

Kelly had 'no right' to anonymity

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**2pm update**

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**Matthew Tempest, Owen Gibson** and **Chris Tryhorn**  
**MediaGuardian**, Thursday September 25 2003

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David Kelly had "no right" to expect the government to keep his identity secret and Whitehall no "constitutional" duty to conceal the name of a civil servant, the QC for the government told Lord Hutton this afternoon.

Jonathan Sumption said the Kelly family's complaint that Dr Kelly's identity had been revealed to the public was "completely unjustified" - although he conceded their right to make it.

But he insisted that Dr Kelly himself, as well as Ministry of Defence witnesses Richard Hatfield and Bryan Wells, had expected the name to come out.

And he claimed the government "neither could nor should have tried to keep this information indefinitely concealed".

Arguing that therefore the decision boiled down to how Dr Kelly's name was released, Mr Sumption declared that there were only two options: a full press release naming Dr Kelly, or the option taken of an unidentified press release and a subsequent confirmation procedure.

He said that "even with hindsight it is difficult to say which was the better process".

But - perhaps significantly - Lord Hutton interrupted to ask why Dr Kelly could not have been given 24 hours notice and then a press statement released naming him?

Mr Sumption replied that the government could only have done that if it was confident that his name would not leak in the meantime, and their "mindset" had been would, due to the Times story of July 5.

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Indeed, Lord Hutton prefaced his next inquiry with a warning that the media should not read too much into it, then asked whether merely being told he would have to appear before parliamentary committees imposed stress on Dr Kelly.

Earlier, Mr Sumption denied that the government was "delighted" by Dr Kelly's appearance before the foreign affairs committee, describing it at best as a "mixed bag" since the MOD scientist did not fully agree with government policy, plus the fact that the FAC wrongly decided Dr Kelly was not BBC journalist Andrew Gilligan's source.

But Lord Hutton intervened to ask why the defence secretary, Geoff Hoon, had therefore restricted what topics Dr Kelly could speak on before the FAC. Mr Sumption rejected the implication of this, saying that civil servants could not voice their own opinions before select committees, only give governmental views.

He rejected any idea of an "underhand scheme" to name Dr Kelly through a Whitehall-wide strategy, saying too many departments were involved even if such a policy had been decided.

And he insisted there was nothing suspicious in the evolving drafts of the MoD Q&A briefing.

Concluding the government's case, Mr Sumption said there was a danger of "learning the wrong lessons" from Dr Kelly's death and that there should not be a "hunt for others to blame."

He said that the MoD's Mr Hatfield, Dr Wells and Kate Wilson were "entitled to feel saddened that their real efforts" to look after Dr Kelly had only brought criticism on themselves.

He specifically rejected "today's headlines" that Dr Kelly only learnt of his fate in a "46 second phone call", saying that it was not the "crude length" which counted.

He added: "There were three phone calls over one hour amounting to almost three times that", and there was plenty of time to convey the message, even if the calls had "no chat".

Again interrupted by Lord Hutton, who seemed quizzical about some of Mr Sumption's assumptions, about how Tom Baldwin of the Times had twice been briefed by anonymous "Whitehall officials" before the name became public, the government's QC said he was unable to help.

Mr Sumption also launched a sustained and detailed attack on the BBC and Today reporter Andrew Gilligan, arguing that the corporation failed to realise the seriousness of the charges it was making and then failed to respond to complaints.

"The BBC never acknowledged how serious the allegations were," said Mr Sumption, adding that this attitude persisted throughout June and July.

The corporation seemed to believe this was a "typical piece of political mud-slinging", he said, and that the "dogs would bark and the caravans would move on". But the government was forced to contest the claims because they were so serious.

Summing up on the final day of the Hutton inquiry, Mr Sumption said Gilligan's description of the way in which he came to identify the weapons inspector as "one of the senior officials in charge of drawing up the document" had "all the hallmarks of a self-serving invention".

Like Jeremy Gompertz, counsel for the Kelly family who preceded him, Mr Sumption

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criticised Gilligan's evidence and raised a question mark over the reliability of the reporter's notes on his personal organiser, two versions of which were found by computer experts.

"Mr Gilligan said that the description [of how Dr Kelly was to be described in the report] was proffered out of the blue at the end of the conversation. He said Dr Kelly accepted it along with a second version. That has all the hallmarks of a self-serving invention, partly to accommodate the awkward evidence of the two versions of the file on his personal organiser," said Mr Sumption.

Gilligan accepted that Dr Kelly was not a senior member of the intelligence services but failed to correct the impression that he was, even after describing him as such on a Radio 5 report, he added.

Thereafter the impression that the source was a senior intelligence official in charge of drawing up the dossier spread throughout the BBC, alleged Mr Sumption, and at every turn the corporation failed to correct it.

He said the erroneous description was picked up and used by Today presenter John Humphrys and by Radio 4's World at One and was used again by Gilligan. Given that the BBC was "one of the most reputable broadcasters" in the world, the description was also picked up by foreign TV and radio stations.

"He [Gilligan] accepts that Dr Kelly was not a member of the intelligence services, a description which he used himself on Radio 5 That description was then taken up by his colleagues... Mr Gilligan never sought to correct it," said Mr Sumption.

"Perhaps even more remarkable," added Mr Sumption, was the fact that BBC news chief Richard Sambrook "allowed the impression to persist, even among the governors of the BBC".

Mr Sumption said the corporation's governors should have been told more when they met to discuss the row on July 6.

"The governors had no proper means of making their own assessment," he said. "The governors were not provided with information... even though Richard Sambrook [BBC head of news] was sitting there with most of that information in his head."

Mr Sumption said the governors should have been given access to Gilligan's notes or an indication as to what he was told by Dr Kelly when they met on May 29.

He also said any information about Dr Kelly's status should have been revealed before the governors came to their decision.

And the Today editor, Kevin Marsh should have been consulted about what he knew about the background to Gilligan's report, he said.

Lord Hutton put it to Mr Sumption that Mr Davies had argued it was not up to the governors to get bogged down in such apparently small details.

"To some extent that is so," he replied. "In circumstances where the governors are considering whether a complaint against executives is justified it cannot be right to take the executives account of meetings without any underlying investigation from them.

"And that is - from the records we have - precisely what happened."

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