Cross-Examination in Inquests

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Two recent reports seek to remind advocates of the widely-ignored principle that inquests are non-adversarial and cross-examination is not permitted.

The first report carries the bold title: "**The patronising disposition of unaccountable power'** A report to ensure the pain and suffering of the Hillsborough families is not repeated'. First Report

It was commissioned by the government and written by the Right Reverend Bishop James Jones KBE, former Bishop of Liverpool, in November 2017 to examine the experience of victims of the Hillsborough disaster. The report repeats the principle that "an inquest is intended to be an inquisitorial process: a process of investigation, quite unlike a traditional adversarial trial. There are no parties, no prosecution and no defence." Biting observations are made about the adversarial approach of legal representatives who undertake "…the questioning of witnesses to emphasise the culpability of others." One of the points of learning proposed is 'a change to the way in which public bodies approach inquests, so that they treat them not as a reputational threat, but as an opportunity to learn and as part of their obligations to those who have died and to their family'. The Bishop made a number of recommendations in his report, including a suggestion that additional training may be required for solicitors and barristers working in the inquest system.

The Government published a second report in 2017 by the Rt. Hon. Dame Elish Angiolini DBE QC into deaths and serious incidents in police custody. Second Report. The themes are similar and the report expresses concerns about the adversarial nature of inquests, and "hostile and insensitive questioning of family members by QCs or barristers representing the state."

As with so much in the coronial system, one of the major problems with questioning style is the lack of consistency. The line in the sand is drawn in wildly differing places by different coroners. Some coroners do not permit any leading questions. Other coroners question witnesses themselves in a way that can only be described as cross-examination.

A look at the transcripts from high-profile inquests including the Hillsborough inquest (available at https://hillsboroughinquests.independent.gov.uk/transcripts/) demonstrates how far the system has moved from being non-adversarial. Those of us who are used to representing interested persons in shorter, lower-profile inquests, may be surprised to see the style of questioning which was permitted. As just one example of a positive case being put, a barrister asked of a Chief Superintendent: "You know what was in your mind, and I will ask you just one last time: will you accept that, in fact, you froze?" The eventual admission was a crucial part of the evidence, and may not have been forthcoming without the witness being put under pressure by repeated and leading questions. There

may well be a place for cross-examination in a system which seeks to uncover the truth: the two are not necessarily incompatible. The answer may not be to continue the supposed ban on cross-examination and positive cases, but instead to focus on softening the tone and increasing the sensitivity of questions.

Most inquest practitioners whether representing families, public bodies or the State would welcome consistency and clarity, with an understanding that neither advocates nor the coroner are permitted to cross the line, wherever it might be drawn.

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