

Justice4JeanFamily Campaign

Jean Charles de Menezes 7.1.1978 - 22.7.2005

POST INQUEST BRIEFING

The inquest into the death of Jean Charles de Menezes has attracted unprecedented public and media attention for understandable reasons. An innocent man was shot seven times in the head whilst sitting in a tube carriage by armed police officers. No one has been held accountable for his death.

After three and a half years of determined campaigning by the Menezes family, the inquest was supposed to provide the first opportunity for **all** the evidence to finally be heard, including that of witnesses whose testimony played no part in the prosecution of the Metropolitan Police under the Health and Safety at Work Act. Crucially, the evidence would be considered not by government bodies, faceless officials or vested interests, but by eleven ordinary members of the public, sitting together as a jury and independently determining the facts.

But the jury have been denied the opportunity to carry out the task they were sworn to undertake. It became clear that the inquest would not be allowed to conduct a full determination of the evidence. As any semblance of impartiality disappeared with the severe restrictions placed by the Coroner on the jury's decision-making, the Menezes family regretfully felt that they had no option but to instruct their lawyers to withdraw as 'interested persons' from an inquest process that seemed to have no interest in a just outcome.

This briefing outlines the Menezes family's initial response to key concerns regarding the final stages of inquest. A more detailed briefing will be produced in due course.

1. THE PURPOSE OF AN INQUEST

- 1.1 Deaths in custody inquests have special status. The purposes of such inquests have particular requirements as they engage Article 2 of the European Convention on Human Rights (as incorporated in the Human Rights Act 1998).
- 1.2 A leading legal judgment on the purpose of an Article 2 inquest came after a ruling in the case of the racist murder of Zahid Mubarek in Feltham Young Offenders Institution. In *R (Amin) v Home Secretary* [2003] UKHL 51 Lord Bingham summarised the purposes of an inquest which engaged article 2 of the Human Rights Act:

“The purposes of such an investigation are clear:

- to ensure as far as possible that the full facts are brought to light;
- that culpable and discreditable conduct is exposed and brought to public notice;
- that suspicion of deliberate wrongdoing (if unjustified) is allayed;
- that dangerous practices and procedures are rectified;

- and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.”
- 1.3 We believe that the Inquest has failed in its requirements as an Article 2 Inquest. After three months of evidence, 100 witnesses and at a cost of £3 million, the Coroner Sir Michael White, has presided over a complete whitewash. He has failed on every count of the purpose of an inquest investigation.

2. THE FAIRNESS OF THE PROCESS

2.1 Representation

The family were represented by the solicitors and two counsel. The police, in contrast, were represented by five different legal teams. This amounted to ten counsel in all with four different firms or departments of solicitors instructing them. The reason for this disparity was because the police argued that different individuals and teams had separated interests that required protecting. However, in reality all the police combined to support each other and papered over any potential conflicts. When it came to legal submissions on verdicts, they divided their tasks out between the five different teams in order to challenge the family’s submissions that unlawful killing should be left together with a broad narrative verdict.

2.2 Police officers conferred on their notes

The statements of the firearms officers involved in the operation were drafted after the officers had conferred with each other and after they were told they had shot the wrong person. In contrast, the statements of passengers were taken immediately after the shooting and sometimes in particularly inappropriate circumstances (eg in a pub with a television reporting inaccurate news of what had happened on the tube in the background).

2.3 Police anonymity

Any officer who requested it was granted anonymity by the Coroner, even though in most other legal proceedings anonymity will not normally be granted to witnesses except in the most exceptional circumstances. Although the family were permitted to see the witnesses giving evidence, the granting of anonymity raises concerns about the transparency of the proceedings.

2.4 Lost or missing evidence

The investigation into the killing of Jean Charles de Menezes was hampered by the lack of evidence which might have helped the determination of truth, including:

- the absence of CCTV evidence on the platform and the tube;
- the lack of any audio recordings of communications between officers (only handwritten logs assisting);
- the lack of video recording by the surveillance officer of Jean Charles leaving the premises.

- the lack of any recording (either written or audio) of the briefings given to the firearms and surveillance officers;
- doubts about the veracity of certain entries in the surveillance log

3. THE PROBLEMS WITH THE VERDICTS LEFT

3.1 Restricting the jury

Under section 11(3) of the Coroners Act 1988, where a jury is used at an inquest, its function, and its function alone is to determine the facts. We have always argued that it is the role of the Jury, as the ‘final arbitrator of the truth’ to be able to examine and identify fully all factors contributed to the death of Jean Charles. In a case of such public interest it is even more essential that the jury be allowed the maximum scope to consider all the evidence that they have heard, identify which verdict is appropriate and provide a narrative in their own words. Such a narrative would enable the jury to be able to comment on all the evidence that they have heard but also to identify which practices and procedures need to be rectified.

3.2 There is no disagreement about the central fact in this case – that an innocent man, Jean Charles de Menezes was gunned down with seven bullets to his head, as he sat in a tube carriage at Stockwell Station. What was left to be determined was the circumstances that led to this and whether the killing was unlawful. This is what the family and the public wanted to know, but this is been where the jury has been fettered by the Coroner’s directions.

3.3 Unlawful killing gross negligence

We have made numerous oral and written submissions to the Coroner regarding verdicts that should be left to the jury. We called for unlawful killing to be left against the two firearms officers, and also unlawful killing (gross negligence manslaughter) to be left against the senior officers including DAC Cressida Dick. We also asked for a comprehensive list of questions that the jury should consider and that crucially, as in many other inquests, that the jury be allowed to, if they so wish, write a narrative verdict in their own words, commenting on the evidence they have heard.

3.4 Usurping the jury

Usurping the jury’s decision-making powers has effectively made the Coroner the final arbiter of which testimonies carry more weight than others – judgements without which the jury cannot possibly function as anything than a rubberstamp. This is nothing short of scandalous. Restricting the powers of the jury, effectively gagging them from freely reaching their own conclusions, makes a mockery of the importance of juries within the judicial system. The fact that a ‘lawful killing’ verdict was left for the jury to consider but not ‘unlawful killing’ (in circumstances when, it is worth remembering, the jury have the power to decide that neither verdict was appropriate) has robbed the inquest of its transparency or legitimacy and seriously undermined the idea that decisions are reached on the evidence alone.

3.5 It is for this reason that the lawyers for the Menezes family went to the High Court last Wednesday to seek permission for a Judicial review of the Coroners decision not to

allow:

- All verdicts to be considered
- A comprehensive set of questions to be considered
- The jury to be allowed to write a narrative

- 3.6 We asked the Coroner to adjourn the inquest while we made this challenge but he refused to and proceeded with his summing up. Contrary to normal practices at an inquest, he immediately told the jury that he was not leaving unlawful killing and revealed his questions, thus making it almost impossible for our challenge to be successful. Normally directions and verdicts are left for the end of a Coroner's summing up.
- 3.7 With the Coroner half way through the summing up and the family losing their judicial review on the narrative on Wednesday 3rd December, Jean's relatives were once again bystanders. Regrettably, they found themselves in the invidious position of being forced to instruct their legal counsel to withdraw from the inquest proceedings. To make matters worse, the Coroner then ruled that both the press and the family were banned from even publicising the legal challenge, whilst giving the wholly misleading impression that the family's legal counsel were in agreement with his decisions. Having read the transcripts of the summing up it is even clearer to relatives in London and Brazil that Sir Michael Wright has not conducted a fair or impartial inquest.
- 3.8 **Excluding the press and public**
This was further exemplified by the Coroner's attempts on Thursday 4 December to exclude both the press and the public from the inquest. Stating only that a 'sensitive' point had been reached in the inquest proceedings and offering no legal basis for his decision, security guards were sent to clear the press and public galleries. This incredible decision is indicative of how the Coroner has fundamentally seen this inquest as less of a public examination of the facts and more of a damage limitation exercise that very heavily favours the Metropolitan Police.

4. THE NARRATIVE

- 4.1 Looking again at the purposes of an inquest set out above, the importance of the jury's right to provide, if they so wish, a detailed narrative verdict has become increasingly important to the way juries fulfill their responsibilities under Article 2 of the European Convention on Human Rights. Only last month, at the inquest of the death of Mark Camm (who died in June 2004 in Wood Street police station in Wakefield) a jury returned a detailed narrative, set out in their own words, which identified the key factors that they felt on the basis of the evidence had contributed to his death. Their narrative verdict also highlighted practices that needed rectifying to prevent a similar death from occurring in the future.
- 4.2 At the Menezes inquest, senior officers repeatedly took the witness stand to state that nothing had gone wrong on 22nd July and that it is likely that another innocent person will be killed in similar circumstances. This makes the decision of the Coroner to restrict the jury's ability to comment on the evidence even more unexplainable. The

jury has not had the opportunity to ensure that they can identify 'dangerous practices and procedures than needed to be rectified'. A failure to learn **any** lessons from this case has serious implications for every person living and working in London, since the ability of the police to regard any Londoner as unfortunate 'collateral damage' during the course of an operation involving firearms puts all of our lives at greater risk. It has been the family's fundamental wish that their suffering is not be repeated – again and again – by other families, by ensuring all institutional and structural policies and procedures be fully assessed.

4.3 The Coroner's decision to only provide nine questions, with simple 'Yes', 'No' or 'can't decide' answers that are neither probing or revealing, did a huge disservice to the 10 weeks of evidence the jury sat through on including key points such as:

- the shoot to kill policy – Operation Kratos
- the briefing given to the firearms officers
- the 40 minute window of opportunity to intercept Jean Charles,
- the nature of instructions given by DAC Cressida Dick
- the late deployment of the firearms team

4.4 We have consistently argued that the jury be allowed to consider a comprehensive set of questions that can fully ascertain the facts, particularly where there is disagreement. The Coroner refused to allow this sensible option and framed his questions in a particularly prejudicial way that the Menezes family feels is highly offensive.

4.5 The Coroner went so far as to suggest the ludicrous idea that Jean may in some way be to blame for his own death because 'his innocent behavior... may have aroused officer's suspicions. This is not a proper consideration of the evidence. It is a rather crude attempt to downplay the actions and decisions of police officers on the one fact that remains undisputed – that an innocent man was gunned down as he travelled to work.

5. **EVIDENCE OF POLICE FAILINGS THAT EMERGED FROM THE INQUEST**

5.1 Evidence heard at the inquest revealed a catalogue of errors and significant systemic failures relating to the police operation that caused or contributed to the death of Jean Charles de Menezes.

5.2 In summary these failings included:

- The Metropolitan police's policy and training for dealing with suspected suicide bombers was not fit for purpose
- The police had intelligence on Hussein Osman but failed to access this intelligence before Jean Charles was shot
- Only one poor quality image of Osman was used by the surveillance officers, but the police had access to much better images that would almost certainly have prevented the mis-identification of Jean Charles

- By failing to ensure that firearms teams and a silver commander were deployed urgently to Scotia Road, a critical window of opportunity to stop Jean Charles before he entered the public transport system was lost
- The surveillance team failed to exercise tight control of the premises and never got more than a fleeting glance of Jean Charles, yet the Grey team leader was prepared to say “believed to be him”
- There was a fundamental failure of critical communications between the command team, the surveillance team and the firearms team
- The firearms team were given an unbalanced briefing to the extent that they were ready to deliver a critical shot to any suspect suicide bomber, without being warned of the risks of uncertain identification
- The firearms officers were sent into a situation where the chances of arresting the suspect as opposed to shooting them dead were almost negligible
- The command team failed to ascertain that both the firearms team and the surveillance officers could have attempted to stop Jean Charles before he entered the tube system.

5.3 We believe that these failings mean that

- **The Metropolitan Police Authority must now act to ensure that individuals are held to account,**
- **The IPCC should revisit its decisions not to recommend any disciplinary action**
- **The Home Affairs Select committee should under take an inquiry into the shooting and its aftermath.**

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