

Tuesday, 17 November 2020

(10.00 am)

MS PURSER: Good morning, everyone, and welcome to
Tranche 1, Phase 1 of the Undercover Policing Inquiry.
My name is Jacqueline Purser and I'm
the Hearings Manager.

For those of in the virtual hearing room, please
remember that unless you are invited to speak by
the Chairman, please switch off both your camera and
microphone. I will now hand over to our Chairman,
Sir John Mitting, to formally start proceedings.

Chairman.

THE CHAIRMAN: Thank you. We are now, I think, going to
hear the opening statement of Dave Smith.

Speaking directly to him, if I may, may I ask, first
of all, if you have recovered from the attack of COVID
that you had last week?

MR SMITH: I'm -- thank you very much. Yes, I'm on
the mend, thank you.

THE CHAIRMAN: Of course, if at any time during the delivery
of your statement you want a break, I will readily
understand and agree to it without question. Please ask
if you need to.

MR SMITH: Thank you.

THE CHAIRMAN: As you know, I had a hearing earlier in which

1 I indicated that I would ask those who were otherwise
2 minded to mention the real name of HN104, "Carlo Neri",
3 whether they would undertake to me not to do so, and
4 I understand that you've been told about that hearing
5 and its outcome, and that you have been asked for such
6 an undertaking; am I right?

7 MR SMITH: That's correct, yes.

8 THE CHAIRMAN: Do you give me that undertaking?

9 MR SMITH: Yes, I do.

10 THE CHAIRMAN: I accept it. Please continue.

11 Opening statement by MR DAVE SMITH

12 MR SMITH: Thank you.

13 My name's Dave Smith. I'm a blacklisted
14 construction worker and I'm a core participant in
15 the union strand of the -- of this Inquiry, and I'm
16 speaking on behalf of the Blacklist Support Group, which
17 is a campaign that was set up in 2009 after it was
18 discovered that multinational construction companies
19 were -- were spying on us and blacklisting us because of
20 our trade union activities.

21 When we first talked about blacklisting for -- as --
22 as trade unionists, the authorities dismissed us as
23 conspiracy theorists. Repeatedly we were told that this
24 doesn't happen in the UK. But blacklisting isn't
25 a conspiracy theory, it's a conspiracy fact. And it's

1 a conspiracy of which not just multinational companies,
2 but the police -- political policing units that are part
3 of this Inquiry are colluded with.

4 Trade unions first appeared in this country at
5 the time of Industrial Revolution and
6 the British Empire. At the same time that the ruling
7 class was making dynastic fortunes out the slave trade,
8 Parliament, the sole preserve of the rich and
9 the wealthy at the time, was passing
10 the Combinations acts, which made being a member of
11 a trade union an illegal and against the law. And ever
12 since that the time, this colonial mindset, this
13 anti-union hostility, which also sort of moulds in
14 with -- you know, mixes in with institutional racism and
15 institutional sexism, has become part of -- ingrained in
16 the establishment mindset within the UK.

17 My good friend, Lord Hendy, has already highlighted
18 the case of the Tolpuddle Martyrs in 1834. I don't
19 really expect to go over that. But there was another
20 less well known example happened in the exact same year
21 which -- in 1834. There was a meeting of
22 the Master Builders in Ludgate Hill in London, in which
23 all of the major employers in the construction industry
24 had a meeting, and then decided that what they would
25 introduce was this thing called the "document" -- it's

1 notorious within the trade union movement -- where
2 everyone applying to get a job on one of their building
3 projects was forced -- every craftsman was forced to
4 sign this document to say that they would never become
5 a member of a union, they weren't a member of a union.
6 And if they were a member of a union, they were sacked
7 or weren't given the job. And in a period before
8 the Welfare State, clearly the impact of this on their
9 families was destitution.

10 You know, moving on from that, in 1919, an
11 organisation called the Economic League was set up by
12 captains of industry, ex-naval intelligence officers and
13 Conservative MPs. And in their own words, the purpose
14 of the Economic League was to wage "a crusade for
15 capitalism". That's what they said it was for. But
16 what it actually did, of course, was blacklist union
17 activists, left-wing union activists, stopped them
18 getting jobs -- not just in the construction industry,
19 but across engineering, pharmaceuticals, the mining
20 sector, the public sector, across whole swathes of
21 the British economy. And from its inception,
22 the Economic League had both formal and informal links
23 with the police and the security services.

24 The Economic League was closed down in the early
25 90s. And in 1993 the Cullum McAlpine, a director of

1 Sir Robert McAlpine Limited, bought part of
2 the Economic League's blacklist, and set up a new
3 organisation called the Consulting Association, which
4 carried on the work of blacklisting trade unionists in
5 the construction sector. And the companies that were
6 involved in that were Balfour Beatty -- 44 of
7 the biggest construction companies in the UK were
8 involved in it. But the biggest ones that are household
9 names are the likes of Balfour Beatty, Laing O'Rourke,
10 Costain, Skanska, Kier, Vinci, Bam, AMEC and AMEY.

11 This -- this organisation, one of
12 the ex-Economic League employees, Ian Kerr, was set up
13 as the chief executive of the Consulting Association.
14 And his job was to collate files on union activists like
15 myself and like other core participants in this public
16 inquiry.

17 The -- in 2009, the Information Commissioner's
18 Office raided the offices of the Consulting Association
19 and found files -- secret files that the employers were
20 keeping on union activists. And the files include
21 people's name, their address, their National Insurance
22 number, sometimes their telephone number, their car
23 registration number, photographs of themselves,
24 sometimes their medical records, information about their
25 families. Certainly, if people -- once you were

1 blacklisted, if you ended up getting elected as a shop
2 steward, that would be reported on your blacklist file.
3 If you were involved in a protest or if you complained
4 about health and safety, that would be reported on your
5 blacklist file.

6 The Consulting Association didn't have spies on
7 every single building site. What it had was main
8 contacts, what they called "main contacts", from each of
9 the major construction companies, very often at director
10 level of the companies. And what would happen is,
11 a manager on a building site would feed up
12 the information to the director, the director would then
13 feed the information into the -- to Ian Kerr, who would
14 put the information on the blacklist file.

15 But they didn't just keep the blacklist files just
16 for the sake of curiosity. What they used it for was to
17 stop us getting work.

18 So what would happen is, any worker who applied to
19 get a job on one of the building sites ran by these
20 major construction firms would send in a list of names
21 to the Consulting Association, your name and your
22 National Insurance number would be checked against this
23 centralised blacklist, and if it came up -- if your name
24 came up, you would be sacked or refused work. And every
25 time they checked a name, it cost £2.20. In the last

1 set of invoices, Sir Robert McAlpine Limited, who built
2 the Olympic Stadium, their last set of invoices was
3 £28,000. This isn't managers having a chat; this is
4 systematic, industry-wide blacklisting of union
5 activists.

6 The impact of this was that during the middle
7 of building boom, when the -- when the economy was
8 crying out for skilled labour, if you were a blacklisted
9 construction worker, you couldn't get a job. When other
10 workers were taking their kids to Disneyland, we were
11 defaulting on our mortgages. There was long periods of
12 unemployment which affected not just us but our
13 families. The wives of blacklisted workers have talked
14 about getting two or three jobs in order to pay
15 the bills. Not being able to send the kids on school
16 trips. Not being able to buy the kids trainers.

17 One of the wives of a blacklisted worker has spoken
18 about the decision that they took not to have a second
19 child because of the financial hardships of being
20 unemployed because of the blacklisting.

21 I've worked on the Jubilee Line in the 1990s when
22 they built the Jubilee Line Extension. I was a union
23 safety rep on the Jubilee Line. While I was there,
24 there was a dispute about fire extinguishers and fire
25 alarms not existing in -- in London Bridge Station.

1 A number of people who'd participated in that dispute
2 ended up being put on the blacklist.

3 Some of those workers who were blacklisted have
4 committed suicide.

5 I'm not saying blacklisting is the sole reason for
6 their -- you know, for -- for that family tragedy. But
7 it's absolutely clear that long periods of unemployment,
8 that family disputes and tensions which inevitably
9 happened because of this cannot be -- cannot be
10 beneficial to somebody's mental health. You know,
11 blacklisting has contributed to people dying.

12 And not just people dying who are on the blacklist.
13 I was a safety rep and I was dismissed numerous times,
14 and those sackings are recorded in my blacklist file.

15 If you've got a sector where safety reps, who are
16 supposed to be protected by law, are repeatedly
17 dismissed and actively sought out by the employers and
18 dismissed because of their role of highlighting asbestos
19 or unsafe electrical works, then that sends out
20 a message to every other worker on that building site:
21 if the safety rep can be sacked, then everybody else, if
22 you want to complain about health and safety, you better
23 keep your head down, because you might lose your job as
24 well. Blacklisting of safety reps is a contributory
25 factor to the appalling death rate and fatality rate in

1 the construction industry, which is historically
2 the worst in any sector in the UK.

3 Parliament was so outraged
4 by the Consulting Association scandal when it broke that
5 it introduced new legislation, the Blacklisting
6 Regulations 2010. There was a Select Committee
7 investigation into blacklisting that produced seven
8 separate reports, which called the blacklisting a "real
9 life conspiracy". There was a High Court case which
10 ended up being settled at the last minute, where
11 the major employers paid considerable damages and made
12 a public apology in -- in the High Court.

13 But -- and this is the point -- blacklisting and
14 surveillance of us as union activists wasn't just
15 carried out by the employers, it was also carried out by
16 the police, and the political policing units that are
17 central to this public inquiry.

18 Operation Herne, which is the police's own internal
19 investigation into this, has concluded -- and I will
20 quote this -- paragraph 4.2 of Operation Herne says:

21 "Police, including Special Branches and
22 the Security Services supplied information to
23 the blacklist funded by the country's major construction
24 firms, the Consulting Association and other agencies.

25 "Operation Herne finds this allegation is proven."

1 It goes on further and says, in paragraph 13.1.2:

2 "Special Branches thought the UK had direct contact
3 with the Economic League, public authorities, private
4 industry and trade unions."

5 At the very start of this Inquiry,
6 Counsel to the Inquiry made the following statement:

7 "The reporting of undercover officers refers to
8 trade unions and to trade union activities of some union
9 members. There are concerns about why such information
10 was recorded, what it was used for and, in particular,
11 whether it was passed to those who blacklisted workers."

12 That is something that we can agree with
13 Counsel to the Inquiry on. We're very concerned about
14 that.

15 Already, in some of the disclosed documents for the
16 inquiry, it shows that spying on left-wing union
17 activists was part of what the SDS did, the special
18 demonstration group did.

19 The 1972 building workers' strike and the 1972
20 miners' strike is mentioned in the SDS Annual Reports
21 as -- as an area that they were interested in gathering
22 intelligence for.

23 But SDS intelligence, how it worked was, once
24 the SDS gathered the intelligence, once
25 the undercover officers gathered the intelligence, what

1 was done, it was placed on what is known as
2 "Special Branch registry files", you know? Once -- once
3 the information was -- once the intelligence gathered by
4 the undercover officers was placed on the Special Branch
5 registry file, this registry file became available to
6 anybody within Special Branch. And as we have heard
7 already from previous evidence, anyone from MI5 and
8 the Security Services as well. The Special Branch
9 registry files acted as, like, a central database, if
10 you like, for information about spying on activists and
11 also union activists.

12 Lord Hendy has already, in his opening statement,
13 highlighted a conference that the S -- that was on
14 the Special Branch registry files from 1970, in which
15 various trade unions clearly have got individual files,
16 individual Special Branch files about particular trade
17 unions. I don't need to go over them all again; he's
18 mentioned that.

19 But not just particular, individual trade unions,
20 but specific industrial disputes had their own
21 Special Branch files. The Shrewsbury pickets, which
22 I'll come back to later, the Pentonville 5, a group of
23 dockworkers who were sent to prison, the Con Mech
24 dispute, the Briant Colour works dispute. These are the
25 strikes that had their own Special Branch files. And

1 even a rank and file union group called the Liaison
2 Committee for the Defence of Trade Unions had its own
3 Special Branch file.

4 This Inquiry will find that in 1970, Special Branch
5 set up the Special Branch Industrial Unit. And to quote
6 from Operation Herne, the purpose of the industrial
7 unit -- the aim of it was monitoring of trade unionists
8 from teaching to the docks.

9 As well as that, the Special Branch Industrial Unit
10 set up a -- what they called "a network of well placed
11 contacts within British industry". This included
12 directors of multinational companies. But also,
13 according to True Spies, the True Spies documentary that
14 has been referred to many times -- included general
15 secretaries of TUC-affiliated trade unions.

16 The -- the Special Branch Industrial Unit even had
17 an official liaison officer with the Economic League.
18 That's in economic -- that's in -- in Operation Herne.

19 All of the intelligence gathered by SDS
20 undercover officers was available to the Industrial
21 Unit, and the Industrial Unit was having meetings with
22 these well placed industry contacts; basically and
23 they're sharing two-way exchange of information,
24 you know? This went on for -- for a number of years,
25 this two -- you know, both formal meetings and informal

1 meetings.

2 There is considerable overlap between the work of,
3 you know, the -- the target groups of the Special
4 Demonstration Squad and the Special Branch Industrial
5 Unit. And hardly surprising, some of the SDS officers,
6 either before, you know, working for the SDS or after
7 leaving the SDS, went on to -- to work for -- for
8 the Industrial Unit.

9 One of these officers gave evidence yesterday, which
10 is HN336. And in his evidence, HN336 identified
11 the former head of C Squad of the -- of Special Branch,
12 who we now know is Chief Superintendent Herbert Guy
13 Lawrenson, known as "Bert Lawrenson". The head of
14 Special Branch C Squad, at the exact same time that
15 the SDS was set up and who personally signed off some of
16 the Vietnam Solidarity Campaign reports, when leaving
17 Special Branch, he went off and joined and started
18 working for the Economic League.

19 Astonishingly, Operation Herne, which was supposed
20 to be looking into the links between Special Branch and
21 the Economic League, does not mention the fact that
22 Bert Lawrenson went off and worked for
23 the Economic League. Operation Herne does, however,
24 mention that there's a dedicated liaison officer from
25 the Special Branch Industrial Unit with

1 the Economic League.

2 You know, basically, you've got people in
3 the Industrial Unit who Bert Lawrenson used to be their
4 boss, Bert Lawrenson trained them. He then goes off and
5 works for the Economic League. And you've got someone
6 in the Industrial Unit who's the official liaison
7 officer. There is a relationship there between
8 the Economic League and Special Branch Industrial Unit.
9 That needs to be investigated by this Inquiry.

10 As well as the Special Branch registry files,
11 the political policing units in the UK have another
12 centralised database of activists that they spy on,
13 which is known as the National Domestic Extremism
14 Database. Originally, it was set up and compiled by
15 another police unit, the National Public Order
16 Intelligence Unit, which is also one of the main -- one
17 of the main units looked at by -- by this Inquiry.

18 But another political policing unit was also
19 responsible for collating and adding information to
20 the National Domestic Extremism Database, and that was
21 NETCU. NETCU stands for National Extremism Tactical
22 Coordination Unit. And they are also gathering
23 information and adding it to the Domestic Extremism
24 Database.

25 The Domestic Extremism Database has information on

1 thousands of British citizens, you know, a vast swathe
2 of them who have committed no crime whatsoever.

3 NETCU, who were -- who were helping compiling it,
4 their -- the head of NETCU, the person in charge of
5 NETCU was Superintendent Steve Pearl at the time. And
6 a few years ago, he gave an interview to the Daily
7 Telegraph. And I'll quote from the Daily Telegraph. He
8 said the purpose of NETCU was:

9 "... to take over MI5's covert role watching groups
10 such as the Campaign for Nuclear Disarmament,
11 trade-union activists and left-wing journalists."

12 In October 2008, Detective Chief Inspector
13 Gordon Mills from NETCU gave a PowerPoint presentation
14 to one of the secret meetings held by
15 the Consulting Association.

16 These Consulting Association meetings were held once
17 every three months, and were organised by its chief
18 executive, Ian Kerr.

19 The -- Gordon Mills gave a PowerPoint presentation
20 which, on the PowerPoint presentation, flags up that
21 left-wing activists could be emerging threats trying to
22 get jobs with these construction companies, and that
23 the construction companies needed strong vetting
24 processes to ensure that these left-wing activists
25 didn't get jobs on their -- on their companies. Bearing

1 in mind he was speaking to a meeting of blacklisting
2 organisation that had been secret since 1993, I think
3 they had a pretty strong vetting system in place
4 already.

5 Ian Kerr, the chief executive of the Consulting
6 Association gave a witness statement to the High Court
7 trial -- it was never used in the High Court trial
8 because it -- but I've got a copy of it -- in which he
9 said -- and I quote -- NETCU:

10 "... wanted an output for their information ...
11 I gave them the email addresses of the contacts in
12 the construction industry and they would feed
13 them information."

14 Both the Special Branch Industrial Unit and NETCU
15 have now been disbanded. That doesn't mean to say that
16 their work doesn't still exist. What's happened is
17 the people working there have now been absorbed into
18 SO15 at the Metropolitan Police. SO15 is Counter
19 Terrorism Command, and spy on trade unionists is now
20 considered -- is -- it comes under counter-terrorism.

21 The liaison element with industry context hasn't
22 stopped either. The liaison element of the Special
23 Branch Industrial Unit and NETCU carries on to this day
24 by what is known as Operation Fairway and -- forgive me,
25 this is a bit of a mouthful -- another political

1 policing group known as the National Domestic Extremism
2 and Disorder Intelligence Unit Industrial Liaison
3 Section.

4 The Inquiry will also find that in 2010,
5 the national coordinator for Special Branches suggested
6 that Special Branches needed to be more proactive in
7 giving Special Branch briefings to industry and
8 academics.

9 And I seriously have to ask, when -- when an
10 employer is brought to a briefing and Special Branch
11 tells them about -- about individual workers, activists
12 that are on a domestic extremism database, seriously,
13 what do they think's going to happen to us? Is it going
14 to be neutral or is the employer going to do something
15 with that information?

16 Clearly, it's affected us as trade -- blacklisted
17 trade unionists. But, equally, because they're giving
18 this information to public authorities and to
19 universities as well, it could affect other people who
20 are not trade unionists about getting into university,
21 access to university. It could also affect campaign
22 groups and their funding streams potentially, for
23 fighting anti-racism that has been flagged up earlier
24 on.

25 I now -- I now want to move on and concentrate on --

1 on the core participants in this Inquiry and -- and
2 three of the -- particularly concentrate on three
3 particular undercover police officers: Peter Francis,
4 Mark Jenner and the officer known as "Carlo Neri".

5 So, first of all, I start with Mark Jenner.

6 I knew Mark Jenner back in the 1990s. When I knew
7 him, his name was "Mark Cassidy". He was a member of
8 the construction union UCATT. He claims to be a joiner,
9 a carpenter. He was a member of Hackney branch of -- of
10 the construction union UCATT, which is my union. His
11 union subs were paid by a bank account set up by
12 Special Branch. After attending meetings -- this man
13 attended meetings. We've been told by his partner at
14 the time that after coming back from meetings, he would
15 come back with pages and pages of handwritten notes,
16 which would then be typed up from -- from -- about what
17 different people said at meetings.

18 Mark Jenner also spied on a campaign group in East
19 London called the Colin Roach Centre, which -- which
20 carried out multiple tasks. One of the -- one of
21 the organisations based at the Colin Roach Centre was
22 the Hackney Trade Union Resource Centre, which meant
23 that lots of trade union meetings took place at the --
24 at the centre, and lots of trade union campaign groups
25 held their meetings at this -- at the centre.

1 One of the -- or two small trade union groups that
2 existed at the time at the centre was the Building
3 Workers Safety Campaign and the Brian Higgins Defence
4 Campaign.

5 Mark Jenner didn't just attend these meetings; some
6 of the meetings he chaired the meetings. We have
7 actually got letters that the undercover police officer
8 sent out to various different trade union branches
9 across London introducing himself as a construction
10 worker fighting for -- for safety on -- on building
11 sites, and trying to glean information from a variety of
12 trade union branches in -- in London at the time.

13 Two of the core participants in this public inquiry,
14 Brian Higgins and John Jones, were both leading members
15 of the two campaign groups that -- that
16 "Mark Cassidy"/Mark Jenner infiltrated. Both of them
17 have got information about those campaign groups and
18 about the Colin Roach Centre on their blacklist files.

19 Jenner, acting and posing as a trade union activist
20 in the construction industry, also turned up on events
21 organised by the Joint Sites Committee, which is a group
22 that brings together trade union activists across
23 various different unions in -- in the London area.

24 I remember him on a picket line in Waterloo about
25 unpaid wages. I also remember him being particularly

1 disruptive at meetings, if I'm honest. He also became
2 into contact with -- with other core participants at the
3 time. Frank Smith, a -- a core participant, is
4 a bricklayer, heavily blacklisted since the 1990s,
5 a UCATT branch secretary. And Steve Hedley, also
6 a core participant, appears on the blacklist.
7 Steve Hedley is now the assistant general secretary of
8 the RMT rail union, and "Mark Cassidy"/Mark Jenner was
9 spying on us as well.

10 At one point, the Colin Roach Centre and the Hackney
11 Trade Union Resource Centre organised a trade union
12 delegation to visit Northern Ireland as part of
13 the peace process at the time. Steve Hedley was one of
14 the people on that delegation, as was the undercover
15 police officer, "Mark Cassidy"/Mark Jenner, who actually
16 attended that, and while he was there stayed at
17 Steve Hedley's family home in Northern Ireland.

18 I want to move on.

19 Trade union activism isn't just about terms and
20 conditions; this isn't just about wages and safety.
21 Trade unions are also proud to be anti-fascists and
22 anti-racists. You know, it's not something to be
23 ashamed of, it's something we are proud of that we're
24 opposed to fascism.

25 In the period of these undercover officers'

1 deployment, British National Party thugs and their
2 paramilitary terrorist wing, Combat 18, were terrorising
3 the streets of East London. Racist attacks skyrocketed
4 at the time. Family homes were being petrol-bombed.
5 Union offices were being attacked, including at
6 the London Borough of Tower Hamlets, when the union
7 offices there were smashed up, all the computers were
8 smashed up and swastikas were daubed all over the walls.
9 You know, the increase in racial attacks coincided with
10 the -- with the atrocious murders of -- of
11 Stephen Lawrence and Ricky Reel, which, you know, it
12 just puts it in context about what was going on at the
13 time, those tragedies.

14 It's hardly surprising, therefore, that trade unions
15 and Labour Movement campaigns, especially around
16 election time, often asked for union people to come and
17 steward their -- their meetings against attacks from
18 the fascist thugs. And trade unions from
19 the construction industry were invited a lot to provide
20 stewarding, to defend, you know, electioneering and
21 outside counts and that kind of stuff.

22 And some of the activists who are core participants
23 in this group were part of those stewarding things. And
24 one of the sort of ad hoc networks that we were --
25 talked about was called the "Away Team". We were all

1 spied on because of our involvement with the Away Team
2 as well.

3 Finishing with Mark Jenner, I just want to say one
4 thing.

5 For the record, we accuse Mark Jenner, and through
6 Mark Jenner the British state, of deliberately
7 interfering with the internal democratic processes of an
8 independent trade union, by covertly joining the union,
9 by participating in debates within the union, by voting
10 on motions that were sent to national conference and to
11 the regional council, by participating in executive
12 council elections, by actually distributing material
13 arguing for a UCATT convenor to be sacked and being
14 disruptive in the meeting, causing division within
15 the union, that is how they have interfered with
16 the democratic processes of an independent trade union.
17 This is in direct contravention of international law
18 that has been ratified by the UK, specifically
19 ILO Convention 87 and the European Convention on Human
20 Rights Article 11.

21 One more trade unionist I need to mention that
22 Jenner spied on was of course "Alison", who he had
23 a five-year relationship with, who's also
24 a core participant in this Inquiry. "Alison" was
25 a National Union of Teachers activist during all this

1 period. I'll let "Alison" -- you've heard from
2 "Alison's" lawyer already.

3 When Jenner's deployment came to an end, another
4 police officer turned up, to spy on virtually the same
5 activists. And this one was the officer that went under
6 the name of "Carlo Neri".

7 On more than one occasion, "Carlo Neri" encouraged
8 core participants Frank Smith and Dan Gilman, and
9 another trade union activist, Joe Batty, who hasn't been
10 granted core participant status, to firebomb a charity
11 shop. The undercover officer claimed that the charity
12 shop was run by an Italian fascist by the name of
13 Roberto Fiore, who was the leader of the Italian fascist
14 party known as Forza Nuova, who was on the run from
15 Italy after being wanted by the Italian police in
16 connection with the Bologna train station bombing of
17 1980, where 85 innocent people were killed.

18 For the record, we accuse "Carlo Neri" of being an
19 agent provocateur. He deliberately set out to entrap
20 those trade union activists and to get them sent to
21 prison.

22 For the record, the trade union activist -- these
23 people were trade union activists and anti-racist
24 campaigners. They completely refused to have anything
25 to do with it because they're not terrorists and never

1 have been terrorists, despite how the undercover officer
2 tried to entrap them.

3 "Carlo Neri" also had a long-term relationship with
4 another core participant -- or a number of
5 core participants in this Inquiry, specifically a friend
6 of mine, Donna McLean. Towards the end of
7 the deployment, "Carlo Neri" manufactured a split from
8 Donna McLean, and -- and when he claimed to be homeless,
9 actually moved in with Steve Hedley, into his house
10 as -- as a lodger.

11 In 2004, Steve Hedley was dismissed because of
12 a dispute on the Channel Tunnel Rail Link at the time,
13 where there was a big campaign to get him reinstated.
14 And "Carlo Neri", the undercover police officer, turned
15 up on the picket line to -- to spy on the union
16 activists there, no doubt.

17 There is a restriction order which says I am not
18 allowed to use the real name of "Carlo Neri" during
19 this -- during my opening statement. But I am allowed
20 to say that I personally have known "Carlo Neri"'s real
21 name for more than five years. As a group of activists
22 and with the Undercover Research Group, we found out
23 that he was a police officer more than five years ago.

24 When I published a book in 2016, we decided not to
25 publish his real name out of respect for the family.

1 But for the last 18 months, "Carlo Neri"'s real name has
2 been in the public domain.

3 Last week, I heard Rajiv Menon QC be told that he
4 would be silenced if he asked a question that the Chair
5 to the Inquiry did not like, or did not think was
6 appropriate. I'm not a Queen's Counsel; I'm
7 a construction worker who's looking to get the truth for
8 me and my friends about how we were spied on by
9 the British state. But I will not be silenced.

10 Four weeks ago, I wrote an article for Tribune
11 Magazine about the bill going through Parliament at
12 the moment: the Covert Human Intelligence Sources Bill,
13 which would allow -- would allow undercover officers in
14 future complete immunity from prosecution for committing
15 any crime, including rape, murder and torture. In order
16 to highlight this, I cited "Carlo Neri"'s incitement to
17 commit arson as part of the article, and the article
18 published "Carlo Neri"'s real name.

19 Neither I, nor Tribune magazine by publishing that,
20 have breached the restriction order. But inside this
21 Inquiry, I'm not allowed to mention "Carlo Neri"'s real
22 name. This sends -- this -- you know, the public
23 inquiry was set up to get to the truth and, you know,
24 uncover what was going on, but inside the Inquiry I'm
25 not allowed to mention it.

1 On Sunday night, I watched BBC TV, like millions of
2 other people. I watched the Philip Pullman's "His Dark
3 Materials" drama on TV. And, actually, coming into this
4 public inquiry seems like stepping into an alternate
5 universe, you know? And just to be clear, it's
6 the alternate universe that's a bit sinister, where
7 the Magisterium cling onto power by holding on to an
8 outmoded view of the world, denying people to be able to
9 see the truth, and deciding what people are allowed to
10 know and what they're not allowed to know.

11 I'll move on. The state did not just spy on us as
12 trade unions; the evidence that was gathered,
13 the intelligence that was gathered by the SDS officers
14 was passed on to the blacklist. I will give some
15 examples. One glaring example comes from the deployment
16 of Peter Francis during the early 1990s.

17 Peter Francis has admitted that he was part of --
18 was sent in -- one of the people he was sent in to spy
19 on was Frank Smith, the blacklisted core participant
20 I've already mentioned, and -- and -- and his girlfriend
21 at the time, Lisa Teuscher.

22 So, Peter Francis has admitted that he was
23 the person who opened the Special Branch registry file
24 on -- on Frank Smith, and that there's information on
25 the Special Branch registry file that talks about

1 Frank Smith's role in the Away Team and his relationship
2 with Lisa Teuscher. Frank Smith's blacklist file from
3 the Consulting Association -- and I will read it now --
4 and I quote -- says Frank Smith is:

5 "... under constant watch officially and considered
6 to be politically dangerous."

7 Peter Francis has said this virtually mirrors
8 the language that is on his Special Branch file.

9 What I would like to know, and what
10 the core participants in the union strand would like to
11 know, is how could the blacklist organisation possibly
12 know that Frank Smith was being spied on by the state
13 and kept under surveillance by the state if that
14 information wasn't provided by the -- by
15 the security services and Special Branch somehow?

16 Peter Francis also spied on and opened a file on
17 Lisa Teuscher. She was a leading figure in
18 the anti-racist campaign Youth against Racism in Europe.
19 He was also tasked by the Home Office to look into
20 Lisa Teuscher's immigration status because she's an
21 American citizen. And for seven years during that
22 period, Lisa Teuscher's passport was taken from her and
23 held by the Home Office while her -- she went through an
24 appeal because her Indefinite Leave to Remain was going
25 to be removed. Lisa Teuscher describes that

1 as "traumatic" at the time.

2 What we also find is that Lisa Teuscher, despite
3 never having worked in the construction industry ever,
4 has got a Consulting Association blacklist file. And
5 what does it say on the Consulting Association blacklist
6 file? Two things. Number one, that she is
7 the girlfriend of Frank Smith. And number two, that
8 she's been involved in several marriages of convenience.
9 Once again, similar -- virtually similar to the stuff
10 that was reported that Peter Francis says he put on
11 Lisa Teuscher's Special Branch file.

12 Once again, we ask, how is it possible that
13 a manager on a building site, who is the normal route of
14 feeding up information to the blacklist files, would
15 possibly know this? You know, this information has
16 clearly come from Special Branch or the police somehow.

17 Let me be clear. No one is suggesting that
18 Peter Francis or any of the individual Special
19 Demonstration Squad officers has personally handed over
20 this information to the -- to the Consulting
21 Association, or the Economic League. That was not their
22 job. The job of liaising with industry contacts was --
23 was from the Special Branch Industrial Unit, that was
24 their role, and -- and NETCU, whose job was liaison with
25 industry. It was through those mechanisms that

1 the information got on to -- those processes, those
2 meetings that the information got on to the blacklist
3 files.

4 Another glaring example was -- or appears on
5 a blacklist file is an incident in the -- at
6 the Cenotaph in 1999.

7 Every year, the National Front lays a wreath at
8 the Cenotaph on Remembrance Sunday. That a racist and
9 anti-Semitic organisation whose members have been
10 involved in sort of fascist violence is allowed to lay
11 a wreath at the Cenotaph on Remembrance Sunday has
12 always been controversial, but they do it ever year. In
13 1999, there was a counter-demonstration, and three
14 core participants, Frank Smith, Dan Gilman and
15 Steve Hedley, participated in the counter-demonstration.

16 Operation Herne has already admitted that their
17 participation in the -- on that demonstration is
18 reported and recorded on Special Branch files.
19 Literally within days of it appearing on
20 the Special Branch files, the same information also
21 appears on their blacklist files.

22 Once again, we're not suggesting that an individual
23 police officer on the day passed over the information to
24 the blacklist. This comes from -- through liaison with
25 industry contacts. The information about the Cenotaph

1 and the information about -- on Frank Smith's,
2 Steve Hedley's and Dan Gilman's information comes -- is
3 recorded as coming from the company, Costain. The main
4 contacts for Costain, the construction company Costain,
5 are known to have had relationships with Special Branch
6 officers.

7 I will name them. Dudley Barrett, who's now
8 retired, and Gayle Burton, who is now working for
9 the Jockey Club.

10 The only possible plausible explanation for how
11 the information about the Cenotaph incident ended up on
12 the blacklist files is if someone from Special Branch
13 told one of these -- Costain's managers that --
14 about it. That's the only possible way. The -- any
15 other suggestion about how it got on there quite
16 honestly is laughable.

17 You know, I keep coming -- I'm going to come back to
18 this. If the purpose of spying on us, which has been
19 dressed up all the way through this, is to stop public
20 disorder and serious criminality, then we've had three
21 undercover police officers spying on us for over
22 10 years. Why were none of us arrested? Why have none
23 of us been -- you know, why have none of us been charged
24 with these serious disorder offences that supposedly we
25 were -- we were being spied on? That's because, in

1 reality, police spying, the SDS spying, political
2 policing in this country, that's what it's about. It's
3 not about stopping public disorder, it's about spying on
4 people that the British state consider to be
5 inconvenient to them. And that means, you know,
6 left-wing trade unionists.

7 You know, we accuse Special Branch Industrial Unit
8 and NETCU of supplying information to the employers and
9 to the blacklist. The ideological mindset behind
10 Special Branch spying on us as left-wing union activists
11 and the blacklist spying on us as left-wing trade union
12 activists is absolutely identical. There's actually --
13 you know, we've got Special Branch people going off and
14 working for the Economic League. The mind --
15 the ideological mindset is identical. It's hardly
16 surprising that they shared information with each other.

17 Despite what the Designated Lawyers said on
18 the first couple of days, the police are not neutral in
19 this, you know? The British state is not neutral in any
20 major dispute between big business and trade unions.
21 The state is on the side of -- of the major companies.

22 The Special Demonstration Squad is not a rogue unit,
23 you know? The supply of information to the blacklist
24 isn't some aberration; it's standard operating procedure
25 for how the British state work and link and liaise with

1 big business.

2 Core participants in this strand, you know, demand
3 to know what went on. We want to know the mechanics.
4 We want to know the justification behind this. This
5 isn't a trial: we expect a narrative verdict to explain
6 what went on and how our information was passed on.

7 There are eight core participants in this public
8 inquiry who have been spied on in the union strand. But
9 we were not the only union members who were spied on
10 by -- by the undercover police. There are seven million
11 union members in the UK. To this day, we're still
12 the biggest civil society voluntary organisations. And
13 the police to try and dress it up as, "Oh, we were just
14 spying on individual members, not trade unions."
15 You know, being a trade union member isn't a business
16 relationship, a contractual relationship of a union.
17 The members are the union. That's how it works.
18 You know, we're not something separate.

19 There's a -- there's a saying in the trade union
20 movement that an injury to one is an injury to all.
21 You know, it doesn't matter to us what someone's race
22 is, what someone's gender is, you know, what someone's
23 class is or what their political orientation is; if
24 someone's in trouble, we help them. That's called
25 "solidarity". And seven million trade union members,

1 seven million members of the British public want to know
2 whether their union branches were infiltrated. They
3 want to know whether information was passed on about
4 their trade union reps, you know?

5 The -- to dress it up as anything else -- if they're
6 spying on union members, they're spying on trade unions.
7 To dress it up as anything else is complete smoke and
8 mirrors. And there's an explicit requirement in
9 the terms of reference for this public inquiry to look
10 into what the purpose -- what was done with
11 the intelligence gathered by -- by these SDS officers.
12 Not just what they did when they were on deployment, but
13 what happened with the -- what the intelligence was used
14 for afterwards.

15 Yes, it's time for -- it's time for the police to
16 come clean on this.

17 Yes, we want to know the cover names of
18 the undercover officers. Yes, we want to know the 1,000
19 groups that were spied on. But we want to know much
20 more than that. You know, which other union members
21 lost their jobs because of information passed on to them
22 by -- by police liaison officers? We want Special
23 Branch Industrial Unit to name the key industrial
24 contacts and the companies that were provided with
25 information about trade union members. And -- and if,

1 as it said in the True Spies programme, if any of those
2 key industrial members were union officials,
3 the Blacklist Support Group wants the union officials to
4 be named as well.

5 In construction we've found our blacklist; it's been
6 discovered. But there are plenty of other blacklists as
7 well. In the North Sea there's a system called "Not
8 Required Back", which is effectively a blacklist for
9 anyone who complains about safety in the North Sea.

10 In the BBC for many years there was an MI5 officer
11 actually literally based in the BBC buildings. They had
12 something called a "Staff Transfer Register" for
13 left-wing activists -- left wing members who were
14 working for the BBC.

15 During the Thatcher period there was a blacklist set
16 up called the "Subversion in Public Life" blacklist,
17 which was provided information by the security services.

18 In the retail sector, there's a blacklist
19 called "The National Staff Dismissals Register", which
20 was actually part-funded by a million-pound grant from
21 the Home Office.

22 We expect these to be looked into, you know, if
23 the police have provided information.

24 And just to be clear, in 2002, when the BBC
25 documentary True Spies came out, one of

1 the Special Branch officers in the programme talked
2 about a blacklist -- talked about Special Branch being
3 given a list of names by Ford Motor Company at
4 the Ford Halewood plant factory in Liverpool. And
5 I quote from -- basically for Special Branch to check
6 the names for when people were applying for jobs.

7 And the officer says this -- and I quote:

8 "It was very, very important that trade unions were
9 monitored ... We were expected to check these lists.
10 You call it blacklisting and that's what it was. In any
11 war there are always going to be casualties."

12 Seriously? "In any war"? This is a Special Branch
13 officer. You know, are trade unionist meant to be
14 the enemy within? You know.

15 The Blacklist Support Group needs to know if any
16 intelligence from any of these undercover units was
17 passed on to any of these blacklists.

18 And for the record, we don't think these are
19 the only blacklists, we believe that blacklisting in
20 some description takes place in every sector of the UK
21 economy, but it's often hidden, as is the police
22 involvement in it.

23 I'm getting close to the end, I believe.

24 Another important aspect for us is about what
25 happens to the undercover officers or the police spies

1 after they left working for -- for the police. I've
2 already mentioned the head of C Squad in Special Branch,
3 Bert Lawrenson, who went off to work for the
4 Economic League, but there are others.

5 Assistant Chief Constable Anton Setchell, who was
6 the head of UK political policing between 2004 and 2010,
7 upon retirement, he went off to work for Laing O'Rourke
8 as their head of security. Laing O'Rourke was one of
9 the blacklisting companies.

10 Superintendent Steve Pearl, who I mentioned before,
11 from NETCU, he went off to work for a company called
12 Agenda Security. Barrie Gane, the deputy head of MI6,
13 he went off to work for an organisation called Threat
14 Response International. Both organisations, both
15 companies that are engaged in spying on activists for
16 corporate clients.

17 Another company that spies on activists for
18 corporate clients and employs ex-state spies is an
19 organisation called "Control Risks". It's been in
20 the press that Control Risks had a £59,000 contract with
21 Crossrail, a publicly funded body, to spy on union
22 activists applying for work in their -- on that project.

23 One of the activists spied on, his name was
24 Frank Smith -- sorry, start that again.

25 One of the activists spied on was a shop steward, a

1 Unite the union shop steward called Frank Morris. He
2 was the first ever shop steward elected on the project.
3 Literally within days, he was sacked from the job.

4 What we want to know is all of these ex-police spies
5 and managers in these units who have gone off to work
6 for the private sector, are they using their influence
7 to garner information for their corporate role?

8 But more than that, because of mass privatisation
9 that has happened across the entire public sector, has
10 state spying that was previously carried out by
11 the police, has any of that been privatised? They've
12 privatised the role of the army. You know, we've got
13 security contractors -- privatised security contractors
14 working in Iraq and Afghanistan. Has the British state
15 privatised any of this -- this state spying? Because if
16 there is, who have they given the contracts to? How
17 much taxpayers' money have they been getting? And are
18 they exempt from Freedom of Information and public
19 scrutiny? Because it's very difficult to see where --
20 where that comes from.

21 You know, for this to work, then we have to be
22 sceptical and we have to go -- for this Inquiry to work,
23 we have to actually go in and find -- find out this
24 information. But unfortunately, you know, far, far from
25 the police providing us with this information, step --

1 every step of the way they have stopped giving us
2 information and tried to stop it.

3 One of the core participants in this public inquiry
4 in the union strand is an electrician called
5 Steve Acheson.

6 Steve Acheson stood on a picket line for three years
7 up in Manchester, along with two other electricians, in
8 order to expose the blacklist. Eventually,
9 a whistleblower came forward and told us about
10 the Consulting Association, gave a witness statement at
11 Steve Acheson's employment tribunal.

12 It's Steve Acheson and other activists in this
13 Inquiry who have exposed the blacklist, and exposed
14 what's going on with the undercover police, not
15 the police. In fact, at every step of the way,
16 the police have tried to stop the truth getting out.

17 When the Blacklist Support Group first put in
18 a complaint about police spying being provided to the --
19 the blacklist -- we put in a complaint in 2012 --
20 the Met Police refused to even accept the complaint.
21 Refused to accept it. It was only after an appeal by
22 Imran Khan & Partners that it was passed on to
23 the Independent Police Complaints Commission. And
24 within a few days, the IPCC said:

25 "... it is likely that all Special Branches were

1 involved in providing information about prospective
2 employees."

3 Almost immediately, Chief Constable Mick Creedon,
4 who was in charge of the Herne report, said that no such
5 evidence exists. We now know this to be simply untrue;
6 the evidence does exist. But once again it's an example
7 of how the police have tried to obstruct this Inquiry.

8 You know, another example is NETCU. Come back to
9 NETCU.

10 NETCU was specifically set up -- the organisation
11 that was -- that gave the PowerPoint presentation at
12 the Consulting Association meeting: that was
13 specifically set up outside of the remit of the police.
14 Even though everyone working in it was a serving police
15 officer, even though it was funded by the Home Office,
16 it was under the remit of the Association of Chief
17 Police Officers, which means it's exempt from Freedom of
18 Information requests.

19 I've put in Freedom of Information requests to NETCU
20 to find out about the Woodstock -- the meeting that
21 NETCU gave to the Consulting Association. And we have
22 been told repeatedly that no documents from NETCU exist,
23 that they have all been destroyed. This is a police
24 unit that existed for seven years; that officers working
25 in it had meetings with industry over a seven-year

1 period. They produced reports, they sent emails, they
2 sent correspondence, they did PowerPoint presentations.
3 And we're meant to believe that not a single document
4 exists that every single -- NETCU has now been subsumed
5 into the Metropolitan Police. But we're meant to
6 believe that all of these documents have now been
7 destroyed, and not one of them was worthy of carrying
8 over? What were these police officers doing for seven
9 years if not one of the documents was worth carrying
10 over?

11 When we are told that all of these documents have
12 been destroyed and none of them exist anymore, I'll go
13 out on a limb and say that is a blatant lie. We are
14 being lied to. Some of these documents still exist and
15 some of these documents are still being accessed by --
16 by the police now.

17 Now, we've got a choice here. We either believe
18 that the police are capable of lying, or we've got to
19 believe that everything the police tell us is absolutely
20 the truth.

21 You know, ask the families of the football fans who
22 died at Hillsborough. Ask the miners who were falsely
23 imprisoned at Orgreave. Ask the Birmingham Six whether
24 the police lie. Okay, the police lie. This is not
25 name-calling like the lawyers for the Metropolitan

1 Police Service suggested at the beginning. These are
2 political policing units that are being investigated
3 during this public inquiry. You know, these police
4 units lie. They've been trained to lie, for --
5 you know, we need -- this Inquiry needs to be sceptical
6 about this.

7 Unfortunately, the scepticism -- the benefit of
8 the doubt seems to be given to the police time and time
9 again. We were told -- we've been told by the police
10 that throughout its 40 years of this investigation, only
11 one police officer actually joined a trade union and was
12 a member of a trade union. We had a meeting in 2018
13 with the Inquiry team and you, the Chair, reinforced
14 this, that the police had said that only one police
15 officer during the entire 40-year period had actually
16 joined a trade union.

17 Look, I'm not a lawyer, but I imagine that when
18 barristers, you know, meet each other at a social event
19 that they talk to each other about what -- you know,
20 what chambers they're at, or what posh school they went
21 to. In the trade union movement, we don't do that. In
22 the labour movement we talk to each other and we ask
23 each other which union you're a member of. Any
24 undercover police officer who was spying -- on any kind
25 of long-term deployment who was spying on union

1 activists who wasn't a member of a trade union would
2 stick out like a sore thumb. So I do not, for one
3 minute, believe that there's only one police officer in
4 this Inquiry that joined a trade union.

5 The other thing is to do with our police files. All
6 of the core participants -- you know, we wouldn't be
7 core participants unless the police had told us that we
8 were spied on and that we had police files. I have
9 applied to get a copy of my police file, and like other
10 core participants I've been told the police can neither
11 confirm nor deny whether they hold any information on
12 me. Not just about me but even about
13 the Blacklist Support Group, they can neither confirm
14 nor deny whether they hold any information on us. And
15 the reason they gave is national security. So much for
16 transparency. So much for transparency.

17 We had a meeting with you, as the Chair of this
18 Inquiry, in July 2018. And during that meeting, we
19 specifically asked if two core participants,
20 Brian Higgins and John Jones, could be provided with
21 their police files, because both of them were seriously
22 ill and both of them are in their late 70s. And we were
23 given assurances -- given assurances that, as much as
24 physically possible, that would be handed over to those
25 people. Two years later, those files, police files,

1 have still not been handed over to John Jones and
2 Brian Higgins. Brian Higgins passed away in June 2019.

3 Seriously, what possible national security threat
4 can there be that a dying man isn't allowed to see
5 a copy of a file that the police produced on him, wrote
6 about him in the 1990s? I am in touch with
7 Brian Higgins' family. And I'm putting it politely by
8 saying that they're not very happy with the way that
9 they've been treated either by the police or by this
10 Inquiry.

11 Those are not the only documents that
12 the Blacklist Support Group haven't been allowed to see.
13 The only evidence from Tranche 1 that we've been --
14 disclosed to us so far are the Special Demonstration
15 Squad Annual Reports and the Operation Herne
16 investigation.

17 This Inquiry starts in 1968. Blacklisted workers
18 who are represented by the Blacklist Support Group have
19 got files that go back to the early 1960s. There are,
20 you know -- so we feel we're entitled to see these
21 documents. But the only ones we've seen are
22 Operation Herne and the SDS reports.

23 Just quickly want to mention Operation Herne if
24 they're going to be core documents in this Inquiry.

25 Operation Herne was the internal investigation set

1 up by the police to look into allegations that they
2 supplied information to the blacklist. What is
3 noticeable in it is the use of language. All the way
4 through, it talks about "alleged
5 victimisation", "supposed blacklisting" that was going
6 on. This is despite the fact that the officers
7 compiling it had full access to the full Consulting
8 Association blacklist database; despite the fact that
9 Parliament passed legislation directly because of this
10 blacklist; despite the fact there's been numerous
11 employment tribunals where the written judgment
12 condemned the blacklist; and there was a High Court
13 trial in which all of the employers admit doing it and
14 have made a public apology.

15 There are 74 appendices in the Operation Herne,
16 including an interview with the Special Branch liaison
17 officer with the Economic League. The Blacklist Support
18 Group hasn't been shown any of those appendices
19 whatsoever. All we've got is a heavily redacted version
20 of the -- of the report.

21 What I will say, because it would be -- you know, it
22 would be rude of me not to, is thank you very much to
23 the officers, because one of the things that they do
24 highlight is that the book that myself and
25 investigative journalist Phil Chamberlain wrote and

1 published in 2015, the police describe it as "the most
2 comprehensive collection of material on the subject".
3 Thanks very much. We'll be using that in our marketing
4 from now on.

5 But what it also demonstrates is that testimony from
6 the activists, what the activists have found out is
7 going to be just as comprehensive as the stuff that
8 the police have found out. And, actually,
9 the activists' testimony should be given just as much,
10 if not more, weight than the police.

11 I'm literally in the final furlong, so forgive me.

12 The -- in addition, you've got the SDS Annual
13 Reports.

14 Now, look, we've seen these annual reports. We're
15 meant to see these as, like, key evidence in these -- in
16 this Inquiry. I'm -- I'm a shareholder in various
17 blacklisted construction companies. And every year
18 I get sent an annual report when it comes up to their
19 AGM. And what it does is, it tells you what
20 the company's been up to, where they're earning money,
21 you know, where around the world they've been involved.
22 But I'll tell you what it never mentions. It never
23 mentions how many fatalities they have had on their
24 building sites. It never mentions when they've been
25 prosecuted for human rights abuse or when they've been

1 prosecuted for health and safety violations. Not once
2 have I seen it mentioned that they were involved in
3 blacklisting or they paid out millions of pounds at
4 a High Court trial and did a public apology.

5 And I don't expect it to, because what that document
6 is, what the annual report for the corporations are are
7 PR exercises to give them to shareholders to make sure
8 they've got a guaranteed funding stream to carry on in
9 the future.

10 And that's what the SDS reports are as well.
11 They're PR exercises sent to people who are going to
12 provide the SDS money in the future, and they should be
13 viewed in exactly the same way: they are not a full and
14 transparent review of what the SDS actually got up to
15 during that period.

16 Having said that, even the heavily redacted versions
17 we have got do flag up that there's information relevant
18 to trade unionists and the union strand.

19 You know, one of the things that they identify is
20 that one of the organisations infiltrated by the SDS was
21 the Shrewsbury Two defence campaign.

22 The Shrewsbury Two campaign related to Des Warren
23 and Ricky Tomlinson, the Shrewsbury pickets who were
24 sent to prison after the 1972 construction workers'
25 strike. A notorious miscarriage of justice, in which

1 the police and the security services colluded to get
2 these two construction workers sent to prison.

3 Fifty years after the case -- more than fifty years
4 after the case, the Home Secretary still refuses to
5 release the government files relating to the Shrewsbury
6 pickets because of national security reasons. This is
7 screaming of an establishment cover-up. Absolutely
8 screaming of it.

9 One of the blacklisted workers who used to speak on
10 behalf of the Blacklist Support Group, his name was
11 Mick Abbott, he was a scaffolder. His blacklist file
12 starts in 1964. He was one of the key, leading members
13 of the Shrewsbury Two defence campaign. And his
14 blacklist file was covered with information relating to
15 his campaigning on behalf of the Shrewsbury Two. If
16 the police were spying on the Shrewsbury Two defence
17 campaign, it's almost implausible that they weren't
18 spying on Mick Abbott. Mick Abbott also passed away.
19 He passed away in 2014. So, once again, we'll never
20 know.

21 The other thing that the annual reports mention is
22 the 1972 construction workers' strike, building workers'
23 strike, being an important element of -- of what the SDS
24 were interested in at that point.

25 The blacklisted workers from that period, they're

1 literally the people who led the dispute. They are --
2 you know, their blacklist files are covered with stuff
3 relating to the 1972 builders' strike. It's implausible
4 that if the SDS was spying on the building workers'
5 strike in 1972 that the blacklisted workers that we
6 represent were not spied on as well.

7 As it is at the moment, the Blacklist Support Group
8 has been denied access to all of the Tranche 1 evidence,
9 which also means our lawyers haven't been able to -- to
10 ask questions of any of the -- of any of the other
11 witnesses.

12 You know, far from being -- far from being
13 transparent and getting to the truth, what we've got in
14 this public inquiry so far are barriers. What we've got
15 at the moment are restrictions.

16 You know, as -- as you're aware, I've tested
17 positive for COVID. The only way I can see
18 the public -- the only way it's possible to view what's
19 going on in this Inquiry is to register my -- that
20 I want to come and see it online. If I'm selected,
21 I have to travel during a COVID lockdown to a hotel in
22 London to watch the Inquiry via a TV screen. Something
23 that I cannot do. When the police officers are giving
24 oral evidence, you can't even see that. What we've got
25 is some kind of -- it's like going back to the 80s. Got

1 a Ceefax of -- watching the Inquiry via Ceefax, where
2 you've got a typed transcript coming up, which literally
3 doesn't work. It doesn't work.

4 You know, rather than taking my word for it, let's
5 take the home affairs correspondent for the BBC, who's
6 the lead correspondent for the BBC for this public
7 inquiry, Dominic Casciani, who has tweeted
8 the following -- and I quote -- relating to the live
9 transcript, which is the only way supposedly to follow
10 it. This is what the chief correspondent for the public
11 inquiry for the state broadcaster says:

12 "It is virtually unusable for reporters trying to
13 follow it remotely. The words are appearing via a fast
14 scrolling video feed that can't be paused or can't be
15 rewound. This basically means, from a practical
16 perspective, as a working reporter, that a public
17 inquiry becomes largely impossible to report."

18 In the last few days I've heard you, Chair, state at
19 the beginning of the hearings that "members of
20 the public are entitled to hear the same public evidence
21 as I will hear and you're entitled to reach your own
22 conclusions about it". I say, simply, in all practical
23 senses, that's not true.

24 Most people find out what's going on from the public
25 inquiry from the media. Even if I wanted to, I can't go

1 to this hotel and find out this because of
2 the restrictions that you, as the Chair, have imposed.
3 It would be easy to allow the public -- a simple thing
4 would allow the public to be able to follow this and for
5 the media to be able to report it properly, and that
6 would be to live stream all of the evidence. That is
7 what is happening in the Grenfell Tower Public Inquiry
8 at the moment, but that is not what's happening in this
9 public inquiry.

10 From where I'm standing at the moment, instead of
11 being transparent and open, what this looks like is
12 we're watching a good, old-fashioned establishment
13 cover-up unfolding before our eyes.

14 In conclusion -- this is my last couple of
15 paragraphs -- my last paragraph, I'd say. Blacklisted
16 workers have -- our experience of the British legal
17 system doesn't give us optimism that the British state
18 investigating wrongdoings of the British state is
19 necessarily going to come up with justice.

20 Seven hundred blacklisted workers were claimants
21 (inaudible) trial, and the multinational companies were
22 literally allowed to buy themselves out of a trial.
23 That is not justice. We do not expect this public
24 inquiry to provide justice. Our participation in this
25 Inquiry is with the slim hope that through the process,

1 more and more evidence will become uncovered that will
2 come to light about this -- the anti-union hostility of
3 the upper echelons of the British secret political
4 policing units, that have a mindset which is still back
5 in that colonial-period mindset, which, you know, of,
6 you know, institutional racism, institutional sexism,
7 working class hostility, hostility to trade unions. We
8 do not expect justice. Our participation is we will
9 shake the tree as much as possible and see what comes
10 out.

11 We want to expose what these police units have been
12 doing in the name of the British taxpayer, so that it's
13 exposed. Keeping it hidden does nothing for justice,
14 but also does nothing for the British public, who are
15 meant to be, you know, reassured after, you know, we get
16 to the truth in this.

17 The police lawyers will argue that the undercover
18 police officers were doing what they were doing in order
19 to protect democracy. When they're spying on trade
20 unionists, when they're providing information to
21 blacklist organisations, to stop trade union activists
22 getting jobs, that is not defending democracy, that is
23 defending big business and capitalism. And for
24 the avoidance of all doubt, capitalism and democracy are
25 not the same thing. Thank you.

1 I'd just like to send solidarity greetings to all of
2 the other core, non-state, non-police core participants.
3 It's been an honour working alongside you for the last
4 few years, and an injury to one is an injury to all.

5 Thank you very much.

6 THE CHAIRMAN: Thank you, Mr Smith. I'm delighted to see
7 that you are in -- I don't know your state of health,
8 but in full vigour.

9 MR SMITH: Thank you very much. And thank you for allowing
10 me to go over my time a bit. I apologise.

11 THE CHAIRMAN: Not at all.

12 We will resume at 11.40 with the procedural hearing,
13 in which I'm going to hear submissions from counsel for
14 two of the non-state core participant side, and which
15 will also be attended by the Metropolitan Police lawyers
16 and the Designated Lawyers.

17 11.40. Thank you.

18 MS PURSER: Thank you very much, everyone. We will now take
19 a short break until 11.40. Please can you move into
20 your break-out rooms.

21 (11.22 am)

22 (A short break)

23 (11.40 am)

24 MS PURSER: Welcome back, everyone. I will now hand over to
25 the Chairman to continue proceedings.

1 Chairman.

2 Procedural Hearing on Rule 10

3 THE CHAIRMAN: Thank you very much.

4 Can I ensure, first of all, please, that everybody
5 who needs to be here is here? Ms Brander?

6 MS BRANDER: Yes, I'm here, sir.

7 THE CHAIRMAN: Mr Menon?

8 MR MENON: Yes, I'm here, too, sir.

9 THE CHAIRMAN: Mr Sanders?

10 MR SANDERS: Yes, sir.

11 THE CHAIRMAN: And Mr Skelton?

12 MR SKELTON: Yes, sir. Thank you.

13 THE CHAIRMAN: Good.

14 I asked all of you to appear -- well, I asked
15 Ms Brander and Mr Menon to appear, and your presence,
16 Mr Skelton and Mr Sanders, is also necessary -- to
17 consider what Ms Brander said to me about
18 the participation of non-state core participants in our
19 evidential hearings. She stated, and I am delighted to
20 accept, that those that she represents and the non-state
21 core participant group more widely do wish to
22 participate actively and constructively in the hearings.
23 And I want to try and see if there is a means by which
24 they can do it.

25 I therefore want to go rather more widely than

1 Ms Brander's written -- helpful written document that
2 she submitted before this hearing; and to begin, if
3 I may, by asking everybody whether it would now be
4 sensible to resume ordinary procedural hearings, that's
5 to say procedural hearings at which all necessary
6 parties were represented which were conducted in
7 the usual way, albeit perhaps nowadays over television
8 screens, with everybody having their say in the presence
9 of everybody else, and thereby assisting me to get to
10 a sensible solution.

11 Ms Brander, is that something that you would
12 welcome?

13 Submissions by MS BRANDER

14 MS BRANDER: Well, sir, I'd perhaps need to understand
15 a little more about what you're proposing. When you
16 were talking about "ordinary proceedings", I thought
17 perhaps you were talking about in a physical courtroom,
18 which would seem maybe wouldn't facilitate more access
19 for more people than are already able to attend
20 the hearing rooms at the Amba Hotel.

21 You then mentioned "television screens", so I'm not
22 sure then whether you're talking about allowing those
23 who have core participant status to have a live link to
24 the proceedings. If it's the latter, that is certainly
25 something that we would support.

1 THE CHAIRMAN: Let me explain myself a bit more clearly.
2 I was hoping not to have to go into ancient history, but
3 here I go.
4 When we had the original anonymity open hearings,
5 I had hoped that they would eventually, smoothly become
6 procedural hearings, so that we would have traditional
7 proceeding hearings, long before the COVID troubles, in
8 a largish courtroom or hearing room, at which everybody
9 would express their views, I would be able to test them,
10 and I would then produce at the end of them a written
11 decision.
12 Unfortunately, when the open anonymity hearings came
13 to an end, for reasons which we're all aware of and
14 which I won't repeat, I decided that we should proceed,
15 as we did, by having face-to-face meetings between
16 the Inquiry's lawyers and the representatives of all
17 sides, but, as it were, bilateral meetings, rather than
18 a meeting at which everybody was present. That has, up
19 to now, worked, albeit I think with increasing
20 difficulty.
21 Now that we've started hearings, it seemed to me to
22 be the moment at which I would invite everybody to
23 reconsider whether it would be a good idea to have, to
24 use the old Latin phrase, *inter partes* oral procedural
25 hearings about the evidential hearings we have conducted

1 and other matters that arise as we go forward.

2 I wanted, first of all, to know from your side,
3 because it was, after all, the actions of non-state
4 core participants who precipitated the route we have
5 gone down up to now, whether that is a good idea or not,
6 whether it's something that will be welcomed or not.

7 MS BRANDER: Well, certainly, sir, my understanding from
8 correspondence between the Lydia Dagostino, the RLR on
9 behalf of the non-state core participant cooperating
10 group, and solicitor to the Inquiry was that it was
11 anticipated that there might be -- or that there would
12 be an inter partes procedural hearing after the end of
13 Phase 1 of Tranche 1 and before the commencement of
14 Phase 2, in order that the issues that have been raised
15 in this phase could be -- could be considered by you,
16 sir. And certainly if that's what you're contemplating,
17 then that is very much something that the non-state
18 core participants would wish to happen.

19 You've heard from Mr Smith this morning about
20 the strength of feeling about how the first phase has
21 gone; and there are certainly many issues that we would
22 wish to have the opportunity to address you on and for
23 you to consider.

24 THE CHAIRMAN: Thank you.

25 It is my intention that there should be an

1 inter partes procedural hearing about Phase 2, and that
2 that should take place towards the end of January next
3 year. Can I explain that the earliest date on which we
4 may be able to begin phase 2 is the middle of March.
5 That may be optimistic, but as Mr Barr said, it's our
6 intention to start Phase 2 in March or April.

7 If an inter partes hearing is possible before
8 the end of January, then it can not only inform how
9 we're going to conduct the hearings, but will permit us
10 to put things in place -- technical means in place to do
11 so.

12 I'm encouraged by what you say, and I hope that your
13 remarks are not confined just to the next stage, as it
14 were, but can help, or can inform how we proceed for
15 subsequent tranches.

16 Have I understood you right?

17 MS BRANDER: Well, sir, I don't have a crystal ball,
18 obviously. And all I can say is to repeat what you
19 heard from Mr Smith this morning about the strength of
20 feeling. Certainly, the core participants want to
21 participate. They are desperate to participate. So
22 they'd very much welcome the opportunity to do so at
23 a procedural hearing. What will happen in the future
24 obviously depends on the way things progress, sir.
25 I can't really say more than that. But certainly for

1 now, they very much want to have the opportunity to
2 address you on -- on the way in which the Inquiry is
3 conducted going forwards, yes.

4 THE CHAIRMAN: And to help determine how hearings are going
5 to take place. Because we are all learning from
6 experience. It's easily the best teacher. And you can
7 advance all sorts of theoretical arguments before things
8 actually start. Once they get going, you see what
9 the problems are and one can sometimes see what the
10 solutions are.

11 May I ask Mr Menon if there's anything that he wants
12 to add to what has just been said in that exchange?

13 Submissions by MS MENON

14 MR MENON: Sir, you will appreciate that having just been
15 alerted to your question, I'm unable to speak on
16 instructions. But for my part, I think that -- that
17 resuming procedural hearings at which all
18 core participants can raise issues with you of concern,
19 whether they be about Rule 10 or whether they be about
20 redactions to the papers, or other procedural matters,
21 would be welcome.

22 I think part of the difficulty since those hearings
23 stopped is that one has had to effectively engage in
24 email communication, either on a solicitor-to-solicitor
25 basis or on a counsel-to-counsel basis, and then you are

1 obviously alerted as to when a ruling or a review is
2 required. But procedural hearings clearly, where
3 everybody has the opportunity to speak, will increase
4 dialogue. And in those circumstances, I would think
5 would be welcomed.

6 THE CHAIRMAN: Thank you.

7 Mr Skelton?

8 Submissions by MS SKELTON

9 MR SKELTON: Yes, sir. I think the MPS endorses
10 the approach of having hearings in which anyone can make
11 submissions about matters which affect their interests
12 and which they ought fairly to be heard upon; and really
13 to approximate your hearings as close as possible to
14 what they would have been like had you been able to sit
15 at Pocock Street and issues had arisen, like
16 Ms Brander's application, while the hearing was going
17 on, and we could all reconvene in front of you in
18 the chamber, as we would ordinarily.

19 So yes, inevitably there will still be the need for
20 some bilateral hearings about safety or security issues
21 or applications that necessarily need to be private, but
22 matters like this which affect everybody, yes.

23 THE CHAIRMAN: Mr Sanders?

24 Submissions by MR SANDERS

25 MR SANDERS: Yes, sir, we'd agree with that.

1 I think a transparent inter partes approach is
2 preferable to a series of bilateral communications,
3 because each party to those bilateral communications
4 isn't aware of what's being said in the other dialogues,
5 and so the more we can do all together, the better.

6 THE CHAIRMAN: Thank you. Then, for once, there is happy
7 unanimity. And I don't anticipate that those who aren't
8 at this hearing would express a dissenting view.

9 Very well. Then we will begin with an "ordinary"
10 procedural hearing, inevitably via television link, some
11 time towards the end of January, about how we're going
12 to hear the next phase of Tranche 1.

13 Can I now turn to the narrower issue of Rule 10.
14 And here I want, first of all, to address Ms Brander and
15 Mr Menon.

16 I think I ought to address my remarks to you,
17 Mr Menon, first, because I regret to say that part of
18 what I have to say is critical.

19 The purpose of Rule 10 is to enable the Inquiry to
20 control proceedings in a manner that is both useful to
21 its purposes and lawful. And I regret to say that
22 the cross-examination -- the re-examination you
23 conducted of Tariq Ali and the cross-examination you've
24 conducted of the two officers illustrated in some part
25 how we can't proceed.

1 Can I first of all deal with Mr Ali.

2 You asked him a question that, when he answered it,
3 breached a restriction order. No ill will was intended
4 obviously. As I understand it, you don't know that
5 the person who was named is dead. He may or may not be.
6 I don't know what your source of information is.
7 The Inquiry doesn't know either way. If he is alive,
8 then his rights under the Rehabilitation of Offenders
9 Act would have been infringed.

10 An inquiry is not a court. It doesn't have
11 unfettered, unrestricted opportunities to explore every
12 issue that an advocate might consider to be relevant.
13 It has statutory limits upon what it can do. And I must
14 try to uphold restriction orders that have been made and
15 people's rights under legislation such as
16 the Rehabilitation of Offenders Act.

17 The next avenue of questioning, which was not
18 harmful but not helpful, was your questioning about
19 the vote that had taken place, at which the officer said
20 he'd voted with his colleagues, if he had voted, who
21 supported the Ad Hoc Committee's line about the route
22 that the march should take. No harm was done by that at
23 all, but equally, no purpose was served by it.

24 The third question is something which may or may not
25 give rise to harm. Whether it does is beyond your

1 knowledge and mine.

2 You asked about Helen Crampton. My understanding is
3 that her name is now emblazoned over the social media
4 sphere. And you asked about a relationship that you
5 suggested she may have had with a man who may or may not
6 be alive but who is probably dead: George Cochrane.

7 I don't know, and the Inquiry team doesn't know,
8 the basis upon which you sought to raise that question
9 with Joan Hillier. And I'm afraid the Inquiry has got
10 to proceed on the basis of participants telling it what
11 they know, or what they believe they know, and the basis
12 for it; rather than, as it were, it coming out without
13 significant advance warning by conventional courtroom
14 questioning.

15 I don't mean those observations discourteously, but
16 I'm afraid I have to make them, because it does show
17 what the Inquiry cannot allow to happen. This is an
18 inquiry, not a trial, and the processes of an inquiry
19 must be followed.

20 I will give you the opportunity to respond to what
21 I have said, obviously. If you require time to reflect
22 upon it before doing so, I will gladly give it to you.

23 Submissions by ME MENON

24 MR MENON: No, I'm happy to respond straight away, sir, if
25 I may?

1 THE CHAIRMAN: Yes.

2 MR MENON: Can I address each of those three discrete issues
3 one by one, please.

4 In relation to my questioning of Tariq Ali and
5 the specific topic that you've raised, just to put it in
6 context for those who didn't hear or see the evidence
7 last Wednesday that Tariq Ali gave, he was asked by
8 Counsel to the Inquiry about a particular meeting that
9 took place at the Notting Hill branch of the VSC, and an
10 intelligence report in respect of that meeting was put
11 on the screen for him to comment on. And the name of
12 a particular individual who was said to have been
13 distributing a leaflet at that meeting was redacted.
14 And he was asked about that and he couldn't assist,
15 because he -- he wasn't told the name, and effectively
16 he wasn't at the meeting; and he had nothing of any
17 evidential value to offer in respect of that.

18 I knew the name of that individual because, on
19 receipt of the papers from the Inquiry and having
20 conducted further investigations, we knew who that
21 individual was. And I wrongly believed at the time --
22 and you know this because I've emailed your legal team
23 to inform them of my mistake, that I wrongly believed at
24 the time that he was deceased. And I'm truly sorry for
25 having made that assumption. I took it on good faith

1 from a wholly reliable source, but unfortunately an
2 innocent mistake was made and that man is very much
3 alive. And that was the sole reason that I mentioned
4 his name in the questioning, was (1) because I believed
5 he was dead, and (2) that I was trying to trigger
6 a recollection in Mr Ali, which in fact I did, because
7 he did recognise the name.

8 But if I'd known he was alive, I would not have
9 mentioned his name. And I've apologised for that, and
10 I hope you accept that apology from me. It was
11 a genuine mistake made on wrong information.

12 And so I accept that, if I'd known that he was
13 alive, given there was a privacy redaction in respect of
14 his name, I shouldn't have mentioned it. So that was
15 the context in which I mentioned that.

16 Having then discovered that he was alive, me and my
17 team took steps to further investigate that matter. And
18 those steps are ongoing. And that is why, when you
19 asked me prior to my questioning of Joan Hillier what
20 the basis of my proposed questions were, I was as vague
21 as I was, because it was effectively hot off the press,
22 if I can put it that way.

23 And it demonstrates, I think, in a very graphic way
24 what happens when the lawyers for the non-state
25 core participants are given disclosure as late as we

1 were. We had literally four weeks to prepare our
2 opening statements, read 5,500 pages of evidence, and
3 propose our questions for the relevant police witnesses.
4 I -- it was a -- it was a very cumbersome task.

5 I mean, if we'd had this material months in advance,
6 as we have repeatedly suggested and submitted that we
7 should have had, this would never have arisen. I'm
8 confident of that. But when one is working against
9 the clock in this way, it is much more difficult to
10 avoid problems of this kind.

11 So I regret mentioning his name. I hope you accept
12 from me that I did so because of an innocent mistake on
13 my part, and I wouldn't have done so if I'd known that
14 he was alive.

15 Turning --

16 THE CHAIRMAN: Forgive me for interrupting you, because
17 I know you're going to turn to the next topic.

18 May I say that I unhesitatingly and of course accept
19 your apology and explanation as to how it happened.

20 I'll return to late disclosure later, which is
21 a distinct topic.

22 MR MENON: Understood.

23 Turning to my questioning in relation to -- I think
24 it was the witness with the cover name "John Graham", in
25 relation to the meeting that nine undercover police

1 officers attended, and where there was a vote in
2 relation to the route to be taken by
3 the October 1968 march.

4 In my submission, it was a relevant topic, sir, to
5 explore with -- with anybody who attended that meeting;
6 because notwithstanding the fact that nine police
7 officers could not have affected the outcome of
8 the vote, given the number of people at the meeting,
9 surely it's important to know how police officers voted
10 on an issue that had a direct impact on the public order
11 policing of that demonstration.

12 I mean, if, for example, a police officer at that
13 meeting had voted along with the Maoists and others who,
14 according to the police, were seeking a fresh
15 confrontation at Grosvenor Square -- in other words they
16 had voted in support of the march going to
17 Grosvenor Square, contrary to the strong views of
18 the leadership of the VSC, who felt very strongly that
19 Grosvenor Square should be avoided on this occasion --
20 then that goes directly to your terms of reference, in
21 terms of the conduct of police officers and their
22 participation in decision-making that had a direct
23 impact on -- potential direct impact on public order
24 policing.

25 So, for example, if "John Graham" had said -- which

1 he didn't, I appreciate that, but I didn't know that
2 until I asked the question --"Yes, in fact, when I went
3 back to the safe house, we spoke amongst each other and
4 we discovered that four of us had voted one way and five
5 of us had voted the other way", that surely would be
6 a relevant matter for your consideration, because it
7 goes completely contrary to Conrad Dixon's "Penetration
8 of Extremist Groups" document.

9 So that's the sole issue I was trying to explore
10 with that question. There was no mischief involved at
11 all. But I didn't know what his answer was going to be,
12 because he hadn't been asked the question. So in my
13 submission, that was a -- that was a question on
14 a relevant and potentially important matter that could,
15 depending on the answer, have assisted you in your
16 search for the truth.

17 So, I mean, that's my defence, if I can call it that
18 way, to that particular question of that particular
19 witness.

20 THE CHAIRMAN: Again, forgive me for interrupting your
21 response, but I did indicate that no harm whatever had
22 been done by that line of questioning. I simply doubted
23 its utility. But that's a matter of opinion between you
24 and me, and I don't think it need delay us any further.

25 MR MENON: Turning, then, to the third issue, which is

1 clearly, in the larger scheme of things, the most
2 important of the three. I can assure you, sir, that we,
3 in my team, deliberated long and hard about how to
4 approach this matter. In part, because it clearly was
5 sensitive. In part, because it clearly was "hot off
6 the press", so to speak. And clearly because
7 consideration had to be given as to whether to wait or
8 not, and seek to deploy that particular point at a later
9 stage.

10 The difficulty that we found ourselves in was
11 this: that Joan Hillier is the only surviving police
12 officer who was involved in the infiltration of
13 Notting Hill VSC. There are no other witnesses who can
14 speak to that issue. And, therefore, a decision was
15 made -- again, in good faith -- that it would be wrong
16 not to explore this matter -- of course with your
17 permission, which you did give me -- with the only
18 surviving police officer who could potentially assist on
19 that issue.

20 And that was the basis upon which I made
21 the application. I can assure you it wasn't an easy
22 decision to make. I fully understand, and understood at
23 the time, the potential implications of asking those
24 questions. But we took the view, Mr Parry and I, for
25 those we represent, that we would be failing in our

1 professional duty to our clients, and failing in our
2 professional duty to assist you in the search of
3 the truth, if we did not seek your permission to ask
4 questions about that matter, which I spelt out in some
5 detail when I made the application, and then when you
6 gave me permission to do so, to explore them with
7 the witness.

8 And that, effectively, is my explanation for what we
9 did. It remains a live issue. I entirely accept what
10 you're saying, that it is now all over the internet, if
11 I can put it that way. And we will consult with your
12 legal team after this particular phase is over, as to
13 how best to explore that issue further, if you think
14 it's worth exploring further, in -- in later tranches
15 and phases.

16 But I mean, clearly, I said something to you, sir,
17 when I made the application for permission, that led you
18 to allow me to ask the questions that I did. Because,
19 clearly, what I was exploring -- and I tried to do it as
20 carefully as I could, without, for example, putting
21 a specific case to the witness -- because I couldn't do
22 that, I asked as open-ended questions as I could -- but
23 I took the view -- and I think you agreed with me --
24 that the issues that I was raising were squarely within
25 the terms of reference of the Inquiry.

1 So I'm sorry that it's turned out the way it has,
2 but I -- I'm afraid I do stand by the decision that
3 Mr Parry and I made. And I think in the circumstances,
4 it was the correct and professional decision to make.

5 THE CHAIRMAN: I do not for one moment question
6 the professional propriety of the question or
7 the thought that you gave to it beforehand.

8 However, if and when an issue like that arises in
9 the future, it is, I think, imperative that cards are
10 put on the table to the Inquiry lawyers. I'm not
11 suggesting that it needs to be put into the public
12 domain, or that advanced notification, or anything of
13 that kind, needs to be given to a witness. But
14 the basis for the questioning needs to be explained and
15 demonstrated to my legal team before the question is
16 raised.

17 Now, because Joan Hillier was giving evidence, and
18 because the issue had not been raised before accepting
19 your -- the questions that you indicated the night
20 before -- I think my timing is right -- I was confronted
21 with a decision as to whether or not an issue capable of
22 being relevant to the terms of reference of some
23 significance should be explored by you in questioning,
24 which is why I gave you permission.

25 But in future, please, if something like that does

1 happen, it is imperative that the Inquiry legal team is
2 told beforehand. Not just the questions you want to ask
3 or the topic on which you want to ask questions, but
4 the evidential basis for the questioning.

5 MR MENON: Yes, I understand.

6 And just finally on this topic, as you've
7 acknowledged, I -- I did, on receipt of the information
8 the evening before -- and it was literally the evening
9 before that I came into possession of the information --
10 I drafted specific questions on this topic. I didn't
11 set out the source of that material, I accept. But
12 I draft -- I set out the specific questions, with
13 the specific names of the individuals concerned, and
14 emailed them both to Solicitor to the Inquiry and
15 Counsel to the Inquiry. And I would have been
16 available, if they wished to speak to me about the basis
17 of those questions, to have -- to have told them
18 everything that I knew.

19 But I had no -- nobody got in touch with me after
20 I submitted those questions. And I then -- I was hoping
21 that, obviously, those questions would be asked by
22 Counsel to the Inquiry. When they weren't asked by
23 Counsel to the Inquiry, I made the application.

24 So, I mean, I hope -- but I certainly undertake that
25 if a similar issue arises in future, I will ensure that,

1 certainly on our part, better lines of communication are
2 available with your legal team, to ensure that we don't
3 have a situation like this arising again.

4 THE CHAIRMAN: Thank you. That's all that I can ask and
5 your response is all that I could hope to receive.

6 Can I deal with late disclosure now.

7 MR MENON: Yes.

8 THE CHAIRMAN: I don't think the outside world, including
9 lawyers for non-state core participants, quite
10 appreciate the problems that, in COVID times,
11 the Inquiry is having with assembling the documents that
12 need to be disclosed, so that those such as yourself can
13 read and understand them and participate effectively in
14 the hearings. I'm not going waste time now explaining
15 what they are, but I ask everybody to accept that
16 they're formidable, and they're not within the control
17 of the Inquiry -- let me put that differently: not
18 wholly within the control of the Inquiry. We do our
19 best to see that the documents are put into a state
20 where they can be disclosed to non-state
21 core participants, without infringing the public
22 interest and other considerations.

23 Despite that, I acknowledge that you are bound to be
24 under very great time pressure preparing for hearings.
25 If we are to start, as we now, thankfully, have, and to

1 proceed at a pace which is ultimately acceptable both to
2 the public, to our sponsors, to everybody who is
3 interested in the outcome of the Inquiry, then you may
4 find that you are placed under time pressure in
5 the future. I think that's unavoidable. And we are
6 struggling to avoid it, but we can't do so completely.

7 And I'm afraid that for the hearings, if they take
8 place, in March or April of Phase 2, the same pressure
9 of time is going to apply. That's something I offer by
10 way not of consolation but of explanation. We do know
11 the problems we're putting you under. I'm afraid
12 they're not avoidable, except at the price of endless
13 further delay.

14 MR MENON: Sir, I understand -- I'm sure Ms Brander will
15 want to say something on this. Can I just say this
16 before she says what she needs to say.

17 We understand all that, but all we ask is that
18 the Inquiry doesn't wait until exactly four weeks, or
19 six weeks before the Phase 2 hearings are to begin
20 before giving us the entire bundle. I mean, we -- we
21 ask the Inquiry to, you know, give us material
22 piecemeal, as and when it becomes available and as and
23 when suitable redaction has been completed, so that we
24 can start the process, because if we -- I mean, in
25 relation to this tranche, for example, surely there must

1 be material available in relation to Phase 2 that can be
2 disclosed, for example, next week, so we can start
3 working on it in December rather than having to wait
4 until February next year before get the full bundle,
5 that's all we ask, so that we have maximum time with as
6 much of the paperwork as possible. And if it has to be
7 piecemeal, so be it.

8 We've made this suggestion before directly to your
9 team, so they're well aware of it, and we just hope due
10 consideration can be given to that request, for
11 the benefit of all.

12 THE CHAIRMAN: Thank you. Just as I've asked you to reflect
13 upon things, you have asked me and my team to reflect
14 upon things, and we will do so.

15 MR MENON: Thank you.

16 THE CHAIRMAN: Ms Brander?

17 Submissions by MS BRANDER

18 MS BRANDER: Sir, I appreciate you say you don't want to
19 waste time today going into the details, but I think it
20 probably would assist to have a rather fuller
21 explanation from the Inquiry -- not now, but it can be
22 in writing afterwards -- as to precisely what the delays
23 are, because there is a real sense amongst the non-state
24 non-police core participants that they are repeatedly at
25 the bottom of the list in terms of priority for -- for

1 their input. And so they come -- as I understand, once
2 it goes through the redaction process, they will be last
3 on the list to receive the material. But last should
4 not mean least, and there should be proper recognition
5 of the value of the contribution that the non-state
6 core participants can make when they see the material.
7 And with respect, sir, I don't think that message is
8 getting through. It seems that not sufficient weight,
9 perhaps, is being given to the value that the non-state
10 core participants will be able to add once they see
11 the material. And all I can do is to support Mr Menon
12 in the submission that he's made that the kinds of
13 difficulties that you have seen, in terms of
14 questioning.

15 The reason for my application -- which was what
16 I had understood this hearing was to be for -- in
17 relation to questioning arises out of the frustration --
18 the visceral frustration -- and I think you probably got
19 some of that from Mr Smith this morning, and if you have
20 been following social media, you will be well aware of
21 it -- that the non-state core participants feel about
22 what they perceive to be their repeated exclusion from
23 the Inquiry's proceedings. And a big part of that is
24 not having -- for the vast majority of non-state
25 core participants, they don't have access to

1 the material until the witness is giving evidence, and
2 then they have this "Ceefax transcript", as Mr Smith has
3 described it. So, if they are to provide us with
4 instructions on the material that they are seeing for
5 the first time as it passes by their eyes on the screen,
6 they have virtually no opportunity to feed into
7 the process.

8 And so it's in that context that these last minute
9 difficulties are going to inevitably arise if there
10 cannot be a greater priority assigned to affording us
11 the materials further in advance so that we can properly
12 prepare, and that we have an opportunity to then discuss
13 with Counsel to the Inquiry the questions that we are
14 putting in writing in advance and an opportunity to
15 explain the rationale behind them, which we have tried
16 to do whenever Counsel to the Inquiry has come back
17 saying no, they don't want to ask a question. I know
18 Mr Menon and myself have tried to then provide further
19 explanation, but all of that takes time, and
20 I appreciate that there are pressures on the Inquiry,
21 but I just -- I would urge that, when the timetable is
22 being worked out, that sufficient recognition be given
23 of the value that the non-state side of this Inquiry can
24 provide, if only it's given the proper opportunity to do
25 so.

1 THE CHAIRMAN: Can I explore a little further with you
2 precisely what it is that you're telling me. As
3 I understand it, there is no complaint about the time
4 that you have for making written Rule 10 submissions to
5 Counsel to the Inquiry, seven days before we hear
6 the evidence of a witness. I've seen what you've put in
7 and generally -- not always, but generally, you get back
8 the answer yes, and you have kindly acknowledged that
9 Counsel to the Inquiry has asked the questions that you
10 wanted to have raised, in the main, even when
11 the initial answer was no.

12 Is it that part of the process that gives rise to
13 difficulty, or is it the later stage when evidence is
14 given, put out on the rolling transcript and documents
15 are put up on the screen?

16 MS BRANDER: Well, sir, it's at every stage, I'm afraid.
17 So, the initial seven day deadline -- as you may be
18 aware, both Mr Menon and I have struggled to meet
19 the seven day deadline simply because we are still
20 trying to get on top the material because we received it
21 so shortly before the hearings, at the time we were also
22 writing the opening statements. So that's the first
23 difficulty.

24 The second difficulty of course, at least from my
25 part, is that I am not able to discuss the material with

1 the vast majority of the non-state core participants
2 because they do not have access to the bundle, and so
3 it's subject to a restriction order, so I'm not
4 permitted to discuss it with them, so I'm not able to
5 gather in their concerns. So I can formulate Rule 10
6 questions on the basis of my understanding of the papers
7 and the understanding of those RLRs within
8 the cooperating group who have access to the bundle, but
9 then there is, because of those time pressures, then
10 very little opportunity for me to discuss with
11 Counsel to the Inquiry when there has -- when they've
12 required further clarification.

13 So for example, I have usually received the response
14 from them saying whether they will or won't ask
15 the questions I've proposed either the night before
16 the witness is due to give evidence or, more frequently,
17 on the morning, before the witness is about to give
18 evidence. So I have -- I have very little time then to
19 either email or go and try and find
20 Counsel to the Inquiry to discuss with them why I think
21 some of the questions that they have said they won't
22 answer -- sorry, won't ask are nonetheless important.
23 I've had to be extremely selective, because there's so
24 little time, so I've chosen perhaps my two or three most
25 important questions and have provided the explanation in

1 relation to those. And you're right, sir, in relation
2 to those, they have then generally then been asked,
3 although perhaps not to the full extent followed up that
4 I have indicated would be desirable in the questions
5 that I've proposed. So, that is one branch of
6 the question -- of the problem.

7 But the second and very significant aspect is that,
8 for the vast majority of non-state core participants,
9 the very first time they will have access to
10 the witness's evidence is as it's rolling past them on
11 the screen. And so I then receive at the end of the day
12 requests through RLRs saying, "Why wasn't the witness
13 asked about this"? A concrete example is from the women
14 in relationships. As you know, sir, they have
15 repeatedly sought to persuade you -- unfortunately,
16 unsuccessfully so far -- that they have a direct
17 interest in this phase, because although the first known
18 relationship doesn't arise until Phase 2 in the case of
19 Rick Gibson, they want to understand where that came
20 from. Did it suddenly spring out of nowhere, or did it
21 emerge -- did it evolve through a culture?

22 Now, we have heard from the evidence of two of
23 the officers so far in this phase -- and I anticipate
24 that the officer 345, who's being called on Thursday,
25 may have further evidence in relation to this -- one

1 officer, "John Graham", accepted that he did take
2 a member of the group out for a drink -- or he went for
3 dinner, sorry -- he went for dinner -- and "Dick Epps",
4 who we heard from yesterday, had been out for a drink.
5 Now, they both denied having sexual relationships, and
6 I have nothing to suggest that they did, but what
7 the women in relationships are very keen to explore is
8 the extent to which activity of that kind was used to
9 bolster credibility, as "Dick Epps" had said it was in
10 his case, and to explore the extent to which they
11 discussed it with managers. You will recall, yesterday,
12 I was able to put those questions to "Mr Epps" because
13 they had been emailed to me by a core participant, but
14 they, at the moment, have virtually no opportunity to
15 input that kind of questioning, because they don't have
16 access to the material in advance.

17 And so that creates a very big problem, which was
18 what prompted my application that I had understood was
19 going to be heard today, which is twofold, really. One
20 is that you agree, sir, or acknowledge that, just for
21 the remainder of this phase, given that we don't have
22 time now to have the full-blown procedural hearing
23 that's anticipated after the end of this phase, that in
24 order to mitigate the difficulties that arise out of
25 the non-disclosure of the bundle to core participants

1 and the problems that have arisen with the rolling
2 transcript, that you take the course of agreeing that
3 there will be ten minutes allowed at the end -- there
4 are only two remaining witnesses -- for non-state
5 questioning, which will enable those such as the women
6 in relationships to email me during the witness's
7 evidence with the key suggestions for questioning. And
8 that would enable them to feel that they have an
9 identified route by which they can participate and which
10 they can assist you, sir.

11 I say it's twofold, because one is allowing
12 a recognition that there will be that opportunity, and
13 the second is broadening the scope for questioning,
14 because you have in the past said that you will only
15 permit questioning by lawyers for non-state
16 core participants where the person doing the questioning
17 represents a witness who's directly affected, factually,
18 by the evidence of the witness being questioned. But
19 this would be a different purpose. This would be
20 exploratory. It would be assisting you, sir, with
21 the themes that go to your terms of reference, drawing
22 on the skills and expertise of those who were subject to
23 similar practices.

24 You heard from Mr Smith this morning about his level
25 of expertise, ironically recognised by the police

1 themselves, not just in relation to the facts of his
2 particular case but in terms of the themes that arise
3 through blacklisting. Now, you might think, sir, that
4 he is someone who would be a source of very relevant
5 knowledge and expertise in relation to identifying
6 questioning going to the sort of systemic issues that
7 are of key relevance to you. And I would submit that
8 the same goes for many of the core participants,
9 certainly in relation to relationships -- the women --
10 certainly in relation to the black justice campaigns,
11 the category J families, but those are just examples,
12 and it is why, sir, taking such a restrictive approach
13 to permitting questioning, will fetter your ability to
14 get to the truth, because you're not drawing on
15 the expertise that is there to assist you, if you would
16 permit it to do so.

17 And I fully appreciate that you must retain
18 the power, sir, to stop inappropriate questioning -- and
19 you've heard from Mr Menon this morning about
20 the reasons why that occurred, and certainly I will
21 undertake as well to ensure, wherever possible, that
22 I discuss matters with Counsel to the Inquiry -- but in
23 terms of issues that arise through a witness's evidence
24 when non-state core participants are receiving that
25 information for the very first time as it flashes past

1 that task is --

2 THE CHAIRMAN: Forgive me for interrupting you. And in
3 particular where the majority of the bundle doesn't come
4 from -- directly from police custody.

5 MR SKELTON: No, and that is an important point, sir, which
6 leads into any second point, which is that I hope
7 the Inquiry recognises that the MPS hasn't improperly
8 delayed the disclosure process. As you will have read
9 in the MPS's written submissions, we emphasise that
10 point, which we think is an important one, because
11 establishing good faith in an inquiry, we think, is
12 important. And we emphasised it oral submissions as
13 well, but I know that Mr Menon didn't accept that
14 assertion, but I would like the Inquiry to at least
15 accept it, that the MPS has done everything it can to
16 ensure that your bundle can be produced and appreciates
17 the difficulties that you have in completing that
18 process.

19 So, the second issue is witness questioning, and
20 I think essentially there are two issues here. One is
21 the specific issue that arose with Mr Menon's question
22 to the female UCO who gave evidence a few days ago.
23 That, I think, is a question really of fairness.
24 I appreciate what Mr Menon said about the background to
25 it and the timing of it, but any question which goes to

1 the heart of an issue which the inquiry is looking at,
2 such as sexual relationships, and is highly contentious,
3 requires careful consideration of what is fair to
4 the witness and the organisations from which she comes.
5 And in this case, of course, it would have been helpful
6 for the witness to have had notice that that question
7 was going to be asked and to have had the evidence on
8 which it was based. And indeed, one has to be careful
9 allowing any questions where there isn't in fact
10 a factual evidential basis for that question to be put,
11 or at least one which is prepared to come forward --
12 a witness that's prepared to come forward. And so we
13 were disturbed by that line of questioning coming out,
14 as it were, on the hoof, for the very first time,
15 without any warning, as I'm sure you were, sir, too, and
16 we hope that in future that will not happen, that
17 witnesses will be allowed the time to think about the
18 issue, and if necessary look at documents again and
19 respond fairly and appropriately as a result.

20 Sir, the more general point that Ms Brander makes,
21 which was the original subject, I think, of this short
22 hearing today, I've just got three short interrelated
23 points to make on behalf of the MPS.

24 First of all, a point which you yourself, sir,
25 I think, said earlier this morning. The Inquiry's

1 inquisitorial not adversarial, and all of the witnesses
2 are called by you and examined by your counsel, and they
3 are questioned in furtherance of your investigations and
4 not in support of a position or case on the part of any
5 of the core participants.

6 Sir, second, and related to that, as you will be
7 aware, Rule 10 of the Inquiry Rules was brought into
8 force in part as a corrective to the Bloody Sunday
9 inquiry, which was notoriously protracted and expensive
10 not least because the legal representatives of its
11 participants were given a relatively free rein to ask
12 questions of witnesses. And Rule 10 stops inquiries,
13 particularly those like this Inquiry, or the Independent
14 Inquiry Into Child Sexual Abuse, which are highly
15 contentious, factually and politically. And sir, it's
16 now a tried and tested model and has been for many
17 years.

18 The third point really is about the advantages of
19 Rule 10. It encourages witnesses to give free and open
20 evidence, as they feel that the questioning is
21 independent and neutral, and not partisan and hostile.
22 And particularly with elderly witnesses in relation to
23 issues such as this where they do feel personally under
24 attack and have done for many years, I would like to
25 emphasise that point. That is very important. And, as,

1 sir, you will be aware, and certainly the MPS is aware
2 from Operation Motion, many of the witnesses who are
3 giving evidence are extremely nervous and worried about
4 having to talk about things that happened so long ago
5 and about talking about their personal lives, and
6 the consequences for many of them have been serious.
7 That is not to underestimate the consequences for those
8 who also are participating in the Inquiry who have been
9 the subject of operations, it's just to give a different
10 perspective that, which is important.

11 Sir, the other point about Rule 10 is that it stops
12 proceedings becoming more polarised than they might
13 already be, because it fairly and mutually disarms all
14 of the advocates in the same way. And in doing so, it's
15 effective and efficient, by which I mean that all
16 relevant topics can be addressed through questions from
17 a single advocate without duplication. And it
18 nevertheless allows core participants to participate
19 effectively in the proceedings by feeding in their
20 topics to your counsel, and when that system operates
21 efficiently -- and admittedly, that does take a bit of
22 time, because there are inevitably teething problems
23 about the timing of the questions coming in and
24 the timing of your counsel indicating whether or not
25 they're prepared to ask the questions or address

1 the topics, but once that settles down, it's difficult
2 to see what additional questions should remain, because
3 your counsel will ask relevant questions, he or she will
4 go through -- comb through our lists and ask
5 the relevant questions and they won't ask the irrelevant
6 ones, and therefore there shouldn't be anything left to
7 be anyone else to pick up.

8 The system, to some extent, is also flexible.
9 Different inquiries, as you will be aware, operate it
10 differently from a strict "CTI will ask all
11 the questions" to a rather more "free-for-all" approach.
12 But your system, sir, is a hybrid model, if I may put it
13 that way, and it has the flexibility of allowing legal
14 representatives to ask questions, but only in limited
15 circumstances, and in particular where there are
16 significant factual disputes. And where there aren't
17 such significant factual substitutes, there really
18 shouldn't be any basis for asking questions, because
19 your counsel should have done the job. And in our view,
20 the exceptions which you have put in force through your
21 procedures balance the interests of fairness of all of
22 us.

23 So, sir, in conclusion, I think the MPS recognises,
24 as do the lawyers representing the MPS, that it can be
25 deeply frustrating for all of the participants attending

1 an inquiry such as this not to have their counsel ask
2 robust questions in furtherance of their interests. And
3 sir, it's also extremely frustrating for the advocates
4 themselves who, by instinct and training, want to
5 further their client's interests by questioning
6 witnesses directly. But, sir, Rule 10 and the procedure
7 you have adopted under Rule 10 has so far proven to
8 operate effectively, and we would say that no one has
9 indicated to you -- either in writing, so far as we
10 know, or during the hearings, or today -- that there are
11 any significant questions or topics that have not been
12 asked and covered by your counsel, or could not be asked
13 or could not be covered by your counsel.

14 And so for the reasons -- for those reasons we would
15 say respectfully that at present, as it stands, there's
16 no good reason for you to depart from your procedures.

17 Thank you.

18 THE CHAIRMAN: Thank you.

19 Mr Sanders?

20 Submissions by MR SANDERS

21 MR SANDERS: Thank you, sir. First, I would echo and
22 endorse what Mr Skelton has just said and I won't repeat
23 the same points again.

24 It's our position that you should apply the approach
25 set out in advance in your notes of, I think, October

1 and December last year. The proposed approach to
2 Rule~10 was trailed and it was confirmed in your note of
3 October of this year. So far as we're aware, that model
4 hasn't been the subject of any challenge, and what
5 the model provides is that questioning by other RLRs
6 apart from CTI should be exceptional and only in cases
7 where two criteria are satisfied. So, first, that
8 there's a significant dispute of fact between two
9 participants, and secondly, that the witness on
10 the other side of that dispute of fact is willing to
11 give evidence.

12 In terms of the two of my witnesses who have been
13 questioned by other RLRs so far, 328 and 336, those
14 criteria were not satisfied when it came to
15 the questions that were put to them. Both were taken
16 over ground that had already been covered. You've
17 already addressed Mr Menon today. I would also add that
18 he went on with 328 on Friday, without permission, to
19 ask questions about the prosecution and the evidence
20 that Helen Crampton had given in a prosecution. You
21 didn't give Mr Menon permission to put those questions,
22 but nevertheless he went on to do that.

23 As Mr Skelton has said, this is an inquisitorial
24 process. My witnesses are assisting you/your inquiry
25 with their recollections. They are not a trial. None

1 of the witnesses from this week or last week is alleged
2 to have done anything wrong, and they've all, in advance
3 of giving their evidence, been briefed about
4 the process. So we have explained to them how
5 questioning will run, the order in which it will be done
6 and the basis on which, exceptionally, other RLRs will
7 be allowed to ask questions. It's very unsettling to be
8 told that you will only be asked questions by anyone
9 else if there's a significant dispute of fact, then to
10 have questions put, because it's unexpected, and
11 obviously they'll be thinking, "What is the significant
12 dispute of fact"? In actual fact, in the case of both
13 of those witnesses, there was no significant dispute of
14 fact.

15 I appreciate that all core participants should have
16 an opportunity to participate in the process, but would
17 submit very strongly that that opportunity comes via
18 the submission of proposed questions to
19 Counsel to the Inquiry. Departing from the model set
20 out in your note is contrary to the principles
21 underpinning the Rule 10 process. As I've said, it's
22 unsettling for the witnesses, who have been briefed on
23 the basis on which such questions might be put. And
24 Mr Skelton has touched on the fact that a lot of
25 the core participants have very partisan and hostile

1 views. From the perspective of my clients listening to
2 or following the opening statements that have been made,
3 they have listened and heard a series of opening
4 statements making very derogatory statements about them,
5 very hostile statements about them, denigrating and
6 vilifying them in circumstances where they simply feel
7 it's not justified. Now, to then have questions put to
8 them by counsel -- and I'm not criticising Mr Menon,
9 Ms Brander or anyone else; I appreciate they're
10 representing their clients and those are their clients'
11 concerns. But to have questions put to the witnesses by
12 those individuals who have just recently been reading
13 out opening statements that are so hostile towards them,
14 bearing in mind that it's an inquisitorial process, is,
15 in my submission, unfair and inappropriate.

16 As regards the suggestion that there will be a free
17 ten minute opportunity to put any questions, that would
18 be an even greater departure from the approach you've
19 set out in your notes, and in my submission that too
20 would be unjustified.

21 Finally, sir, when these applications are made --
22 and the first application was made, I think, on Thursday
23 last week -- we put a question to your team as to
24 whether or not the RLR for the witness would have an
25 opportunity to respond to the application and were told

1 no, unless you felt that you needed to hear that.
2 Certainly in relation to the two of my witnesses who
3 have been -- had questions put to them by others, we
4 would have wished to address you on the appropriateness
5 of that and to oppose it. Now, we're not given that
6 opportunity, but as a matter of procedural fairness, if
7 this approach is to continue, we submit that we should
8 at least be allowed that opportunity.

9 THE CHAIRMAN: Thank you.

10 MR SANDERS: That's all I have to say. Thank you, sir.

11 THE CHAIRMAN: Thank you.

12 Mr Barr, I would like to discuss these issues with
13 you privately before making a ruling upon them. Is
14 there anything that you want to say in public at this
15 stage?

16 Submissions by MR BARR

17 MR BARR: Sir, just very briefly, to put things into
18 context, these are early days in our use of this
19 procedure. The procedure we're following is one that's
20 been used in some previous inquiries, but it may be
21 capable of some refinement.

22 It's also important contextually to remember that we
23 are dealing with very early witnesses in circumstances
24 where there are few disputes of fact and few non-state
25 core participants involved. That will change as we

1 proceed through the evidence.

2 We are grateful for the efforts of counsel for
3 the core participants working with us on the Rule
4 10 procedure. It has many advantages. It's efficient,
5 it can help obtain the best evidence from witnesses, it
6 can avoid delay, it can avoid repetition; it can assist
7 you, sir, with compliance with your duties under Rule
8 13, notice to witnesses; Rule 17, avoiding unnecessary
9 costs; and Rule 17, procedural fairness. In the context
10 of this Inquiry, it can help you to ensure that we don't
11 breach privacy and public interest restrictions. But it
12 is onerous, and we are grateful to all of the counsel
13 who have co-operated with this system.

14 We would hope to move to a position whereby we are
15 getting timely proposals, in one go, in order for us to
16 be able to deal with them and reply to them as soon as
17 we can. I appreciate it's early days, but we were
18 getting multiple iterations in some cases, the last of
19 which were arriving really rather late in some cases.
20 We appreciate the pressures people work under, but we
21 would like to move to, as I say, a single, timely
22 proposal.

23 So, sir, that's what I wish to say.

24 THE CHAIRMAN: Thank you.

25 Ms Brander, I will, when I have discussed the matter

1 with Mr Barr, tell you the outcome. Would you be
2 available to be present, as it were, on screen at 2.30?

3 MS BRANDER: Yes, certainly, sir.

4 Sir, can I be permitted just to respond on just one
5 point?

6 THE CHAIRMAN: Can I ask if everybody else can be present
7 then as well and you may have your opportunity. Unless
8 anybody says no, I'm going to take it that everybody
9 will be ready at 2.30.

10 MR SANDERS: Sir, I can't, I'm afraid. I have a con out of
11 chambers on Victoria Street. I think it would be a bit
12 late to cancel that, but Mr McAllister is with me and
13 I'm sure he can cover it.

14 THE CHAIRMAN: Thank you very much.

15 MS BRANDER: Sir, I apologise, I probably wasn't clear. I
16 just meant to respond on one point now, before you
17 deliberate.

18 THE CHAIRMAN: I understand.

19 MS BRANDER: Thank you.

20 THE CHAIRMAN: Please go ahead.

21 Reply submissions by MS BRANDER

22 MS BRANDER: Thank you. It was really just that, of course,
23 the process by which the Rule 10 system has been set up
24 is on the understanding that those core participants
25 would have access to the relevant bundle and be able to

1 feed into the process sufficiently in advance, and it is
2 precisely the absence of that which makes the system
3 unfair as it currently is, because those who -- those
4 core participants who want to feed in questions that go
5 to the themes that you will be determining aren't able
6 to do so, because the very first time that they see
7 the evidence is as it appears on the screen.

8 That's why -- that's why I limited this application
9 to the remaining witnesses in this tranche, because
10 I fully appreciate, if the entire system is going to be
11 re-evaluated based on the experience of this phase, then
12 it may be that the method for questioning will fit in
13 with that as a piece. But if core participants are to
14 be limited only to feeding into the advanced process,
15 then effectively we have both hands tied behind our
16 back, because neither can we ask questions of
17 the witness as they're giving evidence, but neither can
18 those core participants I represent feed in in advance,
19 because they haven't had sight of the bundle.

20 Sir, that's the point I really wanted to draw to
21 your attention.

22 THE CHAIRMAN: Thank you.

23 May I now, with you, raise one final topic, and this
24 will be the last that we will deal with before I express
25 my decision at 2.30. It's entirely separate.

1 Before the openings I was asked by a number of
2 non-state core participants if proceedings could be
3 live-streamed to their homes and I indicated in the case
4 of one, "Rosa", that when we get to Phase 2 that I would
5 agree to that. I did so on the basis of a long and
6 detailed explanation of her -- both her history and her
7 current and family circumstances, which, as we all know,
8 are exceptional. Quite rightly, those who represent her
9 agreed that the CL and DL teams should see
10 the application unredacted.

11 I then wish to explain to those who were
12 contemplating making applications, and also to
13 the public at large, why, exceptionally, I was willing
14 to agree to her application for Phase 2.

15 I was then asked not to make the detailed basis of
16 her application public. I understood that to be on
17 the grounds that she wished to maintain the right to
18 privacy, which she has, over her personal circumstances
19 and to some extent the history which she would be
20 explaining, I hope, in evidence later. I agreed to
21 that. I was therefore slightly surprised to find that
22 when Ms Kaufmann opened her case for the non-state
23 core participants, including "Rosa", that, almost word
24 for word, the same detail was compellingly set out by
25 her as I had been provided with in her application.

1 Is there any explanations for that sequence of
2 events?

3 MS BRANDER: Well, sir, I would have to take instructions.
4 I'm afraid I'm not able to give an explanation. It's
5 the first that you've drawn this to my attention, so
6 I would need to take instructions in relation to that.
7 But if I'm able to do so before 2.30, I will.

8 THE CHAIRMAN: I'd be grateful if you'd try, and even if you
9 can't do it by 2.30, if some explanation could be given
10 to me at a time when you have been able to take
11 instructions, because whereas up to now I have accepted
12 what I've been told about personal circumstances of that
13 nature without hesitation, I don't wish to be forced
14 into the position where I have to treat such detail with
15 scepticism.

16 MS BRANDER: Well, so be it, sir, but I don't understand
17 that there is any doubt about the truth of what "Rosa"
18 has said. As I understood it, it was simply that she
19 had not wished to have her personal details disclosed in
20 the context of her application, but then it was set out
21 in her opening statement.

22 THE CHAIRMAN: Yes. I'm not talking about the underlying
23 factual assertions but the application that they should
24 not be made public when I seek to explain the decision
25 which I have made.

1 MS BRANDER: I see, sir. Well, all I can do is to repeat
2 I will take instructions as to the reason for that.

3 THE CHAIRMAN: Thank you.

4 Then can we all be back at 2.30?

5 MS BRANDER: Certainly.

6 THE CHAIRMAN: Thank you.

7 MS PURSER: Thank you very much, everyone. We will now take
8 a break and resume at 2.30. Can you all please move to
9 your break-out rooms. Thank you.

10 (12.51 pm)

11 (The short adjournment)

12 (2.30 pm)

13 MS PURSER: Good afternoon, everyone, and welcome to the
14 afternoon session of today's Undercover Policing
15 Inquiry. I will now hand over to the Chairman to
16 continue proceedings. Chairman.

17 THE CHAIRMAN: Thank you.

18 Ms Brander, I think this applies only to you, but if
19 it applies to Mr Menon, then Mr Menon as well.

20 We have two witnesses, as you know, in this part
21 left: one tomorrow and one the day after.
22 Exceptionally, and only for these purposes, what
23 I propose is this, that at the end of the evidence given
24 in response to questions from Counsel to the Inquiry,
25 I will pause for ten minutes. If you then have any

1 questions that you wish to put to the witness, then
2 please raise them with me.

3 I don't, myself, mind whether they're raised without
4 the witness being there, but I think it causes technical
5 problems if you do make that request; and I don't
6 understand the position to be that you have questions
7 which might challenge their truthfulness of a kind that
8 you would not wish them to know before you ask them.

9 I hope that explains sufficiently what I propose to
10 do. It's not a template for the future, because we
11 can't have a position in which, at the end of every
12 witness, there is a pause -- and it would be bound to be
13 for more than ten minutes -- for questions to be thought
14 about and then asked.

15 I hope, Ms Brander, that that meets your immediate
16 concern?

17 MS BRANDER: Yes, thank you very much, sir. I'm grateful
18 for that indication. And obviously at the future
19 directions hearing consideration can be given to
20 the overall procedure going forward.

21 THE CHAIRMAN: Precisely. When we have time to reflect upon
22 it, to think about it and to debate it at greater length
23 than now.

24 Mr Menon?

25 MR MENON: Thank you, sir. I've nothing to add. I'm

1 grateful for the indication.

2 THE CHAIRMAN: Then, unless, Ms Brander, there is anything
3 you want to say in response to the last topic that
4 I raised, that will be it for today. But if you have
5 got anything to say, please take this opportunity of
6 doing so.

7 Submissions by MS BRANDER

8 MS BRANDER: Well, sir, yes. I'm afraid I'm not in
9 a position to give a full response. I have taken
10 instructions over lunch.

11 My instructing solicitors, Birnberg's, have managed
12 to speak briefly with "Rosa"; she's currently in
13 a professionals meeting. I have to say, she was quite
14 alarmed that her integrity was called into question at
15 a public hearing without advance notice; and she does
16 wish to have an opportunity to make a public response.

17 But if I could just say briefly that, in terms of
18 the chronology, I understand that the refusal to make
19 public the application was about a week prior to
20 the written statement being finalised. And certainly,
21 as I understand it, "Rosa" had agreed for her
22 application to be disclosed to the police; she just
23 didn't, at that early point, want it to be made public.

24 I know that the process of her reaching a point
25 where she felt able to share her personal details in

1 the opening statement was a very difficult and painful
2 process for her. And I know Ms Kaufmann and
3 Birnberg's spent many hours on the telephone with her,
4 getting to the point where she was ready to share those
5 details. And you will recall, sir, that there was an
6 application for an extension of time beyond the initial
7 deadline; and I understand that right up until half an
8 hour before the 4 pm deadline, there were still
9 telephone conversations with "Rosa" about what she was
10 and wasn't able to share.

11 That's as much as I'm able to say at the moment,
12 because, as I say, "Rosa" wasn't available beyond a very
13 quick conversation with my instructing solicitors. But
14 I know that she feels quite strongly about this, and she
15 would wish to have an opportunity, given that this has
16 been raised in a public forum, in a public forum to make
17 her response.

18 THE CHAIRMAN: Can I say this in response?

19 First of all, I accept what you and she say without
20 reservation. It was not my intention to criticise her
21 integrity. I didn't do so, I thought. And I certainly
22 don't do so. It's not necessary, frankly, for her to
23 make a public statement about it, but of course she's
24 free to do so if she wishes. I don't ask that any
25 further steps are taken to investigate the matter that

1 I raised.

2 MS BRANDER: Thank you, sir. I'll convey that to her.

3 THE CHAIRMAN: Thank you.

4 Then that, I think, closes proceedings for today.

5 And we will resume, I think, at 12 o'clock tomorrow, to
6 hear from Helen Steel.

7 MS PURSER: Thank you very much, everyone. That concludes
8 today's session. We will resume at midday tomorrow
9 online, and the hearing centre will also be open for
10 attendees.

11 Thank you very much. You may now go to your
12 break-out rooms or leave the call.

13 (2.35 pm)

14 (The hearing adjourned until 12.00 pm on Wednesday,
15 18 November 2020)

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