

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

OPENING STATEMENT ON BEHALF OF MICHAEL MANSFIELD QC

1. Sir, the state is singularly able to, and often does, set the tenor and tone of how a society operates and regulates itself. And when the tenor and tone set by the State represents a wholesale attack on lawyers and those that they represent, there are consequences. Grave consequences.
2. Recent media reports suggest that the Home Office appeared to have dismissed intelligence briefings from counter- terrorism police in relation to an alleged far-right terror attack. Officers from counter terrorism command notified the Home Office in mid-September of this year that it was suspected that a far-right extremist had attempted to carry out a terror attack at a solicitors' firm in London. Weeks later, on the 4th October at the Conservative party conference, Priti Patel intensified her criticism of so called 'do-gooders' and 'lefty lawyers'; her words not mine.
3. On the 23rd October an alleged far-right extremist was charged with attempting to launch a terror attack at the law firm armed with a knife, handcuffs, a Nazi flag and a US Confederate flag with prosecutors saying he appeared to target the firm because of its involvement with immigration cases. After more than 800 former judges and legal figures signed a letter calling on the Prime Minister and the Home Secretary to apologise for their 'hostility' toward the profession a spokesperson for the Home Secretary urged those lawyers that signed the letter to 'get back to work'. No doubt the irony of that statement was lost on the Home Secretary given that the lawyers who signed that letter were precisely the ones whose work she was complaining about.
4. It is, therefore, incumbent on all of us to condemn, in the strongest possible terms, the verbal attacks by the Prime Minister and the Home Secretary and join in the call made by the 800 lawyers and former judges that they apologise for what they have said. The comments by Boris Johnson and Priti Patel are deplorable, unwarranted and undermine the Rule of Law.
5. Sir, it may seem an obvious point to make: 'the law should apply equally to all and should afford protection of the fundamental human rights of every citizen'. Yet ten years' on from what Lord Bingham said in his seminal work: 'Rule of Law' – Mr Mansfield questions whether we are in fact yet again embarking on an era where an independent legal profession is imperilled; where the independence of the judiciary is threatened; and where citizens' rights and liberties are diminished further.
6. It has been Mr Mansfield's experience that this is nothing new. The State, in its varying political hues, has nearly always sought to silence or undermine its critics. The only difference over the years has been the extent to which this has been done and whether it has gone too far. You will be aware Sir that, in his over 53 years of legal practice, Mr Mansfield has, whatever the political party in office and however keen it has been on countering challenges to its powers, always striven to provide independent legal representation, giving people a voice in circumstances where their voices would likely never be heard. The very nature of the work that Mr Mansfield

has undertaken has had the common thread of grave injustice which has meant that he has always been alert to the possibility that he would be susceptible to some sort of surveillance. But why should that be? Why should a lawyer – any lawyer, of any sort – be wary of surveillance by the State? In Mr Mansfield’s case, should he have been suspicious because of the fact that he was a lawyer or because of the type of work that he was doing? And should that make a difference? Should the issues facing an individual render them, or their lawyer, a target in the eyes of the State? A State that purports to abide by the rule of law?

7. Despite these concerns Mr Mansfield, like many other lawyers both within this Inquiry and outside of it, has always refused to be cowed or intimidated. He has never shied away from representing those that sought to challenge the iniquities of the State and its institutions – whether addressing flagrant violations of civil liberties or breaches of fundamental human rights. Far from hiding away and evading scrutiny Mr Mansfield has kept his head above the parapet and has welcomed legitimate scrutiny and indeed encouraged public discourse. What he did not welcome, does not welcome, did not encourage and does not encourage, did not deserve and does not deserve, is the unnecessary and unjustified surveillance (of him and others) by State players and its executive agent - the police.

8. Sir, you will be aware of what Mark Ellison QC stated in his Review:

‘Our system of justice for obvious reasons recognises and respects the rights of all parties to judicial proceedings to prepare and consult over their respective cases without intrusion or interference let alone covert surveillance by another party to the proceedings’ (Vol I p226)

9. Regrettably, during his long career Mr Mansfield has found that this self-evident statement of how our system of justice should operate, is rarely the case. Indeed, as early as 1971/1972 when representing Angela Weir during the trial of the so-called Angry Brigade, Mr Mansfield became aware of the States capacity for covert surveillance.

10. As a result of disclosure served on 16th October 2020 we now know the far-reaching extent to which those in the Home Office were aware of, and indeed approved payment of, the Special Demonstration Squad (SDS). Should the general public not be entitled to know the prohibitive cost to each of them of funding the SDS? Should the general public not be entitled to know the extent and true number of those under surveillance? Late disclosure reveals that the SDS were entrenched, as early as the end of 1969, in a number of groups:

‘New entrants to the extreme left- wing political scene are being identified and recorded within weeks of their manifesting an interest in extremist affairs. Personal descriptions, addresses and occupations are obtained by officers working within groups, and this material is submitted personally or passed to officers engaged on normal enquiry work’.

11. How many citizens, who were peaceful and legitimate members of society holding legitimate political views, had their personal details gleaned and indeed very possibly shared with (many) others? Are the records of those details still available?

12. In 1973 Mr Mansfield represented Marian and Dolours Price – the ‘Price Sisters’. Mr Mansfield was *‘filled with trepidation about taking on a case that had generated so much hatred’*. Such was the climate that he was subjected to outright hostility, even from those in his own profession.

13. It seems inevitable that without good reason Mr Mansfield again fell under the watch of the SDS.

14. In 1977 he represented journalists that the State had attempted to criminalise, during the 'ABC' trial (as it became known). The case concerned the supposed exposition of the means of government surveillance. As a consequence of the trial a light was shone on the dim and murky state surveillance tactics sanctioned by the government and executed by the police - this time against another sector perceived by them as a threat.
15. Notwithstanding being maligned and pilloried by those that viewed him as anti-establishment or a dangerous radical, Mr Mansfield continued to represent those that had suffered the worst kinds of injustice – often directly at the hands of the police.
16. Together with Gareth Peirce, he represented the Birmingham Six – who were wrongly convicted in 1975 and released only after their third appeal in 1991, with the West Midlands Serious Crime Squad's notorious reputation finally in tatters (having been disbanded in 1988). It is sobering, and shocking to think that in 1980 following the men's application for a civil action against the police and Home Office for injuries sustained in custody that Lord Denning in his judgment stated:

'If the six men win it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were involuntary and were improperly admitted in evidence and that the convictions were erroneous...this is such an appalling vista that every person in the land would say: it cannot be right that these actions go any further'.
17. Yet this is the 'vista' that was in place in the 60's, 70', 80's, 90's and the 21st century. What miscarriages of justice such as the Birmingham Six (and indeed Guildford Four) demonstrate – and what has been made clear through even the scant disclosure in this Inquiry - is that the police were, and are, capable of anything and prepared to do anything – including going outside legal parameters with little or no regard to concepts of necessity or proportionality or respect for another human being's civil liberties.
18. If state-sanctioned tactics of unlawful surveillance were designed to intimidate lawyers such as Mr Mansfield, they failed. Mr Mansfield continued to challenge the legality of state-sanctioned police (and military) actions. In the Bloody Sunday Inquiry (in Derry in 2000 and later in London in 2002) he acted for the families of those assassinated by British state agents.
19. In 2005, he represented the family of Jean Charles de Menezes – shot dead by the Metropolitan Police Service (who received nothing more than a fine as a result of breaching health and safety laws). His family are of course Core Participants in this Inquiry.
20. Mr Mansfield assisted the family of civil rights activist and lawyer Patrick Finucane with the demand for a public inquiry into his murder by agents of the British State. In April 2004 an independent report commissioned by the UK and Irish governments concluded that *'only a public inquiry will suffice'*. Yet the Inquiries Act 2005 was railroaded through parliament (it was passed as legislation on 7th April 2005 – the last remaining day before Parliament was dissolved). The Inquiries Act is yet another example of legislation that serves to undermine the rule of law, erode protection of human rights, shake public confidence, and lessen further the independence of the judicial and legal system. There was no consultation prior to the publication of the Bill. The Inquiries Act 2005 repealed the Tribunals of Inquiry (Evidence) Act 1921. Under the new Act the inquiry and its terms of reference are decided by the executive/appointed minister; no independent parliamentary scrutiny of these decisions is allowed; the Chair and any other members of the inquiry panel are appointed by the executive/minister and the

executive/minister has the discretion to dismiss any member of the inquiry. Lord Saville of Newdigate, the Chair of the Bloody Sunday Tribunal of Inquiry stated that the Inquiries Act 2005: "*Makes a very serious inroad into the independence of any inquiry; and is likely to damage or destroy public confidence in the inquiry and its findings*". It is to be noted that Lord Saville's prescient comments have resonance with many of the Non-State Core Participants here.

21. Mr Mansfield finds the current attempt at extending the power of State surveillance all the more disturbing. We have been confronted with the egregious Covert Human Intelligence Sources (Criminal Conduct) Bill which does not define or limit what types of criminal offences might be authorised by the relevant agency. It therefore legitimises, by way of statute, any criminal behaviour by undercover operatives, such as the now-defunct SDS, giving them full civil and criminal immunity. It allows for a far-reaching number of State agencies to engage in such activity. The Bill allows for authorisation of proportionate criminal conduct in order to prevent crime or disorder. One only has to look at the criminal and utterly disproportionate behaviour of the MPS and SDS to realise that such a low threshold is an open invitation to cause damage and, indeed, destroy lives, as it has unquestionably done. Clearly, the State and its executive agents have learnt nothing from a past in which they were responsible for the suffering of individuals and their families.
22. Mr Mansfield represented the family of Ricky Reel at the inquest in 1999. It is of course now known that Mrs Sukhdev Reel was subject to undercover surveillance. His family members are Core Participants in this Inquiry.
23. In the wake of the Macpherson Inquiry – Mr Mansfield, Suresh Grover (of The Monitoring Group) and others founded the National Civil Rights Movement – which went on to assist the families of Michael Menson and Roger Sylvester to name but a few. What these cases, and the many other cases involved in this Inquiry, show is that these individuals and families were not just having to deal with the conduct of agents who were acting on behalf of, and at the instigation of, a democratically elected State but, unbeknownst to them, there existed a secret state whose sole purpose appeared to be to disrupt, hamper and destroy them and their endeavours. When the deck was stacked so heavily against them, what chance did any of them have of achieving any form of success? But, as we know, in some very limited instances, success was possible.
24. Perhaps the miscarriage of justice most associated with Mr Mansfield is that of Stephen Lawrence. The truth as to the extent of surveillance of Mr Mansfield (and others) may never be known. What is known, however, is that Mr Mansfield was subject to the surveillance tactics of, at the very least, one SDS officer - HN81 (or N81 as he was previously known) - during the Macpherson Inquiry and campaign for justice for Stephen Lawrence. Arising from that, Mr Mansfield requires that the following questions must be asked and answered by this Inquiry:
 - a. Who authorised HN81's engagement?
 - b. Were those in the highest management aware of his engagement?
 - c. What were the terms of engagement, the parameters, and protocols, if any, that governed the surveillance of Mr Mansfield and others during the lead up to final submissions at the end of 1998?
 - d. Who made the decision to destroy files, logs (etc)?
 - e. How was Mr Mansfield deemed to be relevant to the issue of 'community tension'?
 - f. What was HN81, or anyone else, specifically tasked to discover?
 - g. When and where did he meet with Mr Mansfield and the Lawrence family?
 - h. How often did he meet them?

- i. What role did HN81 play until 2001?
 - j. Did that role include continued surveillance of Mr Mansfield?
 - k. What does HN81 or any other undercover officer (such as HN15 and HN104) know regarding other surveillance of Mr Mansfield including during the campaigns for justice for Ricky Reel, Michael Menson, Roger Sylvester and others?
25. Peter Francis has made clear that intelligence (as well as ‘hearsay’ and ‘tittle tattle’) gathered from both the Stephen Lawrence campaign and other campaigns for justice that he infiltrated – was used to smear those campaigns. In the Channel 4 dispatches broadcast on 24th June 2013 (referred to in the Stephen Lawrence Independent Review –the ‘Ellison review’ Vol I p 181) 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. What they would have done with the intelligence I can’t call it, but that is our remit, not just for them, that is always our remit when we are out there, we find out intelligence and then, if it is needed, then it will be used... I wasn’t successful, no SDS officer was successful in finding anything really concrete, it was just a bit of hearsay, tittle tattle”.

26. Following evidence gathered during the Ellison Review in 2014 it emerged that HN81 was recruited to the SDS following three years’ in Special Branch. From 1996 to 2001 he remained undercover penetrating left-wing, “anti-establishment” groups.
27. It was accepted (during the Review) that HN81 would not have joined SDS had he been aware of the ‘adverse mental and personal impact it would have had’ on him. Yet that begs the question as to why HN81 remained working for such a reprehensible operation until 2001 particularly given what he knew first-hand about the surveillance that took place in 1998. It makes his concerns for his own welfare all the more questionable.
28. HN81 was ever anxious to maintain that he was not tasked into the Lawrence family campaign but rather he was tasked into groups allegedly attempting to influence the Lawrence campaign. This is despite a briefing note by SDS Detective Inspector Bob Lambert summarising HN81’s work as thus:

‘Over the last 6 months N81 has reported comprehensively on the persistent and largely successful attempts by [N81’s group] to gain influence within the Stephen Lawrence campaign... [N81’s group] have managed to broaden the agenda within the campaign group to include a platform for their own uncompromising view that the SL case is but one that shows the police to be corrupt and racist from top to bottom. While the Lawrence family have sought to prevent extremist activists from taking over the campaign, N81’s reporting reveals the extent to which groups like [N81’s group and others] have gained a significant foothold within the ad hoc organising group...”

29. It was noted in the Review (Vol p224 of 308) that:

'In order to protect N81's identity, it is not possible to provide details of the groups N81 infiltrated, or any specifics that would enable those who were part of those groups at the time to work out who N81 must have been....N81 was well-placed in one of the groups that associated itself with, and tried to build relations with, both the Lawrence family and other groups during the Public Inquiry'.

30. However we know from Baroness Lawrence' evidence given at the Review (Vol I, p218) that the groups involved in the Stephen Lawrence Campaign were the Anti-Racist Alliance (ARA), the Anti-Nazi League (ANL), Youth against Racism in Europe (YRE) and The Monitoring Group – spearheaded by Suresh Grover – an alliance, friend of Mr Mansfield and a core participant in this inquiry.

31. Richard Walton, an officer on the MPS Lawrence Review Team (1998) was asked to join that team "... because the Lawrence Public Inquiry had started and it was clear it was absolutely going the wrong way in terms of Met reputation and all the rest of it... to join a team to do a thorough review under Bob Quick... who was reporting directly to Paul Condon at the time..." (p233 Vol I)

32. Richard Walton was told by Colin Black (acting Commander at Special Branch in 1998):

'We need a conduit to ensure that anything we pick up, particularly from SDS, can be fed in to support your reinvestigations of Lawrence, of Menson and Ricky Reel...'

33. Those involved in undercover surveillance of Mr Mansfield (during the Lawrence Inquiry in 1998) had no justifiable reason for such surveillance. There was certainly no 'public order' or 'public interest' justification and there was certainly no criminality whatsoever observed. Mr Mansfield asks: at what point does the proportionate means to covertly spy on someone come to an end, let alone, even begin? When is the decision taken that there no longer exists a proportionate and lawful reason to use such tactics – if ever there was such a reason in the first place? Were the actions of the SDS simply *'invasive, deceitful and sometimes criminal'* as found in the Ellison Review? (Vol I p224). We believe Mark Ellison QC was right in this assertion and that you are likely to reach the same conclusion at the end of this Inquiry, but only if you test the evidence and consider the wider SDS issues, because as Mark Ellison QC stated:

'A Public Inquiry that can see and hear the evidence being tested, particularly an Inquiry considering the wider SDS issues, might be better placed to make definitive findings' (p271)

34. Unlike HN81 and other police officers, Mr Mansfield did not destroy records; he did not hide papers; he never used an alias. Mr Mansfield did not deceive and deceive again those around him as a means to any end.

35. As we have stated, in the current climate the State acts with increasing hostility towards certain members of the legal profession – those deemed by the Prime Minister as 'lefty human rights lawyers' who are 'hamstringing' the criminal justice system. Given that we have witnessed lawyers across the world being attacked for fighting, particularly in authoritarian regimes, against arbitrary state power and for the basic legal rights of citizens and social groups, does the Prime Ministers conduct not speak more about the nature of this Government and its attitude to the rule of law then it does of the lawyers it seeks to vilify?

36. According to the United Nations Basic Principles on the Role of Lawyers (Basic Principles), states should ensure that all persons within their jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions

without intimidation, hindrance, harassment or improper interference. The Basic Principles require that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties, and not be identified with their clients or their clients' causes.

37. It is apparent from what has recently occurred in the UK that these Basic Principles are still not being adhered to because this Government has targeted those lawyers it deems as challenging it and its policies and practices: so-called 'activist lawyers'.

38. United Nations High Commissioner for Human Rights, Michelle Bachelet, recently noted that senior officials of the Government of the Philippines have threatened lawyers and others who have spoken out against the administration's policies, and she added that this "creates a very real risk of violence against them, and undermines rule of law, as well as the right to freedom expression. Whilst we might scoff at the idea that we are nothing like the Philippines, it is worth noting the consequences in that country of a Government that threatens lawyers who take on cases that challenge the State:

'Since President Duterte took office on June 30, 2016, the number and intensity of attacks against lawyers have increased significantly. At least 41 lawyers and prosecutors were killed between July 2016 and 5 September 2019, including 24 practicing lawyers. Lawyers are also harassed and intimidated. They are subjected to (death) threats, surveillance, labelling, and other forms of attacks.'

39. If you don't have lawyers, or more accurately lawyers who are willing and able to challenge the State, you remove, or, at the very least diminish, the right to challenge at all. As Lord Neuberger, former Supreme Court judge, said in a slightly different context: 'Once you deprive individuals of the right to go to court to challenge the government you're in a dictatorship, you're in a tyranny'.

40. Mr Mansfield's overwhelming concern is that only those that dare speak out against the 'broken system'; only those that assist in uncovering the wrongdoings of the police are subject to such attacks; and are subject to such unlawful surveillance tactics and unlawful monitoring. Whilst Mr Mansfield has sought to reclaim the term 'radical lawyer' from those that view it in pejorative terms, he is, like all of his colleagues in his profession, just a lawyer. A lawyer who represents and advocates on his clients behalf without fear or favour and to the best of his ability. The fact that he has taken on, and takes on, cases which are uncomfortable or upsetting to the State and its institutions should play no part in how he, and his colleagues in similar positions, are defined or treated. Civil liberties and human rights are now the mainstay of this country's legal system. Those lawyers that seek to ensure that they remain so and hold the State to account when these rights are breached, are no different to any other lawyer who seeks to lawfully protect their client's rights. A lawyer is a lawyer.

41. Mr Mansfield is confident that he represents only one of many, many lawyers who have been the subject of surveillance. It is incumbent on this Inquiry to establish the full extent of surveillance on the legal profession. Why it was done and who authorised it. Whilst the specific issue of Mr Mansfield's surveillance is, of course, important to him, only if the wider issue of the intrusion into the legal profession is considered will it be possible for this Inquiry to properly make recommendations of how to ensure that lawyers can do their job without fear of surveillance and free from attack from the State and its elected representatives.

42. If the Inquiry fails in this endeavour, it is possible that fear and intimidation will replace fearlessness and integrity within the legal profession. If so, the pool of lawyers intent on

upholding the rule of law and willing to stand up on behalf of their clients against the State and its institutions will be diminished. Indeed, the most important issue arising from the surveillance of lawyers is not the impact (whether real or perceived) on the individual lawyer but the individuals whose cases have been or are affected by the fact of the surveillance. It is chilling to consider that lawyers might have failed to take on cases or acted otherwise in accordance with their duty, in the knowledge that they might attract the unwanted attention of the State and its institutions. If there is little sympathy for the legal profession, then at least, regard should be had for the protection of the rights of those who deserve representation and justice.

43. Mr Mansfield asks what lessons do the police ever learn? Does history teach them anything? It appears not. Instead the Metropolitan Police Service and SDS act with arrogant impunity – resistant to learning from Inquiry recommendations and guidelines. They no doubt are hopeful that this Inquiry, saddled with lack of disclosure and shackled by lack of transparency on the part of the police, and shrouded in mystery as far as the public is concerned, will make limp and ineffective recommendations to which the police need not have any regard. Give it time they may say and the recommendations will be forgotten about.
44. Yet Mr Mansfield is not going to go away quietly – quite the opposite. He is clear that for an Inquiry to have real purpose there needs to be not only powerful and far-reaching guidelines and recommendations put in place – but perhaps even more importantly there needs to then follow effective implementation of such guidelines and recommendations.
45. Mr Mansfield described Baroness Doreen Lawrence and Neville Lawrence in his words (in 2009) as, ‘ordinary yet exceptional individuals who displayed remarkable courage and tenacity, changing perceptions and agendas for this and the next generation’. Yet it should not have to be down to non-state individuals and groups to fight tooth and nail to ensure that hard-won successes in inquiries, such as the MacPherson Inquiry where over 70 recommendations were made, are ‘*left to gather dust on some obscure shelf within the Home Office, the Ministry of Justice or New Scotland Yard*’.
46. In 2009 Dr Richard Stone, a member of the advisory panel to Sir William MacPherson, wrote a report entitled ‘The Stephen Lawrence Inquiry 10 years’ on’. In that report he observed that institutional racism still existed and that the mentality of rank-and-file officers remained unchanged. Take us ten years’ forward and consider how many steps back we appear to be taking.
47. Mr Mansfield asks that you, Sir, take the bold but necessary step of lifting the veil on the practices of undercover policing which have been hidden for far too long.
48. Mr Mansfield asks that you, Sir, take the bold but necessary step of setting down strong recommendations which actively guard against, and criminalise, unnecessary and unjustified surveillance of those lawyers, such as himself, who have not engaged in any criminal behaviour whatsoever.
49. Finally, Mr Mansfield asks for a sincere apology both to himself and to the other Core Participants.

Imran Khan QC

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9th November 2020