IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

BEFORE SIR JOHN MITTING

FURTHER SUBMISSIONS FOR THE PROCEDURAL HEARING ON 26th JANUARY 2021

---

1. These further submissions for the procedural hearing on 26th January 2021 are primarily in response to the submissions of the police core participants ("CPs") that were uploaded onto the Inquiry's website on 13th January 2021. They should be read in conjunction with our earlier submissions dated 12th January 2021.

Rule 10

2. The police CPs, notably the Metropolitan Police Service ("MPS") and the Designated Lawyer ("DL") group, argue in their submissions that the Inquiry should continue to follow the so-called hybrid model as far as the questioning of witnesses is concerned. In other words, there should be no change to the rule 10 format, and the Non-State Core Participants ("NSCPs") should not be permitted to ask questions automatically.

3. The reasons advanced by the police CPs for why the status quo should prevail are both general and specific. The general reason is the importance of preserving the inquisitorial process, given what the DL group alleges are the extremely hostile and partisan views expressed on behalf of the NSCPs about those involved in undercover policing. The specific reason is the importance of avoiding a repeat of what occurred during our questioning of Joan Hillier.

Preserving the inquisitorial process

4. As we spelt out in our opening statement and do not develop any further herein, responsibility for the Inquiry not being as inquisitorial as it should be rests squarely on the shoulders of the police CPs and the Inquiry. In the circumstances, it is hardly surprising that there is an adversarial air to the proceedings.

5. The best way of fostering a less combative atmosphere and preserving the inquisitorial process is to treat the NSCPs with greater respect and allow them to participate effectively and meaningfully in the Inquiry, by adopting a more generous and collaborative approach to rule 10.

6. For the avoidance of doubt, we agree with those police CPs who argue that the T1P2 bundle should be provided to all CPs much earlier that the T1P1 bundle was provided, notwithstanding the undoubted pressures on and the best efforts of the Inquiry. Four, six or even eight weeks is simply not enough time to read all the material, cross-reference it, take instructions, consider the redactions, prepare an opening statement, and draft rule 10 questions.

7. We also agree that if the Chairman were to reject our application for automatic permission to question witnesses for up to 30 minutes and continue to require rule 10 applications to be made on a witness-by-witness basis, then it would only be fair to allow the witness's counsel to respond to each rule 10 application before the Chairman rules.

Joan Hillier

8. Several police CPs are critical in their submissions about what arose during our questioning of Joan Hillier. In particular, the DL group asserts that the Chairman allowed "speculative cross-examination as to irrelevant matters… with the evidential basis for questions being unclear or entirely absent."

9. We reject this criticism, which mirrors to some extent the criticism made by the Chairman at the procedural hearing on 17th November 2020.

10. Our response is as follows:

a) Our cross-examination about an intimate relationship between a deceased former Special Demonstration Squad ("SDS") colleague of Ms Hillier and a Vietnam Solidarity Campaign ("VSC") activist was not speculative. It was based on what we had been told the evening before by a source. Within hours of speaking to our source, we had emailed the solicitor to the Inquiry ("STI") and counsel to the Inquiry ("CTI") a list of further questions that we wished to ask Ms Hillier, including a list of questions about the relationship. CTI chose not to ask Ms Hillier any of our proposed questions about the relationship. Hence our rule 10 application.

b) Our cross-examination was not about an irrelevant matter. An intimate relationship between an SDS officer and a VSC activist in 1968-1969 was clearly within the Inquiry's terms of reference. This would have been the earliest known intimate relationship between an undercover police officer and a political activist involved in a target organisation.

c) During our rule 10 application for permission to question Ms Hillier (see transcript of 13/11/20, pp70–74), we made it abundantly clear to the Chairman that:

(i) We wished to ask Ms Hillier questions about what we had been told by our source, namely that her deceased former SDS colleague, with whom she had attended meetings of the Notting Hill branch of the VSC, had had an intimate relationship with a leading VSC member of the same branch. We provided the Chairman with the names of the SDS officer and the VSC activist, neither of whose names are the subject of a restriction order.

(ii) We could not confirm that our source would give evidence about the matter that we wished to put to Ms Hillier.

(iii) We could not give a cast iron guarantee that what we wished to put to Ms Hillier would subsequently be supported by a witness statement, given the issue had only just arisen.

d) The Chairman granted our application and allowed us to ask Ms Hillier questions about this specific topic.

e) Our source featured in several intelligence reports in the T1P1 hearing bundle. His name was redacted. He was an SDS target. His arrest for incitement to riot was deliberately delayed until after the October 1968 anti-war demonstration. The principal prosecution witness at his trial in February 1969 was an SDS officer. In short, our source clearly had a direct interest in the T1P1 proceedings. And yet, although alive, he had never been contacted by the Inquiry. By contrast, we found him with little difficulty.

f) If the Inquiry had spoken to our source in advance, as they clearly should have done, it is most unlikely that we would have been compelled to pursue the matter in the manner that we did.

g) The reason we applied for permission to question Ms Hillier specifically about the intimate relationship was that she is the last surviving SDS member who was involved in spying on the Notting Hill branch of the VSC. If we did not apply for permission to question her about the relationship, there would have been no other police witness to ask about it. In an ideal world, we would obviously have preferred to have had a signed witness statement from our source before embarking on our rule 10 application. However, despite the absence of such a statement, we nevertheless felt duty-bound to pursue the matter. In the circumstances, the Chairman was right to allow us to ask Ms Hillier about the relationship, given CTI had chosen not to explore the matter.

11. It would be most unfortunate if the Inquiry jumped onto the police bandwagon and used our questioning of Ms Hillier as a justification, in whole or in part, for not changing the rule 10 format and for not adopting a more generous and collaborative approach to rule

10. It would merely reinforce a widely held perception amongst NSCPs that the Inquiry is showing undue deference to the state.

12. We reiterate what we said in our earlier submissions as it is so important. The NSCPs and others targeted by undercover police officers have so much knowledge and experience to offer the Inquiry in its pursuit of the truth. They have a better understanding than anyone else about the impact of undercover policing when it deviates from the prevention and detection of crime and targets people for unrelated, ulterior, and corrupt purposes. It would be a wasted opportunity if the Chairman failed to take full advantage of the knowledge and experience of the NSCPs by prohibiting or unduly restricting their counsel from participating effectively and meaningfully in the Inquiry.

Redactions

13. We raised the issue of redactions in our earlier submissions. There is a further document we now wish to highlight, namely UCPI0000030766.

14. This appears to be a document produced by the F4 department of MI5. It is a note of a meeting on 17th January 1969 between Chief Superintendent Cunningham of Special Branch, Chief Inspector Dixon of the SDS and someone from MI5 at which political targets were discussed. It is important in that it reveals that Special Branch and MI5 were agreeing who should be targeted and discussing the finding of long-term sources of information.

15. There are several redactions in the note, one of which is of particular concern. Paragraph 6 reads as follows: "Cunningham also asked if we had any coverage of 'Black Power' groups." The next sentence, which is almost certainly MI5's answer to the question, is redacted.

16. Given the close working relationship between Special Branch, the SDS and MI5 (Special Branch and the SDS being subordinate to MI5), any information that is relevant to the issue of spying on Black Power groups should not be redacted, whoever may have been doing the spying. If the Inquiry were to withhold such disclosure from the NSCPs

and ignore it altogether, the picture that would emerge in respect of the secret state's targeting of Black Power groups would be incomplete at best and distorted at worst.

HN333 and HN349

17. In our earlier submissions about closed hearings, we raised concerns about HN333 and HN349 giving the entirety of their oral evidence in closed hearings, their open statements having been summarised during the T1P1 evidential hearings.

18. We have now been notified that although these officers were going to be called in closed hearings, the Inquiry has since decided not to call them at all. Consequently, the concerns we previously raised no longer apply.

19. However, the current situation is even more worrying. There is now going to be no probing, testing, or challenging of anything these officers say in their secret statements, even by CTI in closed hearings. The Chairman, we are told, will simply take the secret statements of HN333 and HN349 into account.

20. We remain concerned about the Inquiry's approach to secret evidence and closed hearings. We reiterate that there should only be a departure from open justice if the evidence is so sensitive that it is strictly and exceptionally necessary to keep it secret. Everything else should be disclosed to the NSCPs, the public and the media.

RAJIV MENON QC
Garden Court Chambers

RICHARD PARRY
Saunders Solicitors

19th January 2021