquest should be held, those wishes are not determinative in law. The Coroner's primary duty is to the deceased, not to the family of the deceased. Similarly, the Attorney General's primary duty, under Section 13 of the 1988 Coroners Act, is to the deceased.not to the family of the deceased. The Coroner speaks for the dead to protect the living.

This letter, addressed to you, is an open letter and it will be made available to the Press Association for onward publication.

Yours sincerely,

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