

Suspicious Death of Dr David Kelly: Doctors Seek New Death Inquest

By [Dr. C. Stephen Frost](#)

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DOCTORS SEEK DAVID KELLY DEATH INQUEST - NEW APPLICATION TO THE ATTORNEY GENERAL

I am one of the doctors who have been fighting for an inquest into the suspicious death of Dr David Kelly in July 2003, pointing out that due process of the law has been subverted by four successive UK governments, including the present, by their not allowing, using a variety of highly dubious tactics, the legally required inquest to take place.

Because of the increasingly obvious anxiety, even desperation, of successive governments to block a formal inquest and the disingenuous reasons given for not holding an inquest, many fear that there has been a cover-up of epic proportions and many others have wondered what it is that is so important to hide that precludes an inquest taking place.

There are some who suspect that Dr Kelly was murdered and of course without an inquest that possibility has not been excluded. If he was murdered by the state, or with the knowledge of the state, and the murder has been covered up, that would constitute criminalization of the state and would fatally undermine trust, and the notion of democracy, and the delicate relationship of those who govern and those who allow themselves to be governed.

In normal circumstances, in England and Wales, a coroner holds an inquest into a suspicious death. There appears to be no intention to hold an inquest into the death of Dr David Kelly. This is a unique and unacceptable state of affairs. At medical school we were taught that without coroners and inquests nobody is safe. The Coroner speaks for the dead to protect the living.

In the context of all the above (and much more), Dr Andrew Watt and Brian Spencer lodged on Wednesday 18 April 2012 another application, to Dominic Grieve QC Attorney General, for an inquest into Dr Kelly's death.

According to an April 20 Press Association wire:

“A group of doctors campaigning for a fresh inquiry into the death of government scientist David Kelly have submitted a new application calling for Attorney General Dominic Grieve to ask the High Court to order an inquest, it emerged today.

Mr Grieve rejected calls for an inquest last June following a lengthy review of the case of Dr Kelly, whose body was found near his Oxfordshire home in 2003,

shortly after he was identified as the source of a BBC report about the Government's dossier on Iraqi weapons of mass destruction.

The Attorney found there was no possibility that an inquest would reach a different conclusion from the Hutton Inquiry, which found in 2004 that Kelly committed suicide.

But the new application submitted by Dr Andrew Watt and Brian Spencer argues that Mr Grieve relied on a "misleading and inadequate assessment" of evidence that Dr Kelly's body may have been moved in the hour after its initial discovery by volunteer searchers.

The first people to see the body described the weapons expert's head and shoulders as being propped against a tree, but when photographs were taken about an hour later there was a clear gap between the body and the tree, and no adequate explanation has ever been given for the discrepancy, said the application, submitted on Wednesday.

"On the single ground of the evidence that the body was moved then it is evident 'in the interests of justice' that an inquest is needed," said the application. "There are, however, many other grounds for doubt about the safety of Lord Hutton's conclusion."

A spokeswoman for the Attorney General's office confirmed that the application had been received and a response was expected within the next few days."

Below that, please see the covering letter sent by Dr Watt with the hard copy of the formal legal document (Section 13 application) to the Attorney General.

And below that, please see the full text of the new Section 13 application, published for the first time on Global Research. The reader will I am sure be rewarded by a careful reading of this meticulously researched document.

(Dr) Stephen Frost *BSc MB ChB Specialist in Diagnostic Radiology (Stockholm, Sweden)*

LETTER TO ATTORNEY GENERAL

20th April 2012

Dominic Grieve QC MP
Attorney General's Office
20 Victoria Street
London
SW1H 0NF

Dear Mr Grieve,

Enclosed with this letter is hard copy of the 18 page Application dated 18th April 2012 to the UK Attorney General in terms of Section 13 of the Coroners Act 1988, seeking that the

Attorney General apply to the High Court to seek an Order that an inquest be held into the death of Dr. David Kelly.

Briefly, the document shows that the body of Dr. David Kelly was in one position at 09.15 on 18th July 2003. An hour or so later it was in a different position. The evidence indicates that the body was moved by person or persons unknown.

It seems to me that any rational consideration of this important matter, in all the circumstances, must lead an honest Attorney General to acknowledge that an inquest might return a different verdict.

Such an assessment would lead to an application to the High Court seeking an Order that an inquest be held into the suspicious death of Dr. Kelly.

You are aware that I have been severely critical of your handling of the Section 13 application initially lodged by Dr. Stephen Frost and colleagues.

I view your consideration of Dr. Frost's Section 13 application as having been deficient and dishonest.

Those causes for concern were obvious to me during your statement to the House of Commons on 9th June 2011.

On 12th June 2011 I invited you to resign as Attorney General.

I again suggest that you consider your position.

Given the serious implications for your political and legal career it occurs to me that you may wish to "tough it out".

In that eventuality, it is my considered opinion that, given what I believe to be the biased and dishonest assessment you carried out in response to Dr. Frost's Application, it is highly questionable whether you can fairly conduct an independent review of this present Application in the manner which an honest Attorney General has a duty to do in the public interest.

You may also wish carefully to consider the implications for your credibility as Attorney General of your concealing the serious questions put to you by me on 13th May 2011 about the veracity of ACC Page at the Hutton Inquiry. Serious questions which you concealed from the House of Commons on 9th June 2011.

Mr. Brian Spencer, co-applicant, is writing to you separately to give you signed confirmation that the Application is in our joint names.

In the first instance, I would be grateful if you would acknowledge receipt of this letter and its attachment.

I look forward with interest to learning how you propose to proceed.

Yours sincerely

(Dr) Andrew Watt

Application

to

The Attorney General

in terms of Section 13 of the Coroners Act 1988

with respect to an inquest into the suspicious death of

Dr. David Christopher Kelly CMG

by

Dr. Andrew Watt

BMedBiol MBChB MD(Hons) FRCP(Ed) DipPharmMed BA

and

Mr. Brian Spencer

18th April 2012

We formally seek that the Attorney General apply to the High Court for an Order that an inquest be held into the suspicious death of Dr. David Kelly in Oxfordshire in July 2003, by virtue of Section 13 of the Coroners Act 1988.

This Section 13 Application examines in detail only one of the multiple causes for concern regarding the suspicious death of Dr. Kelly – the evidence that a person or persons unknown moved Dr. Kelly’s body on 18th July 2003.

Executive Summary

1. At 09.15 on 18th July 2003 the body of Dr. Kelly was found with head and shoulders against a tree.
2. Around an hour later the head was at some distance from the tree, sufficient for an ambulanceman to stand between the tree and the head.
3. Given the evidence indicating that Dr. Kelly had been dead for some hours one can reasonably exclude the possibility that he moved himself.
4. We conclude that one or more third parties were present at the scene at Harrowdown Hill and moved the body.
5. We conclude that the likely purpose of moving the body was to create a false impression of suicide in order to conceal the murder of Dr. Kelly.
6. We conclude that the “suicide” conclusion of the Hutton Inquiry is unsafe and untrue.
7. In the interests of justice an inquest is required into the suspicious death of Dr. David Kelly.

Our approach to the evidence on the positions of the body

We consider evidence relating to the positions of the body and the implications of that evidence under these headings:

1. The position of the body at 09.15 on 18th July 2003
2. The evidence of Detective Constable Graham Coe
3. The position of the body after 10.10 on 18th July 2003
4. The misleading nature of the document “Annex TVP 3”
5. Paragraph 151 of the Hutton Report
6. Conclusions regarding movement of the body
7. Implications
8. Other issues of concern
9. Legal Issues
10. Action required of the Attorney General

In this document we use the terms “09.15 position” and “10.10 position” to refer to two positions of the body. We recognise that there is minor uncertainty about the exact time that the body was found (approximately 09.15) and the exact time that the paramedics first approached the body (approximately 10.10).

The uncertainties regarding time are of the order of a few minutes, at most. We therefore use the times 09.15 and 10.10 in this document to ease expression of the more important issue of whether the body of Dr. Kelly was moved.

1. The position of the body at 09.15 on 18th July 2003

The publicly available evidence is that around 09.15 on 18th July 2003 a body was found at Harrowdown Hill, Oxfordshire by two volunteer searchers, Louise Holmes and Paul Chapman.

According to the evidence given to the Hutton Inquiry the searchers were not accompanied

by any other person.

Nor, we are informed, did Louise Holmes or Paul Chapman take any photographs at the scene.

Therefore the only evidence that exists as to the position of the body at 09.15 is the testimony of Louise Holmes and Paul Chapman.

We consider the evidence of Ms. Holmes and Mr. Chapman separately.

The evidence of Louise Holmes

Louise Holmes (or more specifically her dog, Brock) found the body at Harrowdown Hill at approximately 09.15 on 18th July 2003.

Ms. Holmes approached to a distance of some four feet from the body.

She stated in her Police Statement:

“I saw that this person was slumped against the base of the tree with his head and shoulders resting against the trunk.”

Similarly in her evidence to the Hutton Inquiry she stated,

“He was at the base of the tree with almost his head and his shoulders slumped back against the tree.”

Ms Holmes’ Police statement and oral testimony are consistent. The head and shoulders of the body were against the trunk of the tree.

Given that she viewed the body from a distance of about four feet the possibility of her confusing the position she described at 09.15 in both her written and oral evidence with the position that we later refer to as the “10.10 position” is, we suggest, essentially zero.

There has at no time been any suggestion put forward that Ms. Holmes’ evidence was dishonest.

Given the consistency of her evidence, the improbability of honest error and the absence of any suggestion of dishonesty, we conclude that at 09.15 on 18th July 2003 Louise Holmes saw the head and shoulders of the body against the tree from a distance of some four feet.

The evidence of Paul Chapman

The second person present at Harrowdown Hill at 09.15 on 18th July 2003 when the body was discovered was the volunteer searcher Paul Chapman.

Mr. Chapman was considerably further from the body than Ms. Holmes. Mr. Chapman, in his oral testimony to the Hutton Inquiry, when asked how close he got to the body, stated

"I probably reached about 15 to 20 metres from it."

There are differences in wording in the evidence given by Mr. Chapman in his Police Statement and in his oral testimony to the Hutton Inquiry.

In his Police Statement Mr. Chapman stated,

"He was lying on his back with his feet towards me with blood covering his left arm. He was flat on the ground."

In his Hutton Inquiry oral testimony Mr. Chapman stated that he saw,

"The body of a gentleman sitting up against a tree."

and later in his oral testimony Mr. Chapman stated,

"He was sitting with his back up against a tree".

The wording used by Mr. Chapman in his two pieces of evidence has been interpreted by some as meaning that he changed his evidence.

An alternative interpretation is that both forms of words Mr. Chapman used describe a single position of the body. In other words, Mr. Chapman saw a body lying flat on its back on the ground but with the head and shoulders against the tree.

We would point out that at no time in his evidence, as disclosed publicly, did Mr. Chapman ever say anything to the effect that the head was at some distance from the tree.

It, therefore, remains credible that Mr. Chapman's evidence, when correctly understood, is wholly consistent with Ms. Holmes' evidence viz that Dr. Kelly's body was found at 09.15 on 18th July 2003 with the head and shoulders against the trunk of the tree.

Weight is added to that interpretation of Mr. Chapman's words by the evidence of DC Graham Coe which we consider in more detail in the next section of this document. We note that in 2003 DC Coe similarly referred to the body "lying on his back" but also, in 2010, clarified that he saw the body "with his head and shoulders against a large tree".

In the absence of any evidence to the contrary we conclude that the most likely interpretation of Mr. Chapman's evidence is that he saw Dr. Kelly's body flat on its back but with the head and shoulders against the tree.

We are not aware of any evidence that contradicts the evidence of Ms. Holmes and Mr. Chapman as to the position of the body at 09.15 on 18th July 2003.

2. The evidence of Detective Constable Graham Coe

In the preceding section we summarise the evidence of the position of the body at 09.15.

In this section we deal with the evidence about position of the body at approximately 09.40

on 18th July 2003 from the now retired Detective Constable Graham Coe.

In his written statement to Thames Valley Police DC Coe refers to the body of Dr. Kelly as,

“lying on his back”

and in his oral testimony to the Hutton Inquiry states,

“the body was laying on its back by a large tree, the head towards the trunk of the tree”.

Given that DC Coe doesn't specify if the head and shoulders were against the trunk or if the head was at some distance from the trunk then it is unclear from his written statement and oral testimony to the Hutton Inquiry whether he saw the body in the 09.15 position or the position we will call the 10.10 position (and which is considered in detail in the next section of this document).

In an interview with the Mail on Sunday published on 8th August 2010 DC Coe is quoted as stating,

“I could see Dr Kelly's body sideways on, with his head and shoulders against a large tree. He wasn't dead flat along the ground.”

If one assumes that DC Coe is telling the truth in his 2010 statement there can be no doubt that he saw the body with the head and shoulders against the trunk of the tree.

He saw the body “sideways on”, removing any uncertainty about interpretation that might occur if the body had been viewed from the direction of the feet.

We would draw attention to how DC Coe in his written statement and Hutton testimony used terms such as “lying on his back” yet, according to his statement in 2010, he states that he saw the body with head and shoulders against the tree.

As is the case with the evidence of Paul Chapman, DC Coe has at no time in his publicly available statements indicated that the head was some distance from the tree.

If DC Coe was telling the truth in 2010 then the body position at 09.40 on 18th July 2003 was the same position as at 09.15 i.e. with the head and shoulders against the tree.

3. The position of the body after 10.10 on 18th July 2003

From 10.10 on 18th July 2003 the evidence is that the body is in a different position from the position in which it was found at 09.15.

The evidence after 10.10, from both photographic and witness evidence, is that the body was at some distance from the tree.

The first photographs taken of the scene where the body was found were taken by PC Sawyer at approximately 10.10 on 18th July 2003 (assuming that the times on his digital camera were correct). See Thames Valley Police Freedom of Information Response

RFI2011000524 for the times of the photographs (online at <http://www.thamesvalley.police.uk/aboutus/aboutus-depts/aboutus-depts-infman/aboutus-depts-foi/aboutus-depts-foi-disclosure-log/aboutus-depts-foi-disclosure-log-investigate/aboutus-depts-foi-disclosure-log-item.htm?id=191239>).

At the time of taking those initial photographs PC Sawyer was accompanied by two ambulance staff, Vanessa Hunt and Dave Bartlett.

Mr. Bartlett was not asked in detail at the Hutton Inquiry about the position of the body when he was checking for signs of life. An important piece of new evidence emerged in a newspaper interview published in the Mail on Sunday on 12th September 2010.

Mr. Bartlett stated,

“He was lying flat out some distance from the tree. He definitely wasn’t leaning against it”

adding,

“When I was there the body was far enough away from the tree for someone to get behind it. I know that because I stood there when we were using the electrodes to check his heart. Later I learned that the dog team said they had found him propped up against the tree. He wasn’t when we got there. If the earlier witnesses are saying that, then the body has obviously been moved.”

The position of the body as being at some distance from the tree as described by Mr. Bartlett at around 10.10 is not disputed by any witness evidence to the contrary at later times on 18th July 2003. (We treat the statement of Lord Hutton at Paragraph 151 of the Hutton Report separately later in this document.)

After 10.10 on 18th July 2003 there was a significant distance between the head and the tree.

This is a different position to that observed at 09.15 and 09.40.

We conclude that the body was moved by person or persons unknown.

4. The misleading nature of the document Annex TVP 3

We briefly examine the content of the supposed “Annex TVP 3” published by the Attorney General in June 2011 (<http://www.attorneygeneral.gov.uk/Publications/Documents/Annex%20TVP%203.pdf>) in light of its misleading and inadequate assessment of the evidence regarding the position of the body when found.

The document purports to be an Annex to a Thames Valley Police report. A recent Freedom of Information request has revealed it not to be a Thames Valley Police document but one drafted by Mr. Kevin McGinty of the Attorney General’s Office.

We here note simply that such misrepresentation of the provenance of the supposed

“annex” labelled “TVP 3” is a cause for concern.

In the context of this Section 13 application, a crucially important inadequacy of the document is that it does not consider the time of the body positions documented by various individuals.

It is self-evident that a rational assessment of whether the body had been moved would compare the position of the body at an initial time point with the body position at a relevant later time point.

Worryingly, whether “Annex TVP 3” is a Thames Valley Police document or a document from the Attorney General’s Office it spectacularly fails to carry out such a basic analysis of the body position at different time points.

Mr. McGinty’s failure to consider such a basic issue demonstrates that his document is, at best, grossly inadequate to address the question at hand.

The structure of Mr. McGinty’s document subtly and unfairly undermines the evidence of the two volunteer searchers.

For example, in Comment i. on page 6 of Mr. McGinty’s document we read the following:

“The position of the body is consistently described by those who saw it in situ as **“lying on his back”**. The initial exception to this was Louise Holmes.”

This has the effect of unfairly devaluing Louise Holmes’ evidence that the “head and shoulders” were against the tree.

Mr McGinty’s document ignores, when it ought not to have done, these important factors:

1. Louise Holmes was one of only two people who found the body.
2. Louise Holmes approached to some four feet from the body. She saw it much more clearly than did Paul Chapman from a distance of 15 to 20 metres.
3. That Paul Chapman, the only other person who saw the body at 09.15, also gave evidence consistent with the head and shoulders being against the tree.
4. That nobody else saw the body at 09.15 (at least if the Hutton Inquiry narrative is true).
5. At 09.40 on 18th July 2003 DC Coe also saw the body “sideways on” with the head and shoulders against the tree.
6. Before 10.10 there is no evidence that the body was “some distance” from the tree.

Mr. McGinty’s document totally fails to examine the implications of the statement in 2010 by DC Coe that he saw the body “sideways on” with the head and shoulders being against the trunk of the tree.

This is wholly unacceptable and visibly inadequate for an analysis carried out in 2011.

DC Coe made his newspaper statement in 2010. Thames Valley Police seemingly failed to include that information in the report that underlies “Annex TVP 3”, despite reviewing the newspaper report in question in connection with “Annex TVP 1”. Given that Thames Valley Police were aware of the controversy about the position of the body it is remarkable that any competent Police officer could overlook the significance of DC Coe’s 2010 statement about the position of the body.

We conclude that Thames Valley Police chose to ignore that evidence since it raised serious doubt about the Thames Valley Police investigation in 2003 and, in addition, risked drawing attention to failures on the part of current Chief Officers of Thames Valley Police (specifically Chief Constable Sara Thornton, Deputy Chief Constable Francis Habgood and Assistant Chief Constable Helen Ball) in connection *inter alia* with the formal report to Thames Valley Police that Dr. Kelly may have been murdered (URN 514 of 28th October 2010 refers).

Thames Valley Police also failed to resolve the controversy by the simple expedient of showing photographs taken at 10.10 (or later) on 18th July 2003 to Ms. Holmes, Mr. Chapman and DC Coe and asking “In this photograph is the body in the position at which you saw it at 09.15 (or 09.40, as applicable) on 18th July 2003?”.

Was the failure in 2003 and 2011 to ask such a basic question because Thames Valley Police wished to conceal that the body had been moved?

We conclude that the gross inadequacies of Mr. McGinty’s “annex” labelled “TVP 3” render it wholly unreliable as a fair assessment of whether or not Dr. Kelly’s body was moved.

5. Paragraph 151 of the Hutton Report

Lord Hutton’s Paragraph 151 raises important questions not considered by the Attorney General in his statement on 9th June 2011. Not least is that it raises questions about the veracity of Lord Hutton and, as a consequence, calls into question the integrity of the Hutton Inquiry.

In 2004 Lord Hutton’s Paragraph 151 statement *appeared* to solve a problem for those who wished to conceal the possibility of David Kelly having been murdered, in that it concealed the fact that the body had been moved after 09.15 on 18th July 2003.

In 2012, when we know that photographs exist showing a “significant gap” between the head and the tree, Paragraph 151 of the Hutton Report raises immensely important questions about the integrity of the Hutton Inquiry.

The decision of the Attorney General with respect to the Second Section 13 Application (by Dr. Stephen Frost and colleagues) makes the assumption that the body of Dr. Kelly was in the same position throughout. And that position, as indicated on page 5 of Dr. Richard Shepherd’s report of 16th March 2011 is a position with a “significant gap” between Dr. Kelly’s head and the base of the tree. In other words the body was in what we earlier termed the 10.10 position.

However, there is one important discrepancy from the otherwise seemingly consistent situation with respect to body position after 10.10 on 18th July 2003.

In the Hutton Report, at Paragraph 151 Lord Hutton states the following:

“I have seen a photograph of Dr Kelly’s body in the wood which shows that most of his body was lying on the ground but that his head was slumped against the base of the tree”.

In 2004 Lord Hutton’s statement in Paragraph 151 might have seemed to be believable.

In 2012, considered with current knowledge of the background evidence, the quoted Paragraph 151 statement raises important problems for those, such as Mr. Grieve, who contend that the body wasn’t moved and that there was no cover-up.

First, we’ll consider the possible interpretations if a Paragraph 151 photograph should exist.

If a Paragraph 151 photograph exists and was taken at 10.10 or later then it is evidence that the body was in two positions after 10.10 (since, according to page 5 of Dr. Shepherd’s report of 16th March 2011, some photographs show a “significant gap” between the head and the tree). In other words, the body was moved by person or persons unknown after 10.10 on 18th July 2003.

If a Paragraph 151 photograph exists and was taken before 10.10 then the existence of any such photograph has been concealed. If such a photograph exists and was available to Lord Hutton then it was available to Thames Valley Police and likely to the Attorney General. But both Thames Valley Police and the Attorney General have claimed that the body was not moved.

If such a photograph exists, whether before or after 10.10, showing the head against the tree and that photograph was concealed from the Public and Parliament then that is *prima facie* evidence, we suggest, of an intention to pervert the course of justice by Thames Valley Police, the Attorney General or both.

Second, we’ll consider the possible interpretations should a photograph such as that mentioned by Lord Hutton in Paragraph 151 not exist.

If a Paragraph 151 photograph did not exist, why might Lord Hutton have claimed to have seen such a photograph? The most credible interpretation we can identify for such a hypothetical action on the part of Lord Hutton is that he intended to conceal the fact that the body of Dr. Kelly was moved. In other words Lord Hutton’s quoted words in Paragraph 151 of his report were intended to conceal what we term the 09.15 body position, to conceal that the body had been moved and to pervert the course of justice.

Another interpretation if a Paragraph 151 photograph does not exist is that Lord Hutton couldn’t correctly interpret the photographic evidence. Dr. Shepherd saw one or more photographs with a “significant gap” between the head and the tree. Did Lord Hutton not see such photographs? Did he repeat the mistakes of Lord Widgery and just not bother looking at all the evidence available to him? If Lord Hutton’s assessment of the photographic evidence was so grotesquely inadequate that he failed to observe, in other photographs, a “significant gap” between the head and the tree then it raises questions

about his competence to assess the totality of the photographic evidence.

In passing we mention that it is our considered opinion that, on the basis of the totality of publicly available evidence, the Paragraph 151 photograph does not exist and that Lord Hutton premeditatedly lied in his report.

6. Conclusions regarding movement of the body

Only two people saw the body when it was found around 09.15 on 18th July 2003 – Louise Holmes and Paul Chapman.

The weight of their evidence is that at 09.15 on 18th July 2003 the body of David Kelly was slumped against a tree with the head and shoulders against the trunk of the tree.

Neither Thames Valley Police nor the Attorney General's Office has presented any evidence to the contrary with respect to the body position at the 09.15 time point.

The statement in 2010 of the former DC Coe further strengthens the interpretation that the body was found with head and shoulders against the tree, given that it remained in the same position at 09.40 as it had been at 09.15.

The evidence relating to the position of the body after 10.10 on 18th July 2003 is that the body was seen and photographed at some distance from the tree. The ambulanceman Dave Bartlett, for example, stated that he stood in the gap between the head and the tree.

The body was found around 09.15 in one position and seen and photographed after 10.10 in another position.

No evidence has been presented to indicate that the body was capable of moving itself. Given the perception that Dr. Kelly was dead for some hours before his body was found, it is not credible that he moved his own body. We know of no evidence to support such a "Lazarus hypothesis".

There is no credible evidence to support any hypothetical suggestion that the body moved spontaneously to the 10.10 position, at some distance from the tree.

The only credible conclusion, in the light of the above evidence, is that one or more third parties moved Dr. Kelly's body at some time between 09.15 and 10.10 on 18th July 2003.

If a third party (or third parties) moved the body then we believe that the motive for so doing was to create a credible scenario (at least for the credulous) that Dr. Kelly committed suicide when, in fact, he was murdered.

7. Implications

The evidence, summarized earlier in this document, that Dr. Kelly's body was moved has profound implications for the "suicide" conclusion adopted by Lord Hutton.

Among the implications are the following:

1. If the body was in different positions at 09.15 and 10.10 then a third party (or parties) was present at Harrowdown Hill.
2. The Thames Valley Police investigation and the Hutton Inquiry failed to identify the presence of the person or persons in question.
3. Further, at a minimum, the suicide conclusion of the Hutton Inquiry is called seriously into question since, in significant measure, it relied on the supposed exclusion of the presence of a third party (or parties) at Harrowdown Hill.
4. Vomit trails from Dr. Kelly's mouth indicate that Dr. Kelly died on his back. Who then sat him up against the tree after his death? What motive for so doing can there be other than to conceal a murder by faking a supposed "suicide"?

In our submission Lord Hutton's conclusion of suicide visibly lacks credibility given the evidence that we have presented.

8. Other issues of concern

This document applies its primary focus to our concerns regarding the evidence that the body was moved. We would not, however, wish the Attorney General or any other reader of this document to come to the mistaken conclusion that that is the only issue of concern regarding the suspicious death of Dr. David Kelly.

The two lists which follow exemplify additional concerns, respectively, raised with the Attorney General in the context of the Second Section 13 Application (by Dr. Stephen Frost and others) and issues raised with the Attorney General subsequent to the Second Section 13 Application.

The first list contains what we believe to be demonstrable continuing concerns re the Attorney General's consideration of the Second Section 13 Application. We ask the Attorney General now to fairly and thoroughly assess these unresolved issues as part of his consideration of this Third Application.

1. The Attorney General (written statement of 9th June 2011 page 14) recognised that in recent case law "the test was whether it was possible (though not necessarily probable) that a different verdict would be returned". In his letters to Dr. Shepherd and Professor Flanagan the Attorney General failed to express that test and thereby deprived those supposed independent experts of a fair opportunity to express a view about whether other interpretations of the data are possible. Given that the Attorney General failed to ask that key question of independent experts how can his consideration of the Second Section 13 Application be viewed as being fair? The question as to whether it is possible that another interpretation of the data exists should now fairly be put to genuinely independent experts in the fields of forensic pathology, toxicology, psychiatry, forensic biology and forensic engineering.
2. The Oxfordshire Coroner correctly pointed out that Lord Hutton and a Coroner

apply “different tests” with regard to a potential suicide verdict. See page 3 of the transcript of the hearing of 16th March 2004 conducted by Mr. Gardiner. If “different tests” are applied then, in the absence of a compelling argument to the contrary, it is inescapable that a different verdict might result. In other words, the Attorney General was wrong, on this ground alone, in concluding that it was not possible that an inquest could arrive at a verdict different from the conclusion of the Hutton Inquiry.

3. In addition, a Coroner has different verdicts available to him. The Hutton Report indicates that Lord Hutton considered the conclusions of natural causes, accident, murder or suicide. There is no indication that he considered a possibility equivalent to an “open verdict”. A Coroner not only would have such a verdict open to him but in the absence of evidence beyond reasonable doubt in favour of “suicide” or “unlawful killing” he would, in the circumstances of this case, be required to record an “open verdict”. The Attorney General’s conclusion expressed on 9th June 2011 is visibly in error. It is possible that a Coroner could reach a different conclusion, since he has a verdict available to him which Lord Hutton did not seriously consider.
4. In his consideration of the Second Section 13 Application (from Dr. Frost and others) Mr. Grieve unfairly applied a bias to his consideration of discrepancies in the evidence. It is, of course, correct to state that two honest witnesses may give different accounts of an event. But Mr. Grieve repeatedly failed fairly to assess discrepancies in the evidence since other explanations of discrepancies in evidence are also possible. For example, one witness may be truthful and the other dishonest. Or the two witnesses may be describing what they saw at two time points between which the scene changed – the important evidence that the body was moved is a case in point. Given such a systematically biased assessment of the discrepancies in evidence during the Attorney General’s consideration of the Second Section 13 Application we consider that the assessment of all discrepancies in the evidence must be repeated in a fair, rather than a biased, manner.
5. Serious concerns were expressed to the Attorney General regarding the reliability of the opinion of Professor Hawton. The matter was, for example, communicated to the Attorney General on 21st February 2011 (see <http://chilcotscheatingus.blogspot.co.uk/2011/02/death-of-david-kelly-need-for-expert.html>). The Attorney General failed to seek expert review of the validity of such concerns. Without a fair assessment of the credibility of Professor Hawton’s evidence Mr. Grieve has no sound basis to exclude the possibility that an inquest would reach a different verdict.
6. The hypothesis put to the Attorney General by various correspondents in relation to the Second Section 13 Application is, in effect, that Dr. Kelly was murdered and that that murder was made to look like suicide. Mr. Grieve totally failed to ask how such a scenario can rationally be distinguished from a true suicide. Such a failure of analysis on the part of Mr. Grieve renders his conclusion of 9th June 2011 wholly unsafe. Mr. Grieve and appropriate independent experts must now, in our view, give this issue serious thought.
7. The evidence of Mr. David Broucher is that in February 2003 Dr. Kelly commented that he expected he might be “found dead in the woods”. This matter was drawn to the attention of the Attorney General on 27th January 2011. See <http://chilcotscheatingus.blogspot.co.uk/2011/01/death-of-david-kelly-insufficiency-of.html> . Dr. Kelly’s comment was made in February 2003. Dr. Kelly died in

July 2003. There was ample time to plan a sophisticated faked "suicide". Dr. Shepherd was aware of faked "suicides" (see <http://www.bbc.co.uk/sn/tvradio/programmes/horizon/broadband/tx/perfectmurder/stories/>). Dr. Shepherd, knowing that suicides can be faked and supposedly acting as an independent expert, failed even to ask this important question, raising serious doubts about the validity and integrity of his report of 16th March 2011 to the Attorney General.

8. There are unanswered technical questions about whether and how Dr. Kelly allegedly incised his own left wrist. A rigorous assessment is needed of concerns such as those which were communicated to the Attorney General on 12th April 2011 (see <http://chilcotscheatingus.blogspot.co.uk/2011/04/death-of-dr-david-kelly-important.html>). A detailed assessment of such questions by a forensic engineer is required. Issues such as the sharpness of the knife point, bracing positions, direction of the cuts must be considered in detail.
9. The Attorney General claims (House of Commons Hansard 9th June 2011, Column 302, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110609/debtext/110609-0002.htm>) that he found no evidence of a cover-up. He failed to consider that members of the Kelly family and Dr. Malcolm Warner failed to disclose Dr. Kelly's right arm injury and its functional aftermath in oral testimony to the Hutton Inquiry. He further failed to consider the evidence in Answer 44 of the Attorney General's Schedule of Responses which indicates that ACC Page and Lord Hutton may have suppressed important evidence. The matter of the functionality (or lack of it) in Dr. Kelly's right arm is pivotal in any honest consideration of a situation where a knife, supposedly held in the right hand, is used supposedly to incise the left wrist.
10. Mr. Roy Green, forensic biologist, states in his report of 27th September 2003 that he cannot exclude the possibility that Dr. Kelly died at the hands of another. This comment should have been given more attention prior to 9th June 2011. In light of the evidence regarding the movement of the body it now requires a less cursory assessment than Mr. Grieve has hitherto given it.
11. Dr. Alexander Allan, toxicologist, told Lord Hutton in terms that the co-proxamol tablet had to be ingested. That is untrue. Two other possibilities exist - administration of co-proxamol by nasogastric tube and injection of paracetamol and dextropropoxyphene (the components of co-proxamol). These other possibilities require careful assessment, not least in the context of a possible faked "suicide".
12. To the best of our knowledge there is no direct evidence of "intent" on the part of Dr. Kelly to kill himself. In the absence of such evidence it is, at a minimum, possible that an inquest would return a verdict other than suicide.

The second list illustrates a range of questions and/or concerns which have, to the best of our knowledge, never been satisfactorily investigated but which did not form part of the Second Section 13 application, so far as we are aware. We ask the Attorney General now to fairly and thoroughly examine these issues in the context of this Third Section 13 Application.

1. Concerns exist regarding the reliability of the evidence given to the Hutton Inquiry by Janice Kelly. The Attorney General was made aware of such concerns in his copy of an email of 12th June 2011. For example see <http://chilcotscheatingus.blogspot.co.uk/2011/08/death-of-david-kelly-peter-jacobson.html>. Questions regarding the evidence of Janice Kelly impact on the credibility of Professor Hawton's evidence (mentioned in the preceding list) since Professor Hawton seems to have relied on Janice Kelly's evidence.
2. The Attorney General was presented on 8th June 2011 with evidence that a suicide story was being "spun" in the morning of 18th July 2003, when there was no legitimate basis for a suicide conclusion. See <http://chilcotscheatingus.blogspot.co.uk/2011/06/death-of-david-kelly-spinning-suicide.html>. We do not seek to argue that the Attorney General ought to have included consideration of that matter in his statement of 9th June 2011. We now ask him to give careful consideration as to the implications of "suicide spin" on the morning of 18th July 2011. We believe that careful examination is required of the possibility that the "suicide spin" may have originated in the highest echelons of the Blair Government.
3. In the report by Mr. Roy Green of 27th September 2003 it is indicated that Mr. Green observed "arterial rain" at Harrowdown Hill. He appears to have assumed that the only explanation of such "arterial rain" was bleeding from a transected ulnar artery. He did not appear to consider the possibility that the supposed arterial rain at Harrowdown Hill could have been simulated. We ask that the possibility of simulation now be fully investigated. See <http://chilcotscheatingus.blogspot.co.uk/2011/08/death-of-david-kelly-simulating.html> for some relevant background.

9. Legal Issues

There is, we suggest, no serious legal barrier to the High Court granting an Order that an inquest be held into the death of Dr. David Kelly.

On the single ground of the evidence that the body was moved then it is evident "in the interests of justice" that an inquest is needed. There are, however, many other grounds for doubt about the safety of Lord Hutton's conclusion, some of which we have listed in the section "Other issues of concern".

We consider that in pages 11 to 14 of the Attorney General's Written Statement of 9th June 2011 (online at <http://www.attorneygeneral.gov.uk/Publications/Documents/Attorney%20General%20Dr%20Kelly%20written%20statement%209%20June%202011.pdf>) the Attorney General misdirected himself, effectively providing a legal smokescreen whose effect is to defeat the interests of justice.

We consider, for example, that the Attorney General was in error on two points with regard to the possibility that the Oxfordshire Coroner, Nicholas Gardiner, had misdirected himself.

Mr. Gardiner stated on 16th March 2004 (page 3 of the transcript) that no public inquiry would take evidence on oath:

“Many of those who have written to me have pointed out that the Public Inquiry does not hear evidence on oath and has no powers to compel the attendance of witnesses or summon a jury, some also add that a Judge is not a Coroner. All that may be true, but it does apply to any Public Inquiry. I took the view that if it applies to any Public Inquiry one cannot suggest it is exceptional.”

He misdirected himself on that point since a public inquiry, such as the Hutton Inquiry, could have been established in 2003 under the Tribunals of Inquiry (Evidence) Act 1921 (since repealed) which provided for evidence being taken under oath.

The effect of the Oxfordshire Coroner’s misdirecting himself with regard to the possibility of taking evidence on oath in a public inquiry is that he failed to recognize an “exceptional reason” which would allow (and in the light of Section 8 of the Coroners Act 1988 arguably require) him to resume the inquest.

Further, by virtue of Section 8 of the Coroners Act 1988 the Oxfordshire Coroner has a legal duty to conduct an inquest into Dr. Kelly’s death.

No such inquest has taken place which has produced an inquisition.

Mr. Gardiner misdirected himself in that he failed on 16th March 2004 to consider the implications of the obligation imposed on him by Section 8 to conduct an inquest into the suspicious death of Dr. Kelly.

There is nothing in Section 17A of the 1988 Act which, in the exceptional circumstances of this case, removes the duty placed on the Coroner to conduct an inquest.

We conclude that as a result of misdirecting himself the Oxfordshire Coroner neglected to conduct an inquest which he ought to have conducted, by virtue of the existence of two “exceptional reasons” to resume an inquest. First with respect to misdirecting himself re the taking of oath in public inquiries and second by failing to consider the duty placed on him to conduct an inquest by virtue of Section 8 of the Coroners Act 1988.

Given that no inquest was completed then we believe that Section 13(1)(a) of the 1988 Act, at least arguably, applies. The Coroner had a duty under Section 8 to conduct an inquest. He failed to do so as a result of misdirecting himself.

On the foregoing grounds we believe that, in all the circumstances, the High Court could readily grant an Order for an inquest into the death of David Kelly, on the grounds expressed in Section 13(1)(a) of the 1988 Act.

Alternatively, the High Court could readily grant an Order in terms of Section 13(1)(b).

It is clear that Nicholas Gardiner opened an inquest on 21st July 2003. However, it can be argued that that “inquest” demonstrated gross “insufficiency of inquiry”, not least in the fundamental sense that no “inquisition” resulted.

The additional points we raise in this Application add further grounds in support of a Section 13(1)(b) application.

We consider that it can be cogently argued that either Section 13(1)(a) or Section 13(1)(b) of the Coroners Act 1988 applies to the circumstances of this case.

Section 13(1)(a) applies if the deficiencies of the inquest, started on 21st July 2003 and required by Section 8, are such as to lead the High Court to a conclusion that *ipso facto* “no inquest” took place when an inquest ought to have been held. Alternatively, if the Court accepts that an inquest was begun then Section 13(1)(b) applies since the inquest demonstrated gross insufficiency of inquiry not least in that no inquisition was produced.

The kaffkasque framework implicit in pages 11 to 14 of Mr. Grieve’s written statement of 9th June 2011 to the effect that, at the same time, neither section 13(1)(a) nor Section 13(1)(b) applies would, we anticipate, be thrown out by the High Court or on Judicial Review following this Section 13 Application.

We consider that the evidence that Dr. Kelly’s body was moved outweighs any arcane theoretical abstraction about how Section 13 applies in the highly unusual circumstances of this case.

The interests of justice must come first.

A proper inquest conducted by an honest Coroner is the first step towards belated justice for Dr. Kelly.

10. Action required of the Attorney General

We consider that the Attorney General has a duty, in the interests of justice, to apply to the High Court for an Order that an inquest be held into the death of Dr. David Kelly.

We further consider that a refusal by the Attorney General to seek an order from the High Court is irrational whether in the *Wednesbury* sense of the term or common usage. It is, at a minimum, possible that an inquest might return a different verdict.

The evidence that the body was moved (even when considered in isolation) means that, at a minimum, an honest and diligent inquest *might* return a verdict other than suicide.

It is not necessary for us in this Section 13 application to prove that such an alternative verdict of Open Verdict or Unlawful Killing *would* be reached by an honest and diligent inquest. It is sufficient to demonstrate that it is *possible* that such a different verdict might be reached.

We recognize that it is potentially embarrassing for the Attorney General to seek an Order from the High Court that an inquest be held into the death of Dr. David Kelly, following his unambiguous and misguided statements to the House of Commons on 9th June 2011.

We further recognize that it is particularly embarrassing for the Attorney General to seek an Order from the High Court in a situation where he concealed, from Parliament and from the public on 9th June 2011, evidence suggesting that Assistant Chief Constable Michael Page had lied to the Hutton Inquiry about one aspect of forensic evidence. He was informed of those concerns on 13th May 2011.

See <http://chilcotscheatingus.blogspot.co.uk/2011/05/death-of-david-kelly-unreliability-of-ht ml> .

On 12th June 2011 the Attorney General was invited to consider his position in view of the abject deficiencies of his consideration of the Second Section 13 Application. See <http://chilcotscheatingus.blogspot.co.uk/2011/06/death-of-david-kelly-i-invite-attorney.ht ml> . We repeat that invitation to Mr. Grieve and Mr. Garnier to consider their positions.

In the interest of justice an honest and diligent inquest is necessary.

However, given the *prima facie* evidence of a criminal conspiracy to pervert the course of justice viz to conceal the murder of Dr. David Kelly we consider that a public inquiry significantly more diligent and significantly more honest than the Hutton Inquiry is also required, with powers to compel witnesses to attend and to take evidence under oath.

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