

## IN THE UNDERCOVER POLICING INQUIRY

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**WRITTEN OPENING STATEMENT ON BEHALF  
OF  
JOHN BURKE-MONERVILLE  
PATRICIA ARMANI DA SILVA  
&  
MARC WADSWORTH**

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### **INTRODUCTION**

1. This written opening statement is made on behalf of John Burke-Monerville, Patricia Armani Da Silva and Marc Wadsworth. All three have been granted core participant [‘CP’] status in the Undercover Policing Inquiry [‘UCPI’] in the category of Justice campaigns<sup>1</sup>. However, none has yet been given any disclosure by the Inquiry. They therefore welcome the Chair’s indication that they will have the opportunity to make further opening statements at the start of the hearings during which their evidence will be heard and when disclosure will have been made to them.
2. This opening statement explains who Mr Burke-Monerville, Ms Armani Da Silva and Mr Wadsworth are; it outlines what they are seeking from the Inquiry and their concerns about its ability to uncover the truth.
3. All three were involved in campaigns seeking answers and justice in respect of police violence, racism or corruption. All three have reason to believe that they or their campaigns were subjected to undercover policing. They have not been given any or

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<sup>1</sup> Campaigns aimed at seeking answers and justice in respect of police violence, corruption and /or racism, often in the context of a loved one, or family member, having died or suffered violence at the hands of the police.

any satisfactory explanation why, or how, or for what length of time they were spied on; who authorised it; or how the information gathered has been, or was intended to be, used.

4. They are very concerned about the number of justice campaigns who were similarly reported on by the Special Demonstration Squad ['SDS'] and are deeply sceptical about the explanation offered by the Metropolitan Police Service ['MPS'] to date that these groups were merely 'collateral intrusion' – accidentally 'hoovered up' in information gathered about other more 'dangerous' groups.
5. Mr Burke-Monerville, Ms Armani Da Silva and Mr Wadsworth want answers in relation to their own cases, but they also want the Inquiry to confront the patterns that emerge from the repeated reporting on justice campaigns and the issues of institutional, structural and individual racism that underpin them.
6. Ms Armani Da Silva, in particular, as part of the Justice for Jean Charles de Menezes campaign, has first-hand experience of the critical significance of information (and misinformation) in shaping the public narrative about police action – see paragraphs 21 - 28 below. Given the clear benefit to the police of having information with which to undermine groups campaigning against police violence, racism and corruption, the Inquiry is asked to scrutinise very carefully, with a penetrating sceptical gaze, the purported explanation advanced by the MPS for undercover reporting on justice campaigns.
7. The Inquiry is urged to examine the use to which any information gathered was or might have been put; and to assess the role that racism, both individual and institutional, played in undercover policing of justice campaigns. The Chair is also asked to reflect on and address his own unconscious biases, as discussed at [63 - 70] below.

## **The structure of these submissions**

8. Part A provides further detail about each of the three CPs.  
Part B sets out what the CPs want from the Inquiry.  
Part C sets out concerns the CPs have about the Inquiry's approach to date and its ability to get to the truth on the issues of critical concern.

## **PART A: THE CORE PARTICIPANTS**

### **John Burke-Monerville**

9. Mr John Burke-Monerville is 77 years old. He moved to England as a young teenager and attended St Bernard's Boys' Catholic School in Whitechapel. He was the only black child in the school, apart from one young Asian boy. It was very hard. He left school at 17 and began work. At 25, he went to evening classes to study electronics and then to Waltham Forest College to study electronics and mathematics. He successfully completed college and went on to an apprenticeship in Goldsmith Row, repairing electronic goods. It was hard work, at evenings and weekends. The day he finished his apprenticeship he borrowed money from his father and took over J&S TV Shop, E9, when the previous owner retired. He ran the shop for 30 years. He became well known in the community, both for his shop and for his love of music. He has always sung, ballads and soul music. He has always worked hard and cared for his family. He should now be enjoying his retirement with his wife, children, grandchildren and indeed great grandchildren. Instead he finds himself in a public inquiry fighting to discover why he and his family were spied on by the Metropolitan Police.
10. On New Year's Eve 1986, one of Mr Burke-Monerville's sons, Trevor, then aged 19, was on a night out with two of John's sisters, when he disappeared from outside a nightclub in Stoke Newington, North London. He was arrested and the following day, found semi-conscious, in an unknown car. He was then arrested again on suspicion of criminal damage in respect of the car and taken to Stoke Newington Police Station.

Whilst there, Mr Burke-Monerville attended the police station in his search for his son. He was falsely told by police that Trevor was not there. In the early hours of 2 January 1987, Trevor was taken by police to the A&E department of Homerton Hospital. He was returned to the police station shortly afterwards. At some point that day, he was restrained by six officers in order that his fingerprints could be taken by force. He was taken back to Homerton Hospital at 10pm and again discharged back to Stoke Newington police station at midnight. The following day, he was remanded from the Magistrate's Court to HMP Brixton. It is understood that Trevor was too unwell to be brought into court, so the magistrate went to the cell to remand him.

11. When the family visited Trevor at HMP Brixton, he was plainly very unwell. On 4 January 1987 he suffered fits and on 6 January 1987 he was transferred to the Maudsley Hospital for emergency brain surgery to remove a blood clot from his brain. On the same day, the Crown Prosecution Service dropped all charges against him.
12. The family and the local community began a campaign to discover what happened to Trevor between his disappearance on 31 December 1986 and his admission to the Maudsley Hospital. Trevor never recovered his memory of what happened to him. Doctors at the Maudsley advised the family that Trevor's memory was likely to return one day, but it had not done so by the time he was murdered on the streets near his family home in March 1994. He was stabbed 15 times on his way home from a friend's house. No one has ever been brought to justice in connection with his murder.
13. During the lifetime of the Justice for Trevor Monerville Campaign, both Trevor and other members of the Monerville family, including Mr Burke-Monerville's then 79 year old father and 73 year old mother, were subject to harassment by the police. In 1991, Mr Burke-Monerville's mother was arrested and prosecuted for allegedly assaulting a police officer. She was acquitted at the subsequent trial and successfully sued the Metropolitan Police for malicious prosecution. Trevor found the harassment by the MPS so bad that for a few years he moved to St Lucia to escape it, but had to return when the epilepsy he had developed following the brain surgery worsened.

14. In February 2013, another of Mr Burke-Monerville's sons, Joseph, was shot and killed on the streets of Hackney by a suspected gang member. Joseph was parked in a car with his twin brother Jonathan and their older brother David. David was also injured in the shooting. The police quickly accepted that Joseph had been mistaken for a member of a local gang and confirmed that neither Joseph, nor any of his family, has any connection with gangs. At the time of the incident, Joseph and his twin brother Jonathan were studying Crime Scene and Forensic Science at Metropolitan University in London. Three individuals were due to stand trial in respect of Joseph's murder, but the prosecution was dropped days before the start of trial. An investigation conducted following the family's complaint about the police's handling of the criminal investigation concluded that there were a number of failings. To date no one has been brought to justice for Joseph's murder.
15. On 19 June 2019, a third son, David, was fatally stabbed outside his home in North London. Three men have been charged with aggravated burglary in connection with his death, but the trial that commenced in March 2020 had to be adjourned due to coronavirus lockdown.
16. In 2014, as he was still grieving at the death of his son Joseph, Mr Burke-Monerville was contacted by Operation Herne, the police investigation into the Special Demonstration Squad ['SDS'], and informed that they had information for him. In 2016, he was told that the Justice for Trevor Monerville Campaign had been listed in the 1987 SDS Annual Report as one of the organisations that was "*directly penetrated, or closely monitored, during the year under review.*"
17. Mr Burke-Monerville was granted core participant status in the UCPI on 11 February 2016. However, despite his commitment to participating in the Inquiry – and his participation as a claimant in two judicial reviews challenging the inquiry process – he has not received any further information as to how or why the campaign to seek justice for his son was subject to undercover policing.
18. He has a profound need to discover the truth. He states:

“I feel a responsibility to my sons, myself, my family and my community to ensure that this Inquiry comes through with some sort of answers about why we were spied on by the police. We have not been told the truth by anybody in authority about anything all along. I have no reason to be hopeful about this Inquiry. No one in authority has given me that. But I do remain hopeful. It is, though, my last hope and I am tired. I don’t want my surviving children, grandchildren and great-grandchildren to go through what we are going through.”

### **Patricia Armani Da Silva**

19. Ms Armani Da Silva is the first cousin of Jean Charles de Menezes, the Brazilian man who was shot and killed by police at Stockwell underground station on 22 July 2005, when he was mistaken for a suicide bomber. Ms Armani Da Silva has been involved in the Jean Charles De Menezes family campaign since his death.
20. At the time of the shooting, Ms Armani Da Silva had been sharing a flat with Jean Charles, together with another cousin. She learnt of Jean Charles’ death when she was asked to attend Brixton police station on the day of the shooting.
21. The initial news reporting, including by then Commissioner Sir Ian Blair, suggested that Jean Charles had run through the ticket barrier, that he was wearing suspicious clothing and that he had failed to stop when asked to do so. This gave the impression that Jean Charles was not an entirely innocent victim and appeared to mitigate the enormity of the police error. This was greatly distressing to Jean Charles’ family, because they knew it was highly unlikely he would have done anything wrong. It subsequently transpired that all of the early assertions about Jean Charles’ behaviour were false. He had not run from police. He had not failed to respond to a command. He was not wearing suspicious clothing.
22. Although the subsequent investigation by the, then, Independent Police Complaints Commission [‘IPCC’] into how the misinformation came to be in the public domain

concluded that there was no evidence that the Commissioner or any other member of the MPS had *knowingly* released or concurred in the release of false information, nonetheless, the IPCC concluded that:

“Once the MPS knew that Mr de Menezes was innocent on the morning of the 23 July 2005 they should have refrained from publicly discussing the shooting until such time as the facts had been fully established. Whilst the MPS admitted to having made a tragic mistake they continued to try to justify the shooting by referring to Mr de Menezes’ own actions and clothing.”<sup>2</sup>

23. Despite subsequent widespread publication of the fact that the initial information about Jean Charles and his actions was false, the impression given in those first hours following the shooting remains, for many, the enduring narrative. To this day, the family have to correct the false impression that Jean Charles in some way contributed to his own death.
24. Nor was this the only occasion on which Jean Charles’ family had cause for concern about information being put into the public domain, they believe by police, in order to discredit Jean Charles and deflect from the police’s own failings.
25. On 11 March 2006, Harriet Wistrich, Ms Armani Da Silva’s solicitor, received a telephone call from a DI Paul Settle informing her that an article was going to be published in the Sunday Mirror the following day detailing a rape allegation that had been made against Jean Charles by a woman who stated she recognised him from a photograph she had seen in the media. Ms Wistrich’s clear recollection is that DI Settle gave the unambiguous impression that the article was as a result of a police leak. It was subsequently proved by DNA analysis that Jean Charles was not the assailant.
26. The matter was investigated by the MPS Directorate of Professional Standards under the supervision of the IPCC and DI Settle denied having told Ms Wistrich that the

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<sup>2</sup> Stockwell Two p.94 <http://policeauthority.org/metropolitan/downloads/scrutinities/stockwell/ipcc-two.pdf>

information had been leaked from a police source. The journalist who reported on the rape allegation was contacted, but refused to reveal his source. The investigation into the leak concluded that in light of the number of people who knew of the allegation, including those outside the MPS, further investigation was unlikely to identify the source of the leak.

27. Ms Armani Da Silva cannot prove that the police deliberately put false information about Jean Charles into the public domain on these, or other occasions, for example when it was reported that he was an illegal immigrant. Nor is she aware of anything to suggest that any of the false information that was published about him came from an undercover source. However, for Ms Armani Da Silva there is a chilling parallel between her experiences of misinformation being put into the public domain about Jean Charles and the account that Peter Francis has publicly given of SDS officers being tasked with infiltrating justice campaigns in order to source information with which to discredit them.
  
28. This has always been denied by the MPS, but Ms Armani Da Silva asks the Inquiry to seek out the evidence of those involved in the justice campaigns and consider whether there are common aspects of their experiences which call into question those denials. It may not be possible for any one campaign, individually, to prove that information put into the public domain about them or their loved one was part of a deliberate attempt by the MPS to smear them, but if this is a common experience across many campaigns, then defences of accidental error, or denial of attribution, on the part of the MPS become more difficult to sustain. Likewise, if such a pattern were to emerge, it calls into question the suggestion that the collection of information about these campaigns was merely over-zealous, "collateral" recording by UCOs targeted against other groups, even if, as Operation Herne found, there is no evidence in the surviving documentation of explicit tasking. Whilst isolated instances of misinformation about the victims of police misconduct may be explained as breakdowns in communication, multiple instances of information about justice campaigns being covertly obtained and recorded must raise questions over ulterior

motive, particularly in light of the allegations made by Peter Francis – see paragraphs 40 – 43 below.

29. Ms Armani Da Silva learnt that information about the Jean Charles De Menezes family campaign had been inappropriately gathered by undercover officers from the SDS when she and other members of the de Menezes family and their campaign were contacted by Operation Herne in 2014. They were shown five redacted intelligence reports. These recorded information about individuals connected with, or meetings of, the campaign, including references to political views expressed by relatives of Jean Charles. Ms Armani Da Silva was told by Operation Herne that she could submit a Subject Access Request under the, then, Data Protection Act 1998 and/or a Freedom of Information Act request to the Metropolitan Police Service for further information. The MPS responded in February 2015 refusing to disclose any further details. Ms Armani Da Silva was granted CP status by the UCPI on 21 October 2015.
30. As with Mr Burke-Monerville, despite seeking actively to participate in the Inquiry, and two judicial reviews, Ms Armani Da Silva has not to date been provided with any further information as to how or why the campaign for justice for Jean Charles de Menezes was the subject of undercover policing.

### **Marc Wadsworth**

31. Mr Marc Wadsworth is a journalist, historian and campaigner. In 1991, he founded and led the Anti-Racist Alliance ['ARA']. The ARA was Europe's largest black-led anti-racism movement that comprised faith groups, civil organisations, MPs from all the main parties, and trade unions. It had branches throughout England, Scotland and Wales and had a high political and media profile. It was often seen by the police and other state bodies as a thorn in their side.
32. In 1993, Mr Wadsworth assisted the family of Stephen Lawrence to set up their campaign for justice and introduced them to the lawyer Imran Khan QC. Via Mr

Wadsworth's contacts in the African National Congress, he facilitated a meeting between the Lawrence family and Nelson Mandela.

33. Mr Wadsworth has made DPA and FOI requests to the MPS for disclosure of information they hold about him. These requests have been followed up by requests from his MP, Harriet Harman. However, all that has been disclosed to date is a redacted document that appears to be an intelligence report dated 2 May 1996 concerning a planned ARA march in Central London and a report dated 27 May 1999 relating to a complaint made by Mr Wadsworth to police in respect of a threatening letter he had received. The MPS have refused to either confirm or deny whether the ARA or its members were subjected to surveillance.
34. Mr Wadsworth was granted CP status in the UCPI on 21 October 2015. As with Mr Burke-Monerville and Ms Armani Da Silva, no further information has been disclosed to him as to whether and, if so how or why, he, or the ARA, were the subject of undercover policing.

#### **PART B: WHAT THE CORE PARTICIPANTS WANT FROM THE INQUIRY**

35. All three of these Core Participants have an overwhelming need to know the truth: not just about how, why and by whom they were spied upon; but about the deeper systemic truths about the SDS. They want to know the truth about Peter Francis' allegations of the targeting of justice campaigns; and they want the racism inherent in the view of justice campaigns as trouble-makers to be recognised and addressed.
36. In John Burke-Monerville's case, he additionally has a very personal need for the truth about his sons. He appreciates that the Inquiry's terms of reference are limited to the investigation of undercover policing and therefore, on their face, do not extend to investigating the wider circumstances of the murders of his sons, or the circumstances of Trevor's treatment in police custody. However, a core aspect of the Inquiry's remit is to *"examine the motivation for, and the scope of, undercover police operations in practice and their effect upon individuals in particular and the public in general."*

37. The issue of racism as a motivation for some aspects of the SDS' reporting and deployments must be at the heart of the Inquiry's investigation, including in respect of the "direct penetration" or "close monitoring" of the Justice for Trevor Monerville Campaign. That requires an investigation of the underlying circumstances of, at very least, the treatment of Trevor by the police. At present there are two possible motivations:
- a. a desire to derail and discredit the campaign's attempts to bring to light racist police brutality and subsequent harassment – as Mr Burke-Monerville fears; or
  - b. the targeting of "extreme" left-wing groups who are said to have infiltrated family justice campaigns, such as the Justice for Trevor Campaign – as the police have, to date, maintained.
38. It will be impossible for the Inquiry to assess where the truth lies in respect of these competing motivations without considering the underlying circumstances. If it is right, as the family have always suspected from the fragments they have been able to piece together, that Trevor was restrained and assaulted during his time in police custody, then that, and the fact that the police have never been open about their actions on that night, must raise a real question about their motivations for subsequently infiltrating the campaign that was trying to bring that brutality to light. In other words, uncovering the underlying facts of what happened to Trevor is an essential part of testing the "collateral intrusion" narrative.

#### The interest of all three CPs in the allegations of Peter Francis

39. The third Operation Herne report identifies 17 Black justice campaigns that are mentioned in the SDS records between 1970 and 2005<sup>3</sup>. The concerns raised about the police motivation for such repeated covert reporting on campaigns aimed at

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<sup>3</sup> [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities\\_and\\_how\\_we\\_are\\_doing/corporate/operation-herne---report-3---special-demonstration-squad-reporting-mentions-of-sensitive-campaigns](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities_and_how_we_are_doing/corporate/operation-herne---report-3---special-demonstration-squad-reporting-mentions-of-sensitive-campaigns)

exposing police violence or misconduct are supported by the allegations made by the former SDS undercover officer, Peter Francis.

40. Peter Francis' allegations were first aired in public by the Observer on 14 March 2010 when he alleged that the SDS had infiltrated Black justice campaigns and effectively thwarted their activities: *"My presence in the groups made that justice harder to obtain... Once the SDS get into an organisation, it is effectively finished."*<sup>4</sup>
41. On 24 June 2013, in an article in The Guardian newspaper Mr Francis alleged that, whilst deployed as an undercover officer in the SDS, his superiors had wanted him to find "dirt" that could be used to undermine public sympathy for the family of Stephen Lawrence and their criticism of police failings in connection with the murder investigation<sup>5</sup>.
42. In a Channel 4 Dispatches programme, broadcast the same day, Mr Francis said:

"I was also asked, the same as all other campaigns, 'could I find out anything else that could be used to maybe get the public to not have as much sympathy for the Stephen Lawrence campaign as what it truly had?' 'Is there anything that police could possibly use through the media to start maybe tarring the campaign?' It means the amount of sympathy that that campaign can generate locally is going to be vastly diminished... They wanted any intelligence that could have smeared the campaign, yes, there is this general remit, so had I through my circles come up with something along the lines of, they, the family were political activists, someone in the family was involved in demonstrations, drug dealers, anything..."<sup>6</sup>
43. In a live Q&A session on the Guardian website on 25 June 2013, Mr Francis confirmed that similar practices had been adopted in respect of other justice campaigns:

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<sup>4</sup> <https://www.theguardian.com/uk/2010/mar/14/undercover-police-far-left-secret>. At this time Mr Francis gave his account anonymously, being referred to as Officer A.

<sup>5</sup> <https://www.theguardian.com/uk/2013/jun/23/stephen-lawrence-undercover-police-smears>. On this occasion Mr Francis was content to be identified.

<sup>6</sup> Ellison Report p.181.

“Gathering intelligence secretly about campaigns, and then using that to potentially undermine them are separated, by a very thin line. Had I found out anything detrimental – and newsworthy – about the Lawrence family, the police, using the media then, would have used that information to smear the family. My superiors were after any intelligence of that order. That was made clear to me. But I would just like to clarify, the Lawrences were not unique in this. The same went for the other justice campaigns that I have already said I infiltrated...”<sup>7</sup>

44. On 25 June 2013, the book ‘Undercover – The True Story of Britain’s Secret police’, by Paul Lewis and Rob Evans was published. This set out further detail about the allegations of infiltration of Black justice campaigns by the SDS.
45. Following these publications, two on-going reviews – Operation Herne and the Stephen Lawrence Independent Review into possible corruption in the police investigation of Stephen Lawrence’s murder, conducted by the Mark Ellison QC – were tasked with investigating the allegations made by Mr Francis.
46. Operation Herne was the first to report its findings, in March 2014<sup>8</sup>, and then specifically in relation to justice campaigns in July 2014<sup>9</sup>. Operation Herne concluded that SDS reporting on Black justice campaigns had been “*collateral intrusion*”<sup>10</sup> occurring when potentially violent groups targeted by the SDS had aligned themselves with the justice campaigns. It found that: “*There is no evidence of covert operations targeted against any of the respective families or Justice Campaigns.*”<sup>11</sup> The July 2014 Herne report stressed that “*the SDS and the covert operatives did not directly ‘target’*

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<sup>7</sup> Ellison report p.184.

<sup>8</sup> Herne Report 2: Allegations of Peter Francis [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities\\_and\\_how\\_we\\_are\\_doing/corporate/operation-herne---report-2-allegations-of-peter-francis-operation-trinity](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities_and_how_we_are_doing/corporate/operation-herne---report-2-allegations-of-peter-francis-operation-trinity)

<sup>9</sup> Herne Report 3: Special Demonstration Squad Reporting: Mentions of Sensitive Campaigns [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities\\_and\\_how\\_we\\_are\\_doing/corporate/operation-herne---report-3---special-demonstration-squad-reporting-mentions-of-sensitive-campaigns](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities_and_how_we_are_doing/corporate/operation-herne---report-3---special-demonstration-squad-reporting-mentions-of-sensitive-campaigns)

<sup>10</sup> Herne 3 [5.1] et seq.

<sup>11</sup> Herne 3 [13.1]; [13.6].

*such campaigns but became exposed to them as a result of the activities of the groups that they had infiltrated.”<sup>12</sup>*

47. However, the conclusion of “*collateral intrusion*” based on an absence of records evidencing direct targeting makes no reference to Herne’s finding in its March 2014 report that prior to the introduction of the National Intelligence Model in or around 2014, “*there was little directed tasking, and requests were informal... Individual field officers had a significant freedom and discretion in deciding how their operations developed.*”<sup>13</sup> “[T]he concept of **tasking was informal and ad-hoc**, and differed to current practices. Indeed ‘direct tasking’ was avoided on the grounds that it could compromise an operation.”<sup>14</sup>; “**officers were provided with limited instruction and in effect left to make individual choices while operationally deployed.**”<sup>15</sup>

In light of this, the absence of any records evidencing direct targeting of justice campaigns cannot support a conclusion that they were not, in fact, targeted. Given the practices at the time, one would not expect to find records.

48. This point was made by Mark Ellison QC in the report following his review of Peter Francis’ allegations:

“In light of the limited records available, little weight can be attached to the absence of a record confirming an assertion made by an officer as being indicative or whether or not the assertion is correct.”<sup>16</sup>

49. Ellison found, in respect of the era that he was examining: “*In the 1992 to 1995 era, specific operational tasking was usually communicated orally by an undercover officer’s detective inspector.*”<sup>17</sup> Peter Francis appears to have told the Ellison review

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<sup>12</sup> Herne 3 [1.23]

<sup>13</sup> Herne 2 [7.6]

<sup>14</sup> Herne 2 [5.5].

<sup>15</sup> Herne 2 [26.1.7].

<sup>16</sup> Ellison review p.202 <https://www.gov.uk/government/publications/stephen-lawrence-independent-review>.

<sup>17</sup> Ellison review p.198.

that he largely received his instructions through his Detective Chief Inspector N86 on the drive to work<sup>18</sup>.

50. It is also a matter of common sense that if undercover officers were being asked to be on the look out for information that could be used to tarnish family justice campaigns, it is unlikely to be recorded as such on the face of the police records. In other words, given the context, an absence of evidence is not the same as evidence of absence.
51. All of this serves to underline the importance of the Inquiry looking beyond the face of such police documents as it is now able to retrieve and inquiring carefully into the surrounding circumstances when making assessments about the true or one of the true motivations for the targeting of justice campaigns. A critical part of that is listening to those, like Mr Burke-Monerville, the de Menezes family and Mr Wadsworth who were part of those campaigns.

### **PART C: CONCERNS ABOUT THE INQUIRY'S ABILITY TO GET TO THE TRUTH**

52. Mr Burke-Monerville, Ms Armani Da Silva and Mr Wadsworth share the concerns expressed by all of the non-state core participants in relation to the Inquiry's ability to get to the truth in circumstances where it has largely excluded non-state individuals from effective participation:
  - a. by restricting cover names;
  - b. by compartmentalising non-state CPs into narrow categories of "direct interest", determined by the Inquiry; and
  - c. by holding, at least, the initial hearings in circumstances where only a tiny number of non-state CPs and members of the public will be able to see and hear the evidence.
53. All of this has the effect that others who were spied upon will not know to come forward, thereby depriving the Inquiry of its ability to make an accurate assessment of

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<sup>18</sup> Ellison report p.186.

the true scale of political undercover policing. And it makes it impossible for those who do have CP status to assist the Inquiry with identifying the deeper underlying themes.

54. In addition there is a specific concern that Mr Burke-Monerville, Ms Armani Da Silva and Mr Wadsworth wish to raise in this statement. That is the Inquiry's clear lack of expertise and experience in relation to racism and the risk this presents to the Inquiry being able to get to the truth. This is a critical issue for them and for all those who were spied on as part of justice campaigns. Mr Burke-Monerville and Ms Armani were both claimants in the judicial review of the then Home Secretary's refusal to appoint a diverse panel to sit with the Chair to assist him with his investigation. This issue is of such great importance to the prospect of the Inquiry getting to the truth, that the remainder of this Opening is devoted to addressing it.
55. There can be few people nowadays, including in the field of dispensing justice, who have not heard of the term 'unconscious bias'. The term has become common currency because of the compelling nature of an ever increasing body of scientific research conducted over the last several decades in the field of the mind sciences, especially implicit social cognition<sup>19</sup>. This research has led to an appreciation and understanding of the nature and processes of human perception, judgment and decision making which have debunked notions of objectivity. It has shown instead the existence and force of unconscious biases that drive how we frame our perceptions, how we make judgments and what we decide. They are 'biases' because they refer to a 'systematic error' in the thinking process. They are often connected to a 'heuristic' - a mental shortcut - and are deployed subconsciously to make inferences and judgments<sup>20</sup>. This has been shown to be as true of legal decision making as any other field of human endeavour and to impact upon a judge's fact-finding role<sup>21</sup>.

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<sup>19</sup> A field of psychology that examines the mental processes that affect social judgments but operate without conscious awareness or conscious control.

<sup>20</sup> West, R. F., Toplak, M. E., & Stanovich, K. E. (2008). Heuristics and biases as measures of critical thinking: Associations with cognitive ability and thinking dispositions. *Journal of Educational Psychology*, 100, 4, 930–941.

<sup>21</sup> 59 UCLA L. Rev.1124 (2012) <https://www.uclalawreview.org/pdf/59-5-1.pdf>

56. Many different types of biases have been identified but some are of particular importance in relation to the issues of racial (and sexual) inequality (and political policing) which arise in this Inquiry. Of particular significance is “ingroup” bias, which leads us to shift standards in a direction that shields those with whom the decision-maker identifies (the “ingroup”) from ethical responsibility<sup>22</sup>. In other words, we unfairly favour someone from our own group.
57. Ingroup bias is itself informed by the wider social and cultural forces at play, forces which even from birth develop and shape internal processes by which we make decisions. Thus, while empathy has been shown by behavioural psychologists to be innate in babies as young as three months, they have also demonstrated how empathy narrows as a child grows and layers of identity start to develop, shaped by outside forces. The child becomes more selective in his/her empathy, based on whom they identify with the most, to the extent that they seek the punishment of those who don’t share their identity<sup>23</sup>. In other words, empathy narrows to favour the ‘ingroup’ which is itself identified by dominant external forces. Where, therefore, society is

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<sup>22</sup> For example, in one study (Anc M. Miron, Nyla R. Branscombe & Monica Biernat, *Motivated Shifting of Justice Standards*, 36 PERSONALITY COV. PSYCHOL. BULL. 768, 769 (2010)), researchers at the University of Kansas asked white students to state how strongly they identified with America. They were then asked questions about America’s relationship to slavery and its aftermath. These questions were grouped into three categories: judgments of harm done to Black people, standards of injustice, and collective guilt. The researchers found that White students who strongly identified as American set higher standards for injustice (that is, they wanted more evidence before calling America unjust); they thought less harm was done by slavery; and, as a result, they felt less collective guilt compared to other White students who identified less with America. In other words, their attitudes toward America were correlated with the quantum of evidence they required to reach a judgment that America had been unjust. Moreover, by experimentally manipulating how much people identify with their “ingroup” (in this case America), researchers can shift the justice standard that individuals deploy to judge their own ingroup for harming the outgroup. The researchers conducted a further study, which experimentally manipulated national identification by asking participants to recount situations in which they felt similar to other Americans (evoking greater identification with fellow Americans) or different from other Americans (evoking less identification with fellow Americans). Those who were experimentally made to feel less identification with America subsequently reported very different standards of justice and collective guilt compared to others made to feel more identification with America. Specifically, participants in the low identification condition set lower standards for calling something unjust, they evaluated slavery’s harms as higher, and they felt more collective guilt. By contrast, participants in the high identification condition set higher standards for calling something unjust (that is, they required more evidence), they evaluated slavery’s harms as less severe, and they felt less guilt

<sup>23</sup> This was demonstrated in the “Baby Lab” experiments at Yale University using puppets and has since been replicated across the world ever since. In his book *Against Empathy*, Paul Bloom, Professor of Psychology at Yale, writes about how this human tendency is exploited by politicians, and forms the basis of populism. People can be manipulated into feeling that they are somehow the victims of groups of people who are “different” from them, leading to the scapegoating of minorities when, in actual fact, it is those in power who are victimising them.

structured according to a hierarchy of racism and prejudice, as ours unquestionably has been for centuries, this strong external force will, from birth, influence and shape a person's attitudes and behaviour both consciously and unconsciously.

58. The young age at which this interplay between external factors and subjective processes influences human beings, and its potentially perverse effects, can be seen in the work of African American psychologists Kenneth and Mamie Clark. As far back as the 1940s they demonstrated that both Black and White school children attributed positive qualities to white dolls and negative qualities to black dolls in their groundbreaking "doll-test", demonstrating bias in young children. The poignant conclusion to the recordings was the realisation by Black children that they too must be "ugly" or "bad" because they look like the black doll.
59. Another relevant bias is fundamental attribution error, that is an error in our attempts to explain the causes of a person's behaviour by attributing it to internal enduring traits such as personality and ignoring situational factors. Coupled with the ways in which our attribution of personal characteristics is itself already subject to e.g racial/cultural bias or stereotyping, the error becomes compounded.
60. Then there is the "backfire effect" according to which our beliefs become strengthened in the face of challenge.
61. The French psychiatrist Frantz Fanon in his seminal book *Black Skin, White Masks*<sup>24</sup> spoke of it as the tendency to rationalise one's observations to fit with one's pre-existing beliefs:

"Sometimes people hold a core belief that is very strong. When they are presented with evidence that works against that belief, the new evidence cannot be accepted. It would create a feeling that is extremely uncomfortable, called cognitive dissonance. And because it is so important to protect the core

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<sup>24</sup> ISBN 0802150845, first published 1952

belief, they will rationalise, ignore and even deny anything that doesn't fit in with the core belief.”

62. This Inquiry is tasked with focusing on human behaviour. The behaviour of officers, the behaviour of those they spied upon. All of these biases (and others) are bound to impact upon the assessment of what happened and why it happened. But what is more, given the Chair’s background and life experiences, the ingroup is obviously the establishment, in this instance the police, tasked with protecting law and order. The non-state core participants represent the ‘out group’ in multiple ways – the race of the family justice campaigns, the sex of the women who were deceived into intimate relationships and the politics of the campaigning groups. The potential impact of unconscious bias is manifold.
63. This is not a theoretical concern. The Chair has steadfastly failed to recognise the risk of unconscious bias. At a meeting with non-state CPs, including Mr Burke-Monerville, on 12 December 2018, the Chair was challenged by CPs on his understanding of institutional sexism. He acknowledged a wish to be informed about this, but then immediately rejected the suggestion that he might be assisted by a panel during the investigative stages of the Inquiry. The Chair’s response illustrates precisely his lack of awareness of how his background and life experiences shape the way he sees the world. He responded: *“If the Home Secretary accepts my request for a panel at the lessons stage, including institutional sexism, I will have a panel. As far as what happened I have the approach of a historian. To look at evidence and reach conclusions about what happened.”*
64. This suggests that the Chair believes the “fact finding” stage of the Inquiry can and will be an “objective” process, unaffected by his own world view including the unconscious biases which animate it. Mr Wadsworth, himself a historian, has grave concerns about this view of historical analysis as an objective process, taking place from an Archimedean point, uninfected by the same cognitive distortions as affect the population in general, not shaped by the culture and society in which the historian was raised. He would highlight, for instance, the radically different perspectives on

imperialism taken by academics such as David Starkey and Niall Ferguson, on the one hand, and William Dalrymple, David Olusoga and Mr Wadsworth himself, on the other.

65. As the numerous studies referred to in the UCLA Law Review demonstrate, confidence in one's own objectivity is the most dangerous attitude to have, because if a fact finder is unaware of how her own unconscious biases affect her perceptions of "the facts", then she is unable to address them:

"Most judges view themselves as objective and especially talented at fair decision-making. For instance, Rachlinski et al. found in one survey that 97% of judges (thirty-five out of thirty-six) believed that they were in the top quartile in "avoid[ing] racial prejudice in decision-making" relative to other judges attending the same conference. That is, obviously mathematically impossible.... In another survey, 97.2% of those administrative agency judges surveyed put themselves in the top half in terms of avoiding bias, again impossible. Unfortunately, there is evidence that believing ourselves to be objective puts us at particular risk for behaving in ways that belie our self-conception.

Eris Uhlmann and Geoffrey Cohen have demonstrated that when a person believes himself to be objective, such belief licences him to act on his biases."<sup>25</sup>

66. Not only does the Chair lack any appreciation of the presence of unconscious biases but he has already made a number of statements which manifest "ingroup" bias of the kind to be expected. For example, at the hearing held on 31 January 2019, in response to submissions on behalf of the non-state core participant group that they should be given access to all of the documents that were not subject to valid restriction orders in order to be able to give a non-police, non-state perspective on them, the Chair responded indicating that, in his view this would be disproportionate given the scale of the task. In doing so, he outlined the number of documents involved and made the following comment:

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<sup>25</sup> Implicit Bias in the Courtroom, Kang et al 59 UCLA L. Rev. 1124 p.1173

“There are roughly 26,000 pages. Of those pages I have not done a precise calculation – something between a quarter and a third are documents produced by the groups that were infiltrated and by other groups. Those are the documents which I have looked at rather than read, because bluntly once you have read one ten-page justification for a particular ideological position as opposed to another one in the same broad political spectrum, whose views you regard as incorrect, you do not need to read too many of them.”<sup>26</sup> [emphasis added]

67. The point of this citation is not to suggest that the Chair is required to read every document, but rather to highlight the implicit bias that it reveals.

68. A similar comment was made by the Chair at a meeting with non-state CPs, including Mr Burke-Monerville, on 12 December 2018. A non-state CP raised with the Chair the issue of UCOs undermining campaigning groups. The minutes of the meeting record the following exchange:

[Non-state CP]: ... Getting agreement and participation takes a lot of doing. Campaigns are grown with energy and are vulnerable to disruption. It doesn't take much to disrupt the process. Subtle, important aspect of what's going on. Whether UCOs were used not just to stop criminality but to stop organising...

Chair: Anarchists, Trotskyists, other people of views unrealistic don't require UCOs to disrupt them; they fall out by themselves.” [emphasis added]

69. Again, this comment discloses the Chair's dismissive attitude toward political views that differ from his own. He was challenged about this by CPs within the meeting, and the Chair sought to suggest that his views were limited to what he knew about “ancient history political campaigns”, in respect of which, he said “I'd be surprised if what I've seen reported isn't largely true.” However, Mr Burke-Monerville, Ms Armani

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<sup>26</sup> Transcript p.55-56 [https://www.ucpi.org.uk/wp-content/uploads/2019/01/20190131-transcript-Privacy\\_hearing.pdf](https://www.ucpi.org.uk/wp-content/uploads/2019/01/20190131-transcript-Privacy_hearing.pdf)

Da Silva and Mr Wadsworth do not accept that the Chair's unconscious biases are likely to be limited only to "ancient history".

70. Some of the key issues in this Inquiry are the extent to which racism and sexism, conscious, unconscious, individual and institutional shaped the use and misuse of undercover policing. Another important issue is to examine the justification for undercover policing operations which targeted political groups, including those which were not violent, but were simply viewed by the state as unpopular or "subversive". Identifying the role that racism, sexism and other ingroup biases might have played is critical for the future health and proper functioning of a pluralist democracy. There is little prospect of a properly searching examination of these issues if the Chair does not recognise the likelihood that those very same biases operate on him.

71. Mr Burke-Monerville, Ms Armani Da Silva and Mr Wadsworth are concerned that the Chair's approach to date, not only manifests a lack of self-awareness of his own unconscious biases, but a corresponding lack of understanding of these issues. By way of further example, when the Chair met with Mr Burke-Monerville on 29 April 2019, he repeatedly made observations that suggest he broadly accepts the police narrative that justice campaigns were "collateral intrusion":

"Inevitably the target of the reporting was not the main campaign but the groups in the campaigning."

When asked about whether Special Branch could have been involved in the filming of the Justice for Trevor Campaign by police and whether this was linked to the police harassment of the family, the Chair responded:

"Doubt that they would, they were seeking those creating greater harm."

72. As far as Mr Burke-Monerville is aware, the Chair had not by that time studied the documents relating to his case in any depth. He certainly hadn't received any evidence from Mr Burke-Monerville, or anyone involved in the campaign, as no documentation has yet been disclosed to them. In that context, it is concerning that the Chair is

starting from the assumption that the campaign was not deliberately targeted – one of the key issues he is tasked with investigating.

73. At the previous meeting on 12 December 2018, referred to above, the Chair also made comments which, whilst well-meaning and sympathetic, indicate a fundamental lack of insight into the issue of structural racism. Mr Burke-Monerville explained to the Chair why he considers it important that he (the Chair) needs assistance with understanding racism:

“It is painful for me to read about my own children being killed. I read that you don’t need a panel to help you understand racism properly. You do not know much about racism. I get nervous talking about my children. Not easy to get up every day and know that you’ve lost two sons<sup>27</sup>. You lose one, think you might cope and then it happens again. I hope you understand what I mean. I’ve read some of the comments that you made about racism. I think you need additional people to look at the evidence with you and to help you make decisions especially relating to racism. I would like to know why you think you can do this without help when you have no experience of racism and no discrimination training.”

The Chair subsequently responded, likening Mr Burke-Monerville’s experience to loss during war:

“No one could hear what you said without having respect and sympathy. The only comparable thing I can bring to mind is loss in war. I’ve seen in the French countryside names of 2 or 3 brothers appear together. Ghastly catastrophe. Your loss is at least as bad. I will do my level best to tell you what happened.”

As Mr Burke-Monerville pointed out in response, whilst well meaning, the Chair’s analogy with war time loss misses such a critical aspect of Mr Burke-Monerville’s loss – that it did not occur in conditions of war, but on the streets of London, where he and his family ought to be able to expect a reasonable level of protection, and police

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<sup>27</sup> This was before David was also tragically killed.

investigations capable of identifying suspects and bringing them to trial; but he does not have that, because of the colour of his skin:

Mr Burke-Monerville: "... I mentioned lost in war to make you realise that we are not at war now, so why should I suffer that loss. I am aware that most things I encounter on the streets come from people not caring. Not enough care in the world for people of my colour."

74. It is positive that the Chair has undertaken some diversity training since these meetings took place. However, Mr Burke-Monerville, Ms Armani Da Silva and Mr Wadsworth are far from reassured that that is enough to enable the Chair to begin, from, at best, a standing start, to interrogate fairly and with a truly open mind the intensely complex issues that arise around institutional racism, sexism and other forms of implicit and structural bias that are, or ought to be, at the heart of this Inquiry. As the UCLA research made clear it is vital that legal decision-makers, including judges, are aware of and reflect on their own implicit or unconscious biases. An important starting point is unconscious bias training which attempts to confront us with the indisputable evidence of the existence of these biases and which helps us to understand how people really form judgments as opposed to how we think we do. But ridding ourselves of such biases is exceptionally difficult, which is why the NSPCPs have argued repeatedly for a diverse panel at the fact finding stage to redress the imbalance by providing a diversity of expertise and lived experience. Unsurprisingly, no doubt because of its neutralising effect on the impact of cognitive biases, diversity has been shown to lead to better decision-making<sup>28</sup>. A range of perspectives ensures that the biases, conscious and unconscious, of each decision-maker are more likely to be challenged and examined.
75. Finally, it is important to consider how the potential for unconscious bias to go unchallenged will be magnified in this Inquiry because so much of the police evidence will be heard behind closed doors, untested and unobserved by those who would be able to bring a different perspective.

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<sup>28</sup> Harvard Business Review 4 November 2016 <https://hbr.org/2016/11/why-diverse-teams-are-smarter>

76. For all these reasons, Mr Burke-Monerville, Ms Armani Da Silva and Mr Wadsworth wish formally to record that they hold out little hope for this Inquiry's ability to get to the truth.

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MATRIX CHAMBERS**

**RUTH BRANDER  
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**BIRNBERG PEIRCE**

**23 OCTOBER 2020**