

Tuesday, 10 May 2022

(10.00 am)

THE CHAIRMAN: Ms Brown, good morning.

(Pause)

Ms Brown, good morning.

MS BROWN: Good morning, Sir.

THE CHAIRMAN: You are now going, I believe, briefly, to make an opening statement on behalf of the Home Secretary.

Opening statement by MS BROWN

MS BROWN: Yes, thank you, Sir.

This opening statement is made by the Secretary of State for the Home Department, the Home Secretary, as one of the Inquiry's core participants, and she represents the interests of the Home Office at this Inquiry. The Home Secretary welcomes the invitation to make this statement at the outset of the Module 1, Tranche 1, Phase 3 hearings.

As a core participant, the Home Secretary continues to engage fully with the work of the Inquiry. In particular, and as stated in the Home Secretary's opening statements of 22 October 2020 and 14 April 2021, the Home Office has undertaken an extensive electronic and hard copy disclosure exercise, both in response to specific requests from the Inquiry and on a wider

1 voluntary basis.

2 Turning to the evidence and issues to be considered
3 during the Tranche 1, Phase 3 hearings,
4 the Home Secretary notes that the Inquiry does not
5 intend to call evidence from any Home Office witnesses.
6 Accordingly, the Home Secretary has nothing specific to
7 add at this stage to her previous opening statements.
8 For present purposes, the Home Secretary would wish
9 simply to reiterate that the Inquiry has her full
10 cooperation as a core participant.

11 THE CHAIRMAN: Thank you very much. You will certainly hold
12 the record for brevity.

13 I'm afraid we now have to wait ten minutes before
14 Mr Scobie will make his opening statement, to permit
15 arrangements to be made to get everything in order to
16 allow him to do so. So we'll break for ten minutes.

17 Thank you.

18 (10.02 am)

19 (A short break)

20 (10.15 am)

21 THE CHAIRMAN: Mr Scobie. Are you now ready to make your
22 opening statement? I'm afraid I can't hear you at
23 the moment, so I hope that those who are in charge of
24 the equipment can rectify that.

25 (Pause)

1 Has sound been restored? No.

2 (Pause)

3 UNKNOWN SPEAKER: The technician is on his way to the room.

4 Mr Scobie's microphone is off.

5 THE CHAIRMAN: Mr Scobie, I hope your microphone has been
6 restored.

7 MR SCOBIE: I think it has. Can you hear me?

8 THE CHAIRMAN: I can now hear you. And in the hope that
9 the equipment doesn't go wrong again, would you like to
10 begin your opening statement.

11 Opening statement by MR SCOBIE

12 MR SCOBIE: Of course. Thank you, Sir.

13 I appear with Piers Marquis of Doughty Street
14 Chambers and Paul Heron of the Public Interest Law
15 Centre; and this is the opening statement in tranche 1,
16 Phase 3, to the Undercover Policing Inquiry on behalf of
17 Lindsey German, Richard Chessum and "Mary".

18 Introduction.

19 We represent three core participants in Tranche 1 of
20 this Inquiry. We address the key issues on behalf of
21 Richard Chessum and "Mary" in our Phase 2 opening
22 statement. In this statement, our focus is on
23 Lindsey German, who was a member of
24 the Socialist Workers Party, the SWP, from 1972, and had
25 roles on the central committee of that party for more

1 than 30 years.

2 We will demonstrate:

3 1. That there was no justification for
4 the infiltration of the Troops Out Movement and
5 the Socialist Workers Party on the grounds of preventing
6 public disorder.

7 2. That there was no policing justification at all.
8 The true purpose of these infiltrations was political
9 and economic.

10 3. That neither of these purposes were legally
11 justified and Government knew that to be the case.

12 4. That the Special Demonstration Squad, the SDS,
13 intelligence was used to blacklist law-abiding members
14 of the public.

15 We have a limited time available to us, and so we
16 ask listeners to consider this opening statement
17 alongside the written published version, which is more
18 detailed and fully referenced. And where we refer to
19 the unlawfulness of police activity, we endorse
20 the legal framework provided on behalf of the category H
21 core participants.

22 Purpose of the SDS: Justification.

23 The SDS was created to specifically deal with
24 the potential public order threat of a single
25 demonstration in 1968. Its role was to provide

1 uniformed police with intelligence pertinent to their
2 policing of that demonstration. It should have ended
3 there.

4 It quickly became an intelligence trawl of left wing
5 political groups, growing ever more indiscriminate and
6 ever more intrusive.

7 Increasingly, the Squad's focus shifted away from
8 anything that could genuinely be described as "police
9 work". Suggestions that the SDS were involved in "law
10 and order" are not borne out by the reports that they
11 generated. References to "disorder" became
12 standardised, annually regurgitated in the SDS reports.
13 It was part of a paper-trail pretence to justify
14 Home Office funding and authorisation.

15 Even though, in Chief Inspector Craft's words,
16 the SDS annual reports were an exercise in "pointing up
17 the value of the SDS in terms of public order",
18 the references to disorder in those reports were ever
19 decreasing and increasingly contrived.

20 The 1975 annual SDS report made so little reference
21 to disorder that Commander Rodger of
22 the Metropolitan Police Special Branch
23 commissioned "a complete review of the [SDS] ... its
24 activities and objectives". Rodger noted that "over
25 the past seven years [disorder at demonstrations] has

1 dwindled considerably".

2 The response to the review came from the chief
3 superintendent of the SDS, Rollo Watts. Watts accepted
4 the decline, but nevertheless attempted to justify
5 the continuation of the SDS. He argued that the decline
6 in disorder had been matched by a reduction in the
7 number of undercover officers from 26 down to 12. That
8 was not true. There had been no reduction in the number
9 of officers at all. The number had remained consistent,
10 but the lengths of the deployments had increased.

11 At the same time that public disorder was
12 decreasing, the recipients of SDS intelligence,
13 or "customers", as DI Angus McIntosh called them, were
14 changing.

15 At the outset, SDS intelligence was destined for
16 uniformed officers, so that they could arguably be
17 better equipped to deal with disorder. Even there, as
18 Detective Sergeant Roy Creamer put it, whilst
19 the SDS "were looking for information, there was simply
20 nothing to tell of; it was a case of 'no news is good
21 news'".

22 As time went on, the intelligence was increasingly
23 sent elsewhere, to "customers" with little or no
24 involvement in public order issues; other Special Branch
25 departments, MI5, other, generally unnamed, Government

1 departments, "external agencies" or "liaison partners".
2 Those "customers" also specifically tasked the SDS, ie
3 told them what to get and where to get it.

4 By the end of the 1970s, the SDS management were
5 having regular face-to-face meetings with MI5, including
6 over games of sport, that are redacted for some reason.
7 They were also having monthly meetings over lunch, with
8 the Home Office; although the name and specific role of
9 the Home Office representative in question appears to
10 have been forgotten. Other unnamed government bodies
11 were not liaised with directly. It was considered more
12 appropriate to keep them at "arm's length".

13 By April 1980, SDS and MI5 were meeting for drinks
14 every fortnight. By August 1980, meetings were
15 described as "routine".

16 At the same time, the volume of reports increased
17 exponentially, from 200 information reports in 1969, to
18 almost 10,000 by November 1971; with "thousands being
19 produced on an annual basis" thereafter.

20 In all of this reporting, there is a remarkable lack
21 of reports on public order issues. The explanation
22 offered for this by the SDS is that
23 the Metropolitan Police have destroyed or lost their
24 material, and the documents that we are able to examine
25 were sourced from MI5. It follows, they say, that

1 the reports we can see are bound to give a skewed
2 impression, because Special Branch did not send their
3 public order reports to MI5.

4 That is a very convenient, risible explanation, and
5 it does not fit with the evidence. As public disorder
6 was declining, liaison with other agencies was
7 increasing, along with the number of reports generated.
8 Certainly by 1976, "most of the information obtained by
9 the SDS ultimately went to the Security Service".

10 In relation to Lindsey German and Richard Chessum,
11 the SDS were doing nothing concerning policing at all.
12 They did not report on law and order; they had no regard
13 to the law at all. They were political and economic
14 police, with echoes of the STASI.

15 The Socialist Workers Party -- policing
16 the National Front.

17 First, we are going to look at the fallacy of
18 a public order justification.

19 Lindsey German was a member of the central committee
20 of the SWP for more than 30 years. During that time,
21 the party was by far the most infiltrated organisation
22 by the SDS. There were at least 24 SDS officers that
23 infiltrated them. Many of those, we now know, took
24 positions of responsibility of some sort at branch,
25 district or national level.

1 They formed relationships with members that lasted
2 for years, tricked them into friendships and
3 sexual relationships. They entered their homes,
4 betrayed their trust and exploited them for intelligence
5 purposes. We can see the intelligence that they gained
6 in the reports. They reported on, and disseminated,
7 the details of thousands of members: their personal
8 lives, physical appearances, homes, children, finances,
9 jobs, holiday plans, weddings, sexuality, paternity,
10 relationship statuses, intelligence level, trade union
11 affiliations, health, childcare arrangements, vehicles,
12 studies, and opinions. There is a striking lack of
13 reports on criminality, public disorder or violence.

14 Even in the annual reports, where the SDS
15 desperately tried to justify their continued existence,
16 it is difficult to find a rationale.

17 The Right to Work Campaign and its annual march to
18 the Conservative Party conference was an important and
19 high-profile demonstration supported by the SWP and
20 endorsed by hundreds of trade unions.

21 In the 1980 SDS annual report, the SDS attempt to
22 claim credit for the suggestion that "small 'events'" on
23 the route of that march were -- and I quote
24 -- "frustrated by advance information" because the Right
25 to Work Campaign was "so effectively penetrated by

1 the SDS". In fact, their own internal report had always
2 indicated that the march itself was "not seen as a great
3 threat to public order".

4 In another internal report, the SDS attributed
5 the lack of disorder on the march to the presence
6 of "local and national media". The SDS infiltration had
7 no impact whatsoever on disorder on that march, but they
8 presented a different picture to the Home Office.
9 Whether that was for their own benefit, to secure
10 funding, or the Home Office's, to have a policing
11 related explanation to hand, should they ever need one,
12 is not entirely clear.

13 The SDS also attempt to claim credit for the lack of
14 disorder at the culminating demonstration. Inevitably,
15 there is no reference to the discussions that
16 Lindsey German herself had with the infiltrating
17 officer, HN80, "Colin Clark", about "taking steps to
18 ensure that no one did get arrested ... to ensure
19 the safety of everyone through good stewarding".
20 Equally, there is no reference at all to the fact that
21 the SWP took great care in stewarding their events, and
22 that "Clark" himself was an SWP steward at their
23 national conferences.

24 The 1981 SDS annual report makes references
25 to "pickets, occupations and marches as protests against

1 unemployment and cuts in public expenditure" and
2 the "anti-Tory" demonstration at the march's
3 culmination. But it makes no reference to any disorder.

4 Previous Right to Work Campaign marches did not even
5 feature in the annual reports. The only references to
6 genuine disorder were in respect of processions
7 organised by the National Front.

8 In terms of justification, there were clearly better
9 methods of policing that kind of disorder.

10 1. The infiltration of the SWP does not appear to
11 have generated any intelligence of use. In
12 the thousands of pages of reporting on SWP activity,
13 there is a distinct lack of anything that actually
14 concerns public order. Some officers have been open
15 about the fact that their reporting showed no risk.
16 There is nothing that could not have been sourced using
17 lawful methods of policing.

18 2. Any confrontations stemmed from documented,
19 historically confirmed attacks by the far right on
20 minorities and leftists. We highlighted some of
21 the murders, beatings, arsons and threats in our last
22 statement to the Inquiry. In her statement,
23 Lindsey German highlights that in the six years between
24 1975 and 1981, 51 black and Asian people were killed in
25 suspected racist murders.

1 One method of preventing disorder would have been
2 removing the root of the risk. Police officers would
3 have been better -- police resources would have been
4 better spent preventing and solving real politically
5 motivated crime. There were repeated calls by the SWP
6 and others for the police to do exactly that.

7 But they did not. In the 1979 Special Branch annual
8 report, reference is made to the murder, in May 1978, of
9 Altab Ali. The language used by the police to describe
10 that murder is illuminating. They said:

11 "This death, although not attributable to any
12 racist attack, was nevertheless used by the extreme
13 left to influence an already deteriorating situation in
14 the Bengali community."

15 Those words were written over a year after
16 Altab Ali's murder. At the time they were written,
17 there was no doubt whatsoever that the murder
18 was racially motivated. One of the suspects had told
19 the police:

20 "If we saw a Paki we used to have a go at them ...
21 I've beaten up Pakis on at least five occasions."

22 In September of 1978, Altab Ali's former employer,
23 the secretary of the Brick Lane mosque, had published
24 a report. It was called "Blood on the Streets". It
25 detailed the number of racist attacks on the community

1 in Brick Lane in just the first four months of 1978.
2 There were 33. It listed hammer attacks, stabbings,
3 punctured lungs, slashed faces, airgun shot wounds,
4 people beaten with bricks and sticks and knocked
5 unconscious in broad daylight.

6 But the police denied racial motivation, even when
7 it had been confessed. They then suggested that
8 the terror in local communities was somehow the fault of
9 left-wing activists.

10 If there is going to be infiltration, why were
11 the National Front not infiltrated? There has been
12 a suggestion that Special Branch already had "excellent
13 sources in the far right". They clearly did not. Any
14 sources that they did have were not doing a very good
15 job of preventing the almost daily disorder and violence
16 that the National Front and their ilk were perpetrating
17 on London's streets.

18 Certainly in 1975, the SDS knew that, "most of
19 the public order problems were concerned with
20 the activities of the National Front". Special Branch
21 knew that National Front members were responsible for
22 "several brutal attacks on members of ethnic
23 minorities", and they knew that this brutality
24 heightened opposition to them. SDS officers experienced
25 the National Front violence themselves, although we

1 rarely see it reported. The recent evidence of HN21
2 emphasises the point. He said:

3 "You would be selling the papers and then suddenly
4 from out of the blue some National Front or National
5 Party people would turn up and try and have a go at
6 you ... Physically ... I had a fight with someone who
7 was trying to attack me ... they were quite big and
8 you know some of us were puny creatures. So, it wasn't
9 in our interests to confront them physically ... From
10 the SWP side, it was mostly shouting. From the Far
11 Right thing, it was mostly physical violence."

12 But there was no infiltration. DI Angus McIntosh,
13 HN244, recalls that there was a "high level policy
14 decision" not to infiltrate the far right. A policy
15 decision is the only explanation that makes sense. What
16 was that policy?

17 Far right demonstrations were deliberately
18 provocative of violence by their very nature. They
19 targeted minority areas with as large a show of force as
20 they could muster; the same minority areas they were
21 targeting with extreme levels of politically motivated
22 violence.

23 There is no justification for the violations of
24 individual rights perpetrated by the SDS. But at least
25 if they were infiltrating a political organisation as

1 criminally violent as the National Front, they might
2 have an argument that their work was in some way
3 connected to policing.

4 Listening to the communities themselves, they were
5 frightened, as well they might be. The National Front
6 was an avowedly Nazi party. The people of Southall,
7 Lewisham and Wood Green did not want their community
8 cohesion fractured by fascist demonstrations. They
9 called for bans, or at least relocation. They were
10 ignored.

11 The SDS annual reports of 1981 and 1982 note that
12 confrontations with the far right did not happen in
13 those years. On both occasions, the SDS put that down
14 to the Commissioner banning National Front processions,
15 because they were deliberately provocative of disorder
16 and violence. They always had been. The National Front
17 marches in Southall, Lewisham and Wood Green were all
18 deliberately provocative of disorder and violence.
19 Surely, Special Branch's "excellent sources" could have
20 pointed out the inherently obvious. If police had
21 listened to the communities they were supposed to be
22 serving, the disorder at Southall and Lewisham would
23 never have happened. Instead, they are used as excuses
24 for the wholesale infiltration of the SWP.

25 The Metropolitan Police themselves contributed to or

1 caused public disorder at demonstrations. The only SDS
2 report on the Lewisham disorder was retrospective, and
3 highly critical of policing methods.

4 At Southall, the National Council of Civil Liberties
5 were also highly critical of policing methods. One
6 undercover officer, HN41, was warned off attending
7 the Southall demonstration by his managers. His
8 explanation for this warning was that "the uniform
9 police were going to clamp down on the demonstrations"
10 and the "dangers" would be "more than normal".

11 The pre-planned, dangerous "clamp down" would explain
12 the account of former SWP member, Joan Rudder. She had
13 been helping injured demonstrators when she was ordered
14 out of a house and made to run a gauntlet of police
15 officers, who beat her until her head split open.

16 At Red Lion Square, Lindsey German witnessed police
17 officers throwing demonstrators over railings onto an
18 underpass.

19 At both Southall and Red Lion Square, police actions
20 caused the deaths of demonstrators.

21 The World in Action documentary of the Right to Work
22 Campaign march in 1980 demonstrates the issue.

23 The marchers travelled the length of the country with
24 a low-key police escort. The exchange between
25 the marchers and that escort was good-natured and even

1 jovial. The SDS report on this march had listed
2 the time and place of the arrival in London, and made it
3 clear that there were no public order concerns. But
4 when the march arrived in Southall, it was met by a
5 legion of police. They flanked the roads, in the same
6 way that they had done, two years before, on the day
7 they killed Blair Peach.

8 Finally, it was understood that the police were
9 doing nothing about far right violence and disorder, or
10 were complicit in it. That was not paranoid or
11 imagined. It is not just racist language evident in
12 some of the reporting, or the widespread perception that
13 the police protected the National Front, or
14 the massively disproportionate stops and searches
15 of young black people, or the subsequent findings of
16 institutionalised racism in the police.

17 One of the most interesting documents to have been
18 disclosed in this phase deals with the chief
19 superintendent of Special Branch directing two senior
20 SDS officers, DI Riby Wilson and HN332, to meet with
21 Lady Jane Birdwood at her home in 1968.

22 Lady Jane Birdwood was described as "politically
23 well-informed" and "well-known to Special Branch for her
24 anti-communist views and activities".

25 The SDS officers "thanked for her interest" and asked

1 her to pass on any information that she "or her friends
2 with similar interests" may have. Lady Jane Birdwood
3 and her "friends" were far right activists, and well
4 known as such at the time.

5 She was a racist and an anti-semite. She became
6 periodically associated with the National Front,
7 the British Movement and the British National Party,
8 stood as a far-right candidate in three elections, and
9 was later convicted for multiple offences of inciting
10 racial hatred. Why infiltrate the far right if you can
11 have tea with your "excellent sources" on their "lawn"?

12 It is apparent that nothing was done about the far
13 right violence. It was almost as if there was a reason
14 for not doing anything. A divided society is useful to
15 the establishment, even at the expense of public order.
16 Historically, far-right movements prosper at times of
17 economic crisis. Immigrants are blamed for
18 unemployment, and that is a distraction from the failing
19 policies of government.

20 What is never mentioned in the SDS annual reports is
21 the SWP emphasis on positive methods of undermining
22 fascists. Everyday local activity to protect minorities
23 themselves. The organisation of estate residents to
24 paint out NF graffiti, set up telephone links for mutual
25 support and warnings against racist attacks, organising

1 a protection rota to protect minority residents. And
2 then, there is Rock Against Racism, that the SWP had
3 a crucial role in. That did more to unite people and
4 prevent disorder and violence on the streets than
5 the SDS ever did. The joint leader of
6 the National Front admitted that it had been effectively
7 destroyed by the campaigns of the Anti-Nazi League,
8 again contributed to by the SWP.

9 There was no anti-government or anti-state disorder.
10 There was nothing that could have been said to have
11 been "violent subversion" or "revolutionary violence".

12 Public order issues and the Troops Out Movement.

13 We dealt with public disorder issues in respect of
14 Richard Chessum and the Troops Out Movement in our last
15 opening statement. Quite simply, there were none.
16 The undercover officers and their management do not even
17 pretend that there were any public order concerns.

18 Political and economic policing -- the real
19 rationale.

20 So, what was the real rationale? The SDS was a part
21 of Special Branch; their roles and motivations are
22 inseparable.

23 The role of Special Branch was reviewed in 1970, by
24 what were called "Terms of Reference", described as
25 originating from the Home Office and prepared "in

1 collaboration with the Security Service and other
2 interested parties".

3 The function of Special Branch was to gather
4 intelligence, secretly and overtly, for two purposes.
5 The first of those was easily justifiable from
6 a policing perspective, to assist in preserving public
7 order, which was a police function.

8 The second was assisting the Security Service, in
9 two identified roles:

10 (a) in respect of espionage and sabotage, which
11 again were clearly relatable to police functions as both
12 are covered by the criminal law, and

13 (b) more pertinently as far as this Inquiry is
14 concerned, from actions of persons and organisations
15 which may be judged to be subversive of the security of
16 the State.

17 The specific tasks of the branch included:

18 "... consultation with the Security Service to
19 collect, process and record information about subversive
20 or potentially subversive organisations and
21 individuals."

22 The terms were accompanied by an annex which clearly
23 instructed senior officers that it was:

24 "... important that Special Branches should have
25 a clear idea of what constitutes 'persons and

1 organisations which may be judged to be subversive of
2 the security of the State'."

3 However, they then failed to provide those senior
4 officers and their Special Branches with any definitive
5 idea of what "subversive" actually meant.

6 This may have been the source of some discomfort for
7 chief constables, because ill-defined MI5 lackey work is
8 not what the police are supposed to be about. However,
9 a good officer, conscious of the principles of policing,
10 could interpret the terms consistently with
11 Special Branch's pre-existing responsibility, which
12 was "the prevention of crimes directed against
13 the state".

14 That responsibility, preventing crime, was also
15 enshrined in the legal definition of "subversion",
16 widely published, accepted and acknowledged from 1963,
17 when Lord Denning had reported on the roles of MI5 and
18 Special Branch after his inquiry into the Profumo
19 Affair:

20 "... [subversives are those who] would contemplate
21 the overthrow of the Government by unlawful means."

22 That definition is clear. It speaks very obviously
23 of the "overthrow" of the body appointed from those
24 elected by the mandate of the people. And it poses no
25 difficulty for a police officer because, from a policing

1 perspective, what is "unlawful" and what is not is
2 defined by the criminal law.

3 Applying that definition to the terms, police
4 officers can still do their work professionally. They
5 can collect and record information about criminal, or
6 potentially criminal, organisations and individuals, or
7 investigate criminal backgrounds to demonstrations or
8 industrial disputes. All of those activities had to be
9 conducted within the limits on police powers imposed by
10 the law. What they cannot do is "pry" into political
11 opinions and private conduct, because as Lord Denning
12 said, that would be "in the nature of a Gestapo or
13 Secret Police".

14 Unfortunately, because the terms were deliberately
15 opaque, officers were encouraged to be flexible in their
16 interpretation of "subversion". The Security Service
17 certainly considered themselves to have an unfettered
18 discretion to define it as they wished.

19 And in 1972, MI5 unilaterally redefined
20 it. "Subversion" became:

21 "... activities threatening the safety or wellbeing
22 of the State and intended to undermine or overthrow
23 Parliamentary democracy by political, industrial or
24 violent means."

25 That definition is very different. It prioritises

1 the wellbeing of the state, which, of course, is not
2 democratically elected. It could arguably encompass any
3 democratic movement which seeks to amend the basis of
4 democracy or change the established order. But most
5 importantly, from a policing perspective, it no longer
6 makes reference to the law. "Violent means" are well
7 covered by the criminal law, but political and
8 industrial means are not.

9 Because the terms do not include a definition and
10 were not adapted to compensate for the whims of
11 the Security Service, the police were now encouraged to
12 depart entirely from the basic principles that underpin
13 policing, to covertly collect information about
14 individuals who were simply potentially subversive,
15 people who the police knew had no involvement whatsoever
16 in any kind of unlawful conduct.

17 The Security Service have attempted to add some
18 legitimacy to their unilateral redefining, by
19 referring to it as "the Harris definition":

20 "... formally adopted by Lord Harris of Greenwich,
21 Minister of State at the Home Office in a debate in
22 the House of Lords on 26 February 1975."

23 What they neglect to mention is that they had
24 briefed Lord Harris with that definition in advance of
25 that debate. His assertion that this definition was

1 "generally regarded" as appropriate actually means
2 nothing more than this is how MI5 defines it. But MI5
3 cannot change the law. Having a Lord repeat a briefed
4 definition in a debate does not change the law.

5 In fact, Lord Harris had continued his speech with
6 an implicit endorsement of the Lord Denning definition:

7 "It is fundamental to our democratic traditions that
8 people should be free to join together to express and
9 further their views, whatever others may think of those
10 views, provided they do not break the law."

11 That reiteration of fundamental policing principles
12 has been comprehensively ignored.

13 The clear shift in the activity of the SDS in terms
14 of their "customers" and reporting coincided with
15 the introduction of the "MI5 definition", read alongside
16 the 1970 terms, and then the selective false legitimacy
17 of a Lords debate. Policing public order became
18 policing the political, like Richard Chessum and the
19 Troops Out Movement, and the political and industrial,
20 like Lindsey German and the Socialist Workers Party.

21 The Home Office and Security Service expanded police
22 powers without democratic or electoral scrutiny and
23 without any regard to the law.

24 It's worth noting that in the course of the Lords
25 debate, four of the speaking Lords described themselves

1 as subversive, forcefully pointing out that revolution
2 need not be violent. Almost anybody could be described
3 as "potentially subversive".

4 The police could and did "pry" into the political
5 opinions and private conduct of law-abiding citizens,
6 doing away with our freedom of political thought and
7 association, of free assembly and expression. These
8 were the "Secret Police" that Lord Denning spoke of.

9 This was the reason why Government was so terrified
10 of the people finding out about the SDS.

11 The correspondence that accompanies every SDS annual
12 report emphasises the Home Office's constant need for
13 reassurance about "security", avoiding "embarrassment",
14 and the "political sensitivity" of their continued
15 funding of this STASI-like unit.

16 Government knowledge.

17 The Home Office documents provided in this phase of
18 the Inquiry show the extent of their collusion with
19 the Security Service, the hidden cogs of the state
20 manoeuvring, the duplicity, the avoidance of
21 accountability and the creation of a veil of plausible
22 deniability. They encouraged the "considerable increase
23 in the size and responsibilities of Special Branches in
24 the 1970s". Special Branches that, working with MI5,
25 were "more heavily involved in those aspects of their

1 duties which are more sensitive politically", ie spying
2 on innocent people.

3 They were particularly concerned about criticism
4 from within Parliament and from investigative
5 journalists, that Special Branches were "over-secretive
6 and under accountable", and "interest themselves in, and
7 record the activities of, people who are merely
8 undertaking proper political or industrial activity".

9 It is interesting that the Members of Parliament and
10 journalists that they were concerned about had no idea
11 of what was really going on. The criticism and public
12 outrage came from incidents such as police taking
13 photographs of demonstrators, or asking an arrested
14 student to be an informant, or carrying out checks on
15 Aeroflot passengers. This was nothing compared to what
16 the Home Office were actually funding the SDS to do.

17 The Home Office's first inclination in response to
18 those legitimate concerns was to lie about it, saying,
19 "it may be possible to discount much of this criticism
20 as either misguided or mischievous", while knowing that
21 not only was it all true, but they were signing off
22 secret authorities for SDS officers to do far, far
23 worse. We ask the Inquiry to be conscious of this level
24 of duplicity when engaging with Government about their
25 authorisation of the SDS.

1 A number of senior police officers were distinctly
2 unhappy about what they were being told to do. In 1974,
3 Commander Gilbert was of the view that:

4 "... for the most part work done [for MI5] had
5 little or no relevance to SB's proper charter and ...
6 tied up staff, of which he was chronically short ... in
7 totally unproductive activity."

8 Chief constables raised concerns that MI5 sought
9 more intelligence from special branches than they
10 needed. The work they were doing for MI5 was damaging
11 police relations with the public. Most importantly,
12 the chief constables had no idea whether there was even
13 ministerial approval of, or authority for, the work that
14 they had been doing on behalf of MI5 for the past ten
15 years. They knew that the terms, the MI5 definition and
16 the artifice of the 1975 Lords debate did not constitute
17 lawful authority in a democracy; and they knew that no
18 minister would be willing to formally put their name to
19 this.

20 When the Home Office concede in internal documents
21 that there is not "a water-tight basis on which to
22 justify the work of police officers in investigating and
23 recording the activities of subversives", what they mean
24 is: it is not lawful. The Home Office knew that there
25 was no justification. They asked themselves a question:

1 "How can the work of police officers (which all
2 members of Special Branches are) in investigating
3 subversion, as currently defined, be justified given
4 that the definition covers some activities which are
5 not, as such, unlawful?"

6 But they could not answer it. There was no legal
7 justification. And of course, they were only
8 referring to what Special Branch was doing;
9 the anti-democratic incursions of the SDS were far more
10 invidious.

11 The Home Office attempted to retrospectively
12 legitimise Special Branch activity by reformulating
13 the terms, but they failed; ultimately,
14 the Security Service blocked any attempt to update or
15 amend them.

16 A more honest and straightforward way of having
17 police investigate the activities of political and
18 industrial activists would have been to pinpoint
19 the behaviour that Government was concerned about and
20 attempt to legislate to criminalise it as appropriate.
21 But, of course, that could never have happened,
22 fundamentally because the activists were not doing
23 anything wrong. Parliament and the people would not
24 have stood for the criminalisation of their fundamental
25 rights. So the Government orchestrated the increased

1 police powers by guile and duplicity, unlawfully and
2 anti-democratically. It is a sad irony that
3 the Government activity was far more proximate to
4 Lord Denning's definition of "subversion" than any of
5 the organisations that the SDS infiltrated.

6 In passing, to suggest that knowledge stopped at
7 the Home Office and went no higher is beyond
8 comprehension.

9 In our Phase 2 opening statement we stressed
10 the links between SDS sign-offs and Ted Heath and
11 Harold Wilson. James Callaghan had been
12 the Home Secretary who presided over the inception of
13 the SDS in 1968. He had personal meetings with
14 Conrad Dixon and was well aware of the SDS remit.

15 One of his last acts as Home Secretary in 1970 was
16 to oversee the introduction of the Terms of Reference.
17 It is not credible to suggest that when he was Prime
18 Minister between 1976 and 1979, he did not check on
19 the progress of his two creations. Equally, it would be
20 stretching credibility to suggest that prime-ministerial
21 knowledge ended in 1979 with Margaret Thatcher.

22 Undoubtedly, the civil servants wringing their hands
23 about the illegality of Special Branch activity, such as
24 Sir Robert Armstrong, Sir James Waddell, RJ Andrew, and
25 David Heaton, were the same civil servants signing off

1 the funding for the SDS, firmly reminding the SDS
2 managers of the need for security.

3 The impact.

4 The SWP was an open, democratic, centralist
5 organisation that held predominantly open and publicised
6 meetings. It had an open membership, and
7 a democratically-elected structure, with positions of
8 responsibility open to all members. It published its
9 aims, campaigns and political theories in an open way.
10 The Metropolitan Police even had subscriptions to
11 the publications.

12 Those theories were socialist and revolutionary. It
13 is important to set the record straight in respect of
14 a fundamental misconception.

15 The Socialist Workers Party were not arguing for any
16 kind of "putsch against the state". There was no talk
17 of guillotines or bombing campaigns. The aims of
18 revolutionary socialism are to transform society from
19 within, readdressing the balance of power away from
20 the minority that holds it to the majority that should.
21 That process has to be democratic by definition.

22 They campaigned on issues such as sexual
23 discrimination, racism, low pay, unsafe working
24 conditions, unemployment and poverty; all of which
25 needed transforming. They focused on building a mass

1 movement and broad-based campaigns, with the aim of
2 helping to create a better society.

3 Transforming society for the benefit of the majority
4 by the majority should not be seen as a threat to the
5 "safety of the wellbeing of the State". Using an open,
6 democratic organisation to try to create a broad-based
7 democratic movement should not be seen as an attempt
8 to "undermine or overthrow Parliamentary democracy".

9 But transforming society on the issues that the SWP
10 were campaigning on would ultimately have a detrimental
11 effect on the establishment. And that explains
12 the timing of the 1972 MI5 redefinition of "subversion".

13 1972 was the year of three major industrial
14 disputes, Saltley Gate, the Dock Strike and
15 Building Workers' Strike. All were designed to better
16 the living conditions of the workers. All were examples
17 of unified people power. All were successful, and
18 ultimately all impacted negatively on capitalism.

19 It also explains the obsessive focusing of the SDS
20 on the personal details and employment of trade union
21 affiliation of their targets, and the massive data trawl
22 of leftists, rather than rightists, that the operation
23 had become.

24 "Colin Clark", HN80, and "Phil Cooper", HN155.

25 MI5 had had a long-standing interest in SDS officers

1 rising up the hierarchy to the SWP Headquarters. They
2 made it clear to the SDS management that their "ideal
3 would be a permanent well-placed employee in ...
4 headquarters, not necessarily too high up in
5 the organisation".

6 The SDS did exactly as they were told.

7 "Colin Clark" and "Phil Cooper" both became the national
8 treasurers of the Right to Work Campaign, and both were
9 close to the central committee; in headquarters, but not
10 too high up. The fact that they took those positions in
11 direct succession to each other meant that for six
12 years, between 1978 and 1983, MI5 had their "permanent"
13 source exactly where they wanted it. This tasking was
14 not a public order related tasking; that is why the SDS
15 struggled in their annual reports to attribute any
16 disorder to the campaign.

17 In the words of the SDS themselves, the campaign
18 was:

19 "... an organisation to fight for the rights of
20 Trades Unions, individuals and groups of workers,
21 against the oppression of management and Government, in
22 particular at this time of high unemployment and
23 anti-union legislation."

24 The aim, again in the SDS's own words, was for:

25 "... pressure [to] be brought to bear against

1 management and ... government, when fighting short time
2 working, redundancies and unemployment, or demanding
3 improved pay and/or conditions."

4 That description, given by the SDS, is an accurate
5 assessment of the SWP engaging in militant
6 trade unionism. Militant trade unionism was an area
7 that neither MI5 nor Special Branch were permitted to
8 investigate. However, the infiltrations into the SWP,
9 targeted as they were, were designed to do exactly that.

10 "Clark" and "Cooper's" roles were different to those
11 who had obtained positions of responsibility in
12 the Troops Out Movement. "Rick Gibson", HN297 and
13 "Mike James", HN96, had left that organisation
14 destabilised and ineffective after their successive
15 leaderships.

16 There is some evidence that "Cooper" was
17 deliberately creating discord within SWP headquarters;
18 and was doing so with the connivance of MI5 and SDS
19 senior officers. But the Security Service disclosure is
20 silent on the detail, and of course the police do not
21 know where their papers are.

22 Primarily, "Clark" and "Cooper" took their positions
23 to harvest intelligence on the SWP's organisational
24 structure, administration, finances and membership.
25 That is what they did. They used their attendance at

1 almost every National Delegate Conference and annual
2 Skegness rally from 1977 to 1983 to speak to hundreds of
3 members and gather personal details. They used their
4 access to the party headquarters and computer system to
5 steal the organisation's data, and the data of its
6 members, as ordered by MI5. "Cooper" even ended up in
7 complete control of the Right to Work Campaign bank
8 account.

9 The scale and scope of the reporting, and number of
10 people with files opened on them, is astonishing. Just
11 by way of a few examples from a mass of reporting:

12 At the 1980 annual Easter rally at Skegness, the SDS
13 listed over a thousand named attendees from across
14 the UK. Their addresses, and in the majority of cases
15 their Special Branch file numbers, were noted alongside
16 their names.

17 On a list of 198 named attendees at a peaceful
18 Blair Peach demonstration, only seven were listed as
19 having "no trace" on Special Branch files.

20 From the SWP's National Delegate Conference in 1978,
21 just under 300 names were listed, alongside
22 the addresses, trade union membership and file
23 references.

24 The report on the National Delegate Conference on
25 1978 is 171 pages long. It contains detailed analysis

1 of administration and finance, breakdowns of branch by
2 branch membership nationwide, an extensive list of
3 unions that had SWP members, and a full breakdown of
4 educational institutions with SWP members.

5 The report on the 1982 Right to Work Campaign march
6 was more a detailed list of financial contributors than
7 anything else, with pages and pages of photocopied
8 cheques.

9 The SDS reported on people and sent their details to
10 MI5 simply for buying copies of the Socialist
11 Worker Newspaper. On one occasion that we know of,
12 a 15-year old boy had his personal details recorded and
13 sent to MI5 because he read the Socialist Worker and had
14 been to anti-Nazi demonstrations.

15 "Clark" and "Cooper's" reporting covers the same
16 themes as other undercover officers. Their indexes
17 contain more reports on personal details, such as
18 the physical appearances and relationship statuses of
19 female activists, than anything remotely disorder
20 related.

21 But the real focus is on members' employment details
22 and trade union affiliations; and that brings us to
23 a topic that is of particular importance to
24 Richard Chessum, but plainly impacts on the members of
25 every leftist organisation that was infiltrated by these

1 officers: blacklisting, where the reports of these
2 officers impacted on the financial wellbeing, security
3 and prospects of targets and their families, wrecking
4 countless lives.

5 Blacklisting and the trade unions.

6 The evidence of the senior officers disclosed in
7 this phase makes repeated reference to SDS reports being
8 used for "vetting", which was an activity of both MI5
9 and Special Branches. SDS officers had been answering
10 specific MI5 requests for information on employment
11 since at least, coincidentally, 1972.

12 There was a real danger of blacklisting for the SWP
13 membership, with individual members of the SWP losing
14 their jobs for often spurious reasons. At the same
15 time, there were reports that the Metropolitan Police
16 often visited the office of the Economic League with
17 files about trade unionists.

18 Richard Chessum gave evidence as to how, despite his
19 qualifications and decency, he was repeatedly refused
20 employment.

21 The Inquiry's disclosure in Phase 3 gives a great
22 deal of insight into the liaison between MI5 and
23 Special Branch on the issue of vetting. An example is
24 a fractious exchange of documents between the two, where
25 MI5 set down a marker that the passing of information to

1 employers about their employees is the role of MI5,
2 rather than that of Special Branch. The document is
3 clearly meant, and taken, as a rebuke. It clearly
4 indicates that Special Branch had been relaying
5 employment intelligence to employers.

6 The Special Branch response is phrased extremely
7 carefully. It emphasises that there are rules to
8 prevent them passing such information, and that
9 the provision of intelligence to employers is MI5's job.

10 However, it then goes on to state that it has its
11 own contacts -- predominantly former police officers --
12 with the employers, and a "close and mutually profitable
13 relationship" with them, before telling MI5 in no
14 uncertain terms that "any measure tending to restrict or
15 inhibit our enquiry work" is not acceptable to them.

16 Stripping away the veil of plausible deniability
17 that is a feature of most of these official documents,
18 Special Branch says that there might be rules, but they
19 have their ways of getting round them, and they are
20 going to continue to do so.

21 This "enquiry work" between Special Branch and
22 employers is also referred to on the face of
23 the disclosed Home Office documents. In 1974, a number
24 of MPs raised concerns in a meeting with
25 the Home Secretary about the relationship Special Branch

1 had with employers and trade union management; in
2 particular that Special Branch were passing on lists and
3 photographs of those who attended demonstrations and
4 meetings. Interestingly, the note of this meeting was
5 passed on to Sir James Waddell, who was responsible for
6 reminding the SDS of the need for "security". Waddell's
7 response, in a letter directly to the Home Secretary, is
8 illuminating. Unsurprisingly, it suggests reminding
9 Special Branch of the need for "care and discretion".

10 On the issue of whether or not Special Branch were
11 passing intelligence to employers, he said this:

12 "We know ourselves that some employers plead to be
13 given warning if known agitators seek or obtain
14 employment with them. The official response has always
15 been refusal, sometimes with a hint that there are
16 unofficial bodies which might help. But when
17 a Special Branch officer is himself seeking help from an
18 employer, or from a trade union official, it is asking
19 a good deal to expect him to insist invariably that he
20 is engaged in one way traffic."

21 This is the "close and mutually profitable
22 relationship" between Special Branch and employers.
23 The passing of intelligence gleaned from SDS operations
24 for the purpose of blacklisting. These are
25 the "customers" that so many SDS managers refer to in

1 their statements.

2 The "employers" referred to include not just
3 Government departments and the Civil Service, but also
4 public corporations such as the Bank of England,
5 the BBC, the British Council and, pertinently for
6 Richard Chessum, the Post Office.

7 Most importantly, they also include "List X firms",
8 which are private corporations engaged in government
9 security contracts. Of course, those firms were not
10 only involved in government security contracts. Once
11 they had the lists of people who were concerned enough
12 about their society as to demonstrate in order to change
13 it, they could ensure that those people never worked
14 again.

15 To give an idea of the scale, between 1970 and 1973,
16 the top 50 firms that held government defence contracts
17 were all household names. They covered all sectors and
18 included, for example, British Leyland, Rolls Royce,
19 Laird Group, British Steel, Shell, ICI, Weir Group and
20 Standard Telephones.

21 We do not know how many "X Firms" there were in
22 total, but once those lists were passed on, there was
23 nothing to stop them being passed on again and again
24 amongst federations of employers; lists that were
25 continually updated by the SDS.

1 We raised these issues of blacklisting in our first
2 opening statements. We are grateful to the Inquiry for
3 sourcing and disclosing this material that puts SDS and
4 Special Branch involvement in blacklisting beyond doubt.

5 These lists of demonstrators and meeting attendees
6 were also passed to trade unions.

7 It is important at this stage to put right another
8 misconception. Trade unions were not founded by people
9 who routinely liaised with police officers to assist
10 them in blacklisting their memberships. Trade unions
11 were founded by people like Eleanor Marx and Tom Mann,
12 both Marxists. The narrative that organisations like
13 the SWP "infiltrated" trade unions, as if they were
14 a separate species, is false. It is terminology used by
15 the SDS and the Home Office -- via Sir James Waddell --
16 as part of their attempt to justify SDS infiltrations.
17 This is the same Home Office that when faced with MPs
18 concerned about Special Branch infiltrations of unions
19 told them that there was none, directly or indirectly.
20 That was an outright lie.

21 We ask that the Inquiry be very careful about
22 adopting that narrative. If anything, the infiltrators
23 were those that betrayed their rank and file by passing
24 their names to employers.

25 The police say there was no direct reporting on

1 trade unions; any reporting was indirect, just
2 a byproduct. That is a bending of the truth.

3 Many trade unions supported the SWP campaigns, and
4 when they did, they were reported on. 500 trade union
5 branches sponsored the 1980 Right to Work march and
6 the detail of that support was sent to Box 500 by
7 the SDS.

8 The same process was adopted on every part of
9 the Right to Work Campaign. Many trade unionists joined
10 the SWP, and when they did they were reported on.
11 Indeed, if a trade union subscribed to
12 the Socialist Worker Newspaper, it was reported on.

13 These reports are littered with the trade union
14 related intelligence that MI5 and the Home Office had
15 been seeking since 1972.

16 The bulk of reporting on the SWP membership is
17 related to employment and industrial issues, but this
18 was not to be used for "national security vetting", as
19 the senior officers would try to have us believe. These
20 reports were on probation officers and social workers,
21 hospital workers, teachers, firemen, DHSS staff, workers
22 at Ford and General Motors, bank staff, caterers,
23 ambulance staff, British Rail staff, Post Office staff,
24 tradespeople. More often than not, these reports
25 detailed nothing other than their name, employment,

1 employer details and trade union membership.

2 Special Branches were involved in blacklisting
3 nationally. The True Spies documentary deals with one
4 example of Special Branch collusion with industry.
5 The Ford Motor Company made investment decisions on
6 the basis of a "secret assurance ... involving MI5 and
7 Special Branch". That deal meant that Ford would send
8 lists of job applicants to Special Branch who
9 would "strike a line" through names and return them.
10 The deal was designed to prevent strikes. That is
11 economic policing.

12 "Clark" and "Cooper's" thousand-strong list of SWP
13 members across the United Kingdom must have been
14 incredibly useful. It is no surprise that "Clark" was
15 officially commended for his work. It is also no
16 surprise that SDS chief inspector, Trevor Butler,
17 considered the True Spies documentary to be "an
18 earth-shattering breach of the 'need to know'
19 principle".

20 In their Phase 1 opening statement,
21 the Designated Lawyers assured the Inquiry that "SDS
22 personnel were not involved in trade union
23 blacklisting". The evidence from Phase 3 demonstrates
24 that the SDS did not ask and did not care what use their
25 reports were put to.

1 It is clear that the SWP members were right to be
2 afraid of being blacklisted. The answer to the problem
3 that government faced after the successful industrial
4 action of 1972 was to find the workers who were prepared
5 to stand up and take them out of the workforce.

6 Conclusion.

7 The Home Office knew that the intentional vagueness
8 of their terms and definitions had left officers
9 "uncertain about the proper extent of their role", but
10 they were not in any hurry to do anything about it.
11 Equally, MI5, bound as they were by their own public
12 terms of reference, were doubtless happy to continue
13 "using the SDS to gather information".

14 Barry Moss, who was both chief inspector and
15 superintendent of the SDS during the deployments of
16 "Clark" and "Cooper" was certainly one of the officers
17 who was uncertain about his role. His definition
18 of "subversion" was so loose that it is no wonder MI5
19 looked forward to "mutually useful cooperation" with
20 him. Nothing was ever done to dispel the uncertainty.

21 As a result, the SDS continued to just "hoover up
22 everything", irrespective of the consequences for their
23 targets. Their senior officers encouraged them to do
24 so.

25 Ironically, it was "Colin Clark" himself who came

1 closest to an accurate assessment of the SWP. He spent
2 five years deployed at the heart of the organisation,
3 with access to every detail of its aims and activities
4 and was fully debriefed by MI5 at the end of his
5 deployment. He was not operating among subversives. He
6 said:

7 "[The SWP] were strongly opposed to government
8 policy but were not seeking to subvert the institutions
9 of the state."

10 None of these people posed any threat to
11 the security of the nation. Roy Creamer had it right
12 all the way back at the beginning. He said:

13 "Whilst we were looking for information, there was
14 simply nothing to tell of ... There were no hidden
15 conspiracies anywhere and there was nothing hidden going
16 on."

17 THE CHAIRMAN: Thank you, Mr Scobie. For reasons that are
18 not wholly your responsibility, you've overrun a little
19 on the time we estimated for you. That will involve
20 some reorganisation of the programme after you. But
21 thank you for your statement.

22 We will now adjourn for 15 minutes, which means that
23 we will restart some time between 11.45 and 11.50.

24 Thank you.

25 (11.32 am)

1 (A short break)

2 (11.50 am)

3 THE CHAIRMAN: Ms Murphy.

4 Opening statement by MS MURPHY

5 MS MURPHY: Thank you, Sir.

6 Sir, this opening statement to Tranche 1, Phase 3 of
7 the Inquiry is made on behalf of families who became
8 aware that the identities of their dead children were
9 appropriated for the purposes of constructing the cover
10 identities of the undercover officers.

11 The focus of this statement will be upon
12 the families and the significance of the evidence that
13 you will likely hear in this phase.

14 Sir, in the interests of brevity, we have abridged
15 our written statement for the purposes of this oral
16 statement, and it will therefore follow a somewhat
17 different structure to the document that you have in
18 front of you.

19 We will also address the submissions of Mr Skelton
20 and Mr Saunders, and the exchanges yesterday as they
21 relate to category F issues.

22 First, Sir, the families on behalf of whom we make
23 this statement:

24 Liisa Crossland and Mark Crossland, the stepmother
25 and brother of Kevin John Crossland, who died on

1 1 September 1966 at five years of age.

2 Frank Bennett and Honor Robson, the bereaved brother
3 and sister of Michael Hartley, who died on 4 August 1968
4 at 18 years.

5 The father, mother and sister of Anthony Lewis, who
6 died on 31 July 1968 at seven years.

7 Faith Mason the bereaved mother of Neil Robin
8 Martin, who died on 15 October 1969 at six years.

9 Emma Richardson, the daughter of Barbara Shaw, whose
10 brother Rod Richardson died on 7 January 1973, when he
11 was just two days old.

12 Emma and Rod's mother Barbara Shaw, who was
13 a core participant to this Inquiry, sadly passed away on
14 12 May 2021.

15 And, finally, Sir, a family who have been required
16 to participate anonymously by reason of an order
17 restricting the relevant cover name and therefore
18 the family name.

19 In their opening statements to earlier phases of
20 this Inquiry, the bereaved families told you about
21 the devastating loss of their children and the horror
22 they suffered when they learned that the children's
23 identities had been appropriated by
24 the undercover officers. Those statements also address
25 the moral abhorrence of the practice and the gross,

1 repeated and long-standing unlawful interferences with
2 their rights at common law and those protected by
3 Article 8 of the European Convention on Human Rights.

4 The evidence that you heard, Sir, in April and May
5 last year has further crystallised for the families
6 the absence of any necessity for adopting or maintaining
7 this practice, and indeed for the very existence of
8 the SDS.

9 The current stage of the Inquiry is a particularly
10 important one for the families, as it is in this phase
11 that you will hear the best available evidence as to
12 the origins of the practice, its adoption and how it
13 came to be normalised within the practices of the SDS,
14 leading to its adoption by the NPOIU.

15 Sir, you heard last year, and the families have
16 taken note, that some junior officers did appreciate
17 the moral implications of what they were being required
18 to do; that they were both mindful of the possibility
19 that families would come to learn of what was being done
20 in their loved one's names; that their grief would be
21 compounded. That evidence provides an important context
22 for the evidence that you will hear from the early
23 managers over the coming days.

24 The evidence of the most senior of them, retired
25 Chief Superintendent Geoffrey Craft, retired Commander

1 Barry Moss, retired Chief Inspector Angus McIntosh and
2 retired Chief Inspector Trevor Butler, is to similar
3 effect. The SDS was a secret operation operating in
4 isolation from and outside both moral and legal norms.
5 They had every confidence that its secrets would remain
6 secret.

7 The practice, Sir, was antithetical to the policing
8 by consent model, the model by which
9 the Metropolitan Police have asserted legitimacy for two
10 centuries. It is a recurrent feature of the evidence
11 you will hear that these senior officers saw no
12 difficulty in pursuing practices that the families and
13 public at large would obviously condemn. They were at
14 all times confident that they would not be found out.

15 We invite you, Sir, to conclude that this
16 confidence, derived as it was from the exceptional
17 secrecy that was gifted to the SDS, was the cause of
18 the illegality that became the hallmark of the SDS.

19 Sir, confidence in not getting found out is an
20 extraordinary foundation for the decision-making of
21 senior police officers judged by the standards of any
22 decade.

23 The references we have heard to mercenaries, to
24 fictional assassins, to the KGB, tell you, Sir, that
25 public approval for the existence, actions and behaviour

1 of the SDS could not have been further from the minds of
2 these senior officers.

3 Sir, you will recall that Barbara Shaw was a central
4 figure in the bereaved families' pursuit of information
5 and accountability. It was she who recorded a formal
6 complaint to the Metropolitan Police in 2013 concerning
7 the use of her son's identity; and it was she who
8 challenged the Metropolitan Police's reliance upon
9 the policy of neither confirming nor denying
10 the practice.

11 Shortly after her death, her family learned that
12 the CPS had found sufficient evidence to justify
13 a criminal prosecution of EN32, the officer who had
14 appropriated Rod's identity.

15 The identified charge was of making an untrue
16 statement for the purposes of procuring a passport
17 contrary to section 36 of the Criminal Justice Act 1925.

18 However, it was assessed that such a prosecution
19 would not be in the public interest, because EN32's
20 actions were in accordance with his training and
21 the working practices of the NPOIU at the time. Those
22 working practices were, as you will recall, inherited
23 from the SDS. We will return to the topic of criminal
24 offences when we address you concerning the prosecution
25 and conviction of Mr Mulvena.

1 It is, of course, desperately sad that Mrs Shaw has
2 not lived to hear the evidence from the managers, nor to
3 hear your conclusions. Many of the other family members
4 are also of advanced years. They have clung to the hope
5 of answers, only to have those answers elude them by
6 the pace of the Inquiry's work. They seek answers
7 within their lifetimes about why their loved ones'
8 identities were taken and the extent to which their
9 personal lives were violated.

10 We turn to the circumstances of the family who may
11 only currently participate in this Inquiry anonymously.

12 Sir, we know that you are acutely aware of
13 the circumstances of this family. The restriction order
14 was imposed after they were notified that their loved
15 one's identity had been used; and as the order
16 inevitably relates to their loved one's identity, it
17 also relates to their identity.

18 The consequence is that the family may only
19 participate in this Inquiry anonymously. In common with
20 other restriction orders, breach would place the family
21 and those from whom they have sought support in jeopardy
22 of imprisonment, fines and asset seizures. The family
23 have been informed that no reasons for the imposition of
24 the order can be extended to them.

25 As you, Sir, are fully aware, this family suffered

1 the traumatic early death of a much loved child, related
2 family traumas of the most extreme character, and
3 re-traumatisation when they learned that their loved
4 one's identity had been appropriated.

5 Your team met with the family members in April of
6 this year, and no one in attendance at that meeting can
7 have been left in any doubt as to the impact of this
8 Inquiry, charged as it is with investigating the misuse
9 of their loved one's identity, itself imposing
10 restrictions upon the family's use of their identity.

11 And against a backdrop of unspeakable trauma,
12 the family feel degraded, humiliated, debased and
13 silenced, both in the public domain and in their
14 personal relations. The family have been shut out from
15 the opportunity to scrutinise whether even the process
16 that resulted in the imposition of the restriction took
17 proper account of the ongoing gross interference with
18 their rights.

19 The full circumstances of this family's experience
20 cannot currently be addressed in this opening statement;
21 nor currently form any part of the Inquiry's
22 considerations in open session. The Inquiry's
23 consideration of category F issues is inevitably
24 impoverished in consequence.

25 Nevertheless, the bare facts that it is possible to

1 set out in open session exemplify the legal and moral
2 repugnance of the SDS operational practice. So we hope
3 that progress can be made in alleviating this family's
4 distress at the closed hearing that you have requested
5 your team to convene in the coming weeks.

6 I turn to the transition to a practice of relying
7 upon the identities of dead children and the lack of
8 operational justification for that change.

9 Sir, you expressed confidence yesterday that
10 the evidence will allow you to identify the point in
11 time to within a month or two when the transition from
12 reliance upon fictitious to real identities occurred.
13 The families look forward to understanding
14 the evidential basis for that confidence.

15 From the disclosure shared with the families to
16 date, we can only say this. First, that officers
17 deployed prior to 1974 relied upon fictitious
18 identities, and; secondly, that many officers deployed
19 from 1974, between 1974 and 1982, relied upon real
20 identities, but others did not.

21 We note in the Designated Lawyer Group original
22 opening statement they assert that reliance upon
23 fictitious cover identities was "reviewed and abandoned
24 after a number of undercover officers were compromised
25 or outed" and that the practice of relying upon

1 the identities of dead children was formalised in about
2 1973.

3 The evidential basis for those assertions is
4 entirely unclear on the basis of the open material.
5 Among those relying upon fictitious identities who have
6 given evidence in Tranche 1, there is not a single
7 instance of their deployment being compromised in
8 consequence, so far as we are aware.

9 The absence of operational justification for
10 the practice is, though, clear on the open material.

11 First, the regional and national crime squads'
12 policing operations who were deploying
13 undercover officers in the 1960s, 70s and 80s did so
14 without reliance upon the identities of dead children.
15 There were alternatives.

16 Secondly, undercover officers who relied upon
17 fictitious identities were, we know, able to find -- to
18 secure official documents; documents which they
19 considered sufficient. Conrad Dixon referred to
20 the UCOs obtaining necessary papers long before
21 the practice became to exploit the identities of
22 the dead. The need to obtain identity documents cannot
23 reasonably be advanced by way of justification.

24 Thirdly, compromise of UCOs' cover in these early
25 years was entirely independent of identity choice.

1 Significantly, Rick Clark, one of the first UCOs to
2 deploy using a dead child's identity, was confronted by
3 activists with the birth and death certificate of that
4 child in 1976. This event was well known among senior
5 SDS officers at the time, and no doubt beyond. It is
6 even referenced in the Tradecraft Manual prepared many
7 years later.

8 The reality acknowledged by HN126 was that
9 Rick Clark alone bore the responsibility for
10 the compromise of his cover. He was not assisted by
11 having relied upon the identity of a dead child;
12 the existence of a death certificate made his cover less
13 secure.

14 Angus McIntosh should be able to offer particular
15 assistance to you in your scrutiny of the SDS response
16 to the compromise of Rick Clark and its aftermath.
17 Notably, his statement is silent on the topic, although
18 he admits to an advisory role in the process of officers
19 acquiring cover identities.

20 The managers' statements do not reveal why there was
21 a change in practice, nor who took responsibility for
22 the change. It is their evidence that it was
23 the preferred method or the norm; although Mr Brice
24 would have it that he had no awareness of the practice.
25 Certainly none accept responsibility, other than tacit

1 endorsement.

2 In seeking to unravel all of this, we invite you,
3 Sir, to consider the transfer in governance of the SDS
4 from C to S squad in July 1974. We note the stated
5 intention of increasing oversight. Significantly,
6 recruitment of UCOs occurred alongside those governance
7 changes and significant recruitment in numbers.

8 The change in the SDS practice in the creation of cover
9 identities, on the open documents, appears to have been
10 contemporaneous and potentially related to those events.

11 But we also invite you to scrutinise with care
12 the discrepancies between the evidence of the UCOs,
13 the managers and the contemporaneous records as to how
14 identity creation was managed, and how the processes
15 were reported up the chain of command.

16 Our analysis of that material is set out in our
17 written statement, and it's not repeated this afternoon.

18 But we invite careful scrutiny, because it will, in
19 the families' view, assist you in establishing where
20 the truth lies, and whether the managers are presenting
21 to you a full, accurate and complete picture.

22 And of course the families invite scrutiny of why
23 the obvious and inherent risks of relying upon a real
24 identity did not appear to have come into focus. They
25 invite consideration of the role that the UCOs played in

1 their own compromise; and ask: who, if anyone, was
2 taking responsibility for managing all of this?

3 We turn next to the potential inspirations for
4 the practice.

5 Operation Herne and the families in their statements
6 to this Inquiry have considered the potential cultural
7 and media origins of the practice. In Tranche 1,
8 Phase 2, you heard from HN126, who explained that they
9 had "all watched 'The Day of the Jackal' a couple of
10 years earlier", and it was his understanding that
11 the idea of using the identity of someone dead had
12 sprung from that film.

13 Similar evidence is offered by Mr Craft and Mr Moss
14 in their statements to this phase; although it may be
15 that Mr Craft's evidence in this regard has now
16 developed.

17 Sir, in his statement of 23 February 2022, Mr Craft
18 has provided an additional perspective. He explained
19 that he had "prosecuted someone who had used this method
20 to create passports for members of the KGB", so we know,
21 from Mr Craft's words, that it was a pretty secure
22 method.

23 Sir, Mr Craft's statement, made with the benefit of
24 hindsight, referencing the workings of a security agency
25 of the Soviet military as a basis for operational

1 confidence in the practice of relying upon
2 the identities of dead children is highly significant
3 from the perspective of the families.

4 The Designated Lawyers have now helpfully provided
5 a substantial bundle of press clippings concerning that
6 prosecution; a prosecution that led to Mr Mulvena
7 pleading guilty in respect of offences associated with
8 his having obtained a passport in the name of a dying
9 and then dead man, and his being sentenced to
10 the maximum term of imprisonment available.

11 The press reporting referred to the dead man's
12 unsuspecting family and a loophole, as you referred to
13 yesterday, Sir, in the British passport system; and
14 indeed Somerset House being quoted as stating that
15 a system of automatically stamping birth
16 certificates "deceased" would obviously involve
17 tremendous additional cost to the overheads at
18 Somerset House.

19 So we learn from those press reports that DCI Matt
20 Rodger, as he was at that time, was the Special Branch
21 officer responsible for that prosecution. And you will
22 recall, Sir, he went on to become the Special Branch
23 commander, with responsibility for the SDS between '72
24 and '75.

25 He was a visitor to the SDS safe house, and he

1 socialised with the UCOs. Whether it was he,
2 Commander Cunningham or another who introduced
3 the practice to the SDS, if that is the route by which
4 it was introduced, the Mulvena case can hardly be
5 a basis for confidence in the operational effectiveness
6 of the tactic.

7 The exposure of Mr Mulvena's tactics in securing
8 a British passport for the KGB was front-page news. It
9 was little wonder that activists were able to confirm
10 their suspicions in relation to Rick Clark by
11 confronting him with a death certificate.

12 What is really more surprising is that the SDS did
13 not immediately abandon the technique at that point.

14 Sir, it strains credulity that no living witness can
15 assist you as to why and when there was a significant
16 departure from the historical reliance upon fictitious
17 cover identities. That was a tactic which had proven
18 both effective and secure, which had not resulted, to
19 our knowledge, in compromise, and which did not in
20 itself offend societal norms or the fundamental
21 principles of policing.

22 Were the drivers the publication of
23 the novel "The Day of the Jackal" in 1971, or, perhaps
24 more significantly, the release in cinemas of the movie
25 in May 1973? There is certainly a temporal

1 relationship. Or were the SDS relying upon KGB tactics,
2 and ones that had not even proven successful? Were they
3 introduced by Mr Rodger or Mr Cunningham? What scrutiny
4 was brought to bear on the whole endeavour, if any?

5 We invite you, Sir, to pay particularly close
6 scrutiny to the evidence of Mr Craft and Mr Brice on
7 this topic. We invite you not to assume that
8 the evidence being presented to you was fully frank and
9 complete.

10 We turn, then, to a central issue: the moral
11 perspectives on the practice.

12 In the previous phase, HN200 told you that he had
13 challenged the instruction to rely upon the identity of
14 a dead child. He said:

15 "I can't remember at all who told me, because I was
16 a bit upset, and I actually said 'Why is that
17 necessary?' ... Because it wasn't something that sat
18 comfortably with me."

19 It was his evidence that he assumed he had no
20 alternative.

21 HN80, who deployed between March '77 and March '82,
22 was managed by Mr Craft and Mr Ferguson.

23 He told you that while some UCOs used the identity
24 of a deceased child, he refused to do so. He said that
25 it distressed him to consider using the details from

1 a dead child's birth certificate, and he knew that "it
2 would necessarily cause distress to that child's family
3 if it was discovered".

4 No manager admits to similar reflection
5 contemporaneously. David Bicknell states that the use
6 of deceased children's identities chimed with his
7 experience of World War II, and said that:

8 "We had an unsentimental attitude of getting on with
9 the job, no matter what."

10 It is telling that his perspective was upon police
11 officers overcoming their discomfort, not the families'
12 perspectives.

13 Geoffrey Craft observes:

14 "The only potential harm of using the deceased
15 child's identity was to renew the grief of bereaved
16 parents that had suffered the worst loss anyone could
17 suffer. Looking back on it, that is the way I see it.
18 I am not aware of what thought was given to the issue by
19 more senior individuals."

20 He considered it "inconceivable that the bereaved
21 families would become aware".

22 Reflection had revealed the obvious moral
23 implications of the practice, but there had been no
24 reflection at the time, only confidence that no one
25 would ever know. Mr Moss states:

1 "With hindsight [reliance on this practice was]
2 regrettable ..."

3 As he saw it, there was no other option:

4 "I think the SDS believed the operation would remain
5 secret and that families would not be caused distress by
6 learning about this practice."

7 Again, hindsight revealed to him the moral
8 implications, but at the time, confidence in secrecy
9 overwhelmed the thinking.

10 Similarly, Mr Butler:

11 "Once I was aware of the practice ... I tacitly
12 approved it ... I do not believe the potential impact on
13 the families of the deceased children was ever
14 discussed. The SDS was a top secret unit carrying out
15 highly sensitive work and the assumption was that
16 relatives would never become aware of the practice ..."

17 Mr McIntosh:

18 "I made no attempt to stop the practice as I did not
19 think it was wrong. It was not against the law ..."

20 Mr Brice does not even address the harm that has
21 been caused to the bereaved families; nor does he
22 provide any evidence by way of purported justification.

23 There is an obvious tension between the evidence of
24 Mr Craft, who derived reassurance as to the operational
25 effectiveness of the tactic from the experience and

1 successful prosecution of someone who had assisted
2 the KGB and Mr McIntosh's assertion that the practice
3 was not against the law.

4 The category F CPs invite you to include that
5 the practice was in fact clearly unlawful, both at
6 common law, by reference to international human rights
7 standards; and as the decision of the CPS in relation to
8 EN32 may explain and the experience of Mr Craft
9 confirms, there was every prospect of criminal law
10 infringements also.

11 There is now significant evidence available to
12 the inquiry that senior officers either appreciated
13 the very real harm to bereaved families and chose
14 nevertheless to run that risk, or that they were
15 callously oblivious.

16 Wherever the truth lies, those managers were in
17 dereliction of their duties when they authorised and/or
18 condoned the practice without any critical reflection
19 upon the risk of real harm and the lack of any
20 reasonable justification for the change in practice.
21 The belief that they would not get caught out is no
22 justification at all.

23 We move on to address the calls for additional
24 evidence from the Temporary Commissioner of
25 the Metropolitan Police and the Designated Lawyer group.

1 We address only their suggestion that you might find
2 answers in relation to the practice of relying upon
3 the identities of dead children by delving into
4 the practices of the Security Service, MI5 or the Secret
5 Intelligence Service, MI6, or even, to the extent there
6 is this suggestion, by delving into the practices of
7 the KGB. We make a few brief points.

8 As you, Sir, have identified, your responsibility is
9 to examine the practices of the SDS, a policing body.
10 The practices of MI5 or MI6 in identity creation are
11 irrelevant; they offer neither explanation nor
12 mitigation.

13 There is evidence before the Inquiry from the UCOs
14 and the managers that the inspiration came from
15 the actions of a fictional assassin in
16 "The Day of the Jackal", and we are now invited by
17 the Designated Lawyer's Group, and it would appear
18 Geoffrey Craft, to consider whether, as an alternative,
19 it was the involvement of those with close connections
20 with the CDS in the Mulvena prosecution that led
21 the CDS to adopt a practice learned from the KGB.

22 That evidence, of course, merits investigation,
23 because it assists you as to who within the SDS
24 initiated the practice, why and when. It also assists
25 you on the issue of the purported justification for

1 the practice and the failures of managers to provide
2 legal and moral leadership within the SDS.

3 But what practices those other agencies in fact
4 adopted does not.

5 We invite you to reject that invitation as
6 a distraction from your central task of scrutinising
7 the actions of the Metropolitan Police.

8 So, by way of conclusion, we say this. It was
9 the managers' responsibility to ensure that the workings
10 of the SDS were ethical and within the law,
11 a responsibility that was all the more acute given
12 the extraordinary levels of secrecy that surrounded
13 the unit. The very nature of the operation of the SDS
14 carried obvious risks, obvious risks to the public
15 perception of the Metropolitan Police; and those risks
16 are repeatedly acknowledged within the contemporaneous
17 records. The unique features of the unit increase
18 the need for probity, they do not provide
19 a justification for its absence.

20 The managers' reliance upon secrecy was in any event
21 ill-thought-out. There were of course multiple ways in
22 which the bereaved families could find out, through
23 the compromise of a UCO's cover, through publicity, by
24 accident, and in the manner in which the families did
25 ultimately come to find out, as a byproduct of

1 the exposure of the broader unlawful and reprehensible
2 actions of the UCOs.

3 Sir, the SDS was an entirely misguided enterprise
4 targeted as it was at civil society without any
5 reasonable justification. It operated in secrecy and in
6 isolation. It developed practices that were the stuff
7 of spy movies and novels, and, we now learn, the KGB.

8 In the post-1974 period, UCOs were compelled by
9 their superiors in their very first steps towards
10 deployment to place policing ethics and legalities to
11 one side. In the words of Mr Craft "cover identity
12 creation was the key issue and first matter to be done".

13 Illegality was compelled by the very individuals
14 whose duty it was to ensure that the UCOs operated
15 within a legal and ethical framework. Those managers
16 must bear the responsibility for the development of
17 a toxic culture that pervaded the unit and became its
18 internal fabric.

19 The Temporary Commissioner of the Metropolitan
20 Police has recently acknowledged that failures of
21 leadership within the Metropolitan Police have permitted
22 toxic cultures to fester within certain units, with
23 the result that extreme misconduct has permeated them;
24 and which he has acknowledged is not a matter of a "few
25 bad apples".

1 Thus, Sir, the Inquiry's work remains of critical
2 relevance to modern policing. The families encourage
3 the Inquiry to identify the malpractice that permeated
4 every layer of the SDS operation and where
5 the responsibility lay. In their view, the Inquiry will
6 be compelled to conclude that the SDS managers, officers
7 who went on to hold the most senior positions within
8 the Metropolitan Police over a further two decades, not
9 only failed to challenge and expose the heinous goings
10 on within the SDS, but actually encouraged them; and
11 indeed compelled the UCOs to commit criminal acts and
12 civil wrongs, and to base their entire deployment upon
13 the morally repugnant practice of assuming the identity
14 of a dead child.

15 Their directions, Sir, set the tone of everything
16 that followed.

17 Thank you, Sir. That is the opening statement for
18 this phase on behalf of the category F
19 core participants.

20 THE CHAIRMAN: Thank you very much.

21 Something that you said led me to believe I may not
22 have expressed myself yesterday with sufficient clarity.
23 May I do so again, to avoid future misunderstanding.

24 I said I have no expectation that I will be able to
25 identify the date when the use of deceased children's

1 identities started within a month or two, but I had
2 every hope and every reason to believe that I would be
3 able to identify the approximate time. I think you
4 slightly misunderstood my words.

5 MS MURPHY: You're quite right, I did, Sir, and thank you
6 for that clarification.

7 THE CHAIRMAN: Thank you very much indeed.

8 We will now adjourn for 15 minutes, and we will
9 start with Ms Kilroy. She knows, and has kindly agreed,
10 to vary her timetable, so that we will have a break in
11 the middle for lunch, rather than carrying on until well
12 into the afternoon before she stops.

13 Thank you very much.

14 (12.26 pm)

15 (A short break)

16 (12.40 pm)

17 THE CHAIRMAN: Ms Kilroy. We all know the start of your
18 submissions has been delayed for reasons that are
19 outside your control and mine, and it means inevitably
20 that they're going to be interrupted by the lunch break.
21 Please take your time and whatever moment is convenient
22 to you to break.

23 Opening statement by MS KILROY

24 MS KILROY: I'm very grateful for that, Sir.

25 Sir, 260 years ago, on 11 November 1762, the then

1 Secretary of State, the Earl of Halifax, sent Nathan
2 Carrington and three other of the King's messengers to
3 the home of John Entick, with a warrant to seize and
4 apprehend him, together with his books and papers, and
5 bring them all to the Secretary of State for
6 examination.

7 It was a time of high political ferment, stirred by
8 multiple issues, including war with France concerning
9 overseas colonies. Entick was one of the contributors
10 to a political journal, *The Monitor*, which regularly
11 criticised the Government. He was said in the warrant
12 to be the author of several weekly, very seditious
13 papers, which contained gross and scandalous reflections
14 and invectives upon His Majesty's Government and upon
15 both Houses of Parliament.

16 The four messengers duly ransacked John Entick's
17 house. They were there for four hours, searching for
18 and reading books and private papers in several rooms.
19 In fact, they found nothing seditious, but nonetheless
20 seized papers and took them and Entick away. In due
21 course, he sued for trespass.

22 The resulting judgment of Lord Camden, Chief
23 Justice, *Entick v Carrington*, is widely acknowledged as
24 one of the most important constitutional judgments in
25 the common law, a judgment which reinforces this

1 jurisdiction's commitment to the rule of law. In short,
2 it established that the government must have legal
3 authority in statute or common law before it can
4 interfere with individual rights, including by
5 trespassing on private property; and the state cannot
6 simply assert, by warrant or otherwise, state necessity
7 as a justification.

8 That case also confirmed the common law's aversion
9 to general warrants, warrants which authorise state
10 officers to search private persons or property for
11 evidence of alleged crimes on a non-specific or
12 speculative basis.

13 The Earl of Halifax's warrant fell foul of both
14 these principles, and Carrington had therefore committed
15 trespass.

16 As Lord Camden explained, had the point been
17 determined in favour of Carrington:

18 "... the secret cabinets and bureaus of every
19 subject in the Kingdom will be thrown open to the search
20 and inspection of a messenger, whenever the Secretary of
21 State shall think fit to charge, or even to suspect,
22 a person to be the author, printer, or publisher of
23 a seditious libel ... His house rifled [and] his most
24 valuable secrets taken out of his possession ..."

25 Sir, the principle in *Entick v Carrington*, together

1 with the common law fundamental rights of personal
2 security, liberty and property, underpin much of modern
3 policing and state security law.

4 It is of course the police who are most frequently
5 called upon to interfere with fundamental rights of
6 person and property using arrests, searches and
7 seizures, in order to prevent and investigate crime and
8 maintain the peace. Their ability to do so is, in
9 British law, heavily circumscribed. They must be able
10 to point to statutory powers or common law permissions,
11 which usually require the existence of imminent risks or
12 evidence of serious crimes.

13 Fast-forward 200 years to another politically
14 febrile era. In 1968, in the midst of the Cold War,
15 a large protest against the Vietnam War turned violent
16 and shook the political establishment. The Secretary of
17 State appears to have considered that Special Branch,
18 the division of the police which monitored protests and
19 political groups, had been caught short. Another
20 large march was expected on the same issue later that
21 year.

22 Consequently, a decision was taken to establish
23 a secret policing unit, whose undercover officers would
24 infiltrate various groups thought likely to join
25 the demonstration, and gather intelligence aimed at

1 preventing a repeat of the same violence and disorder.

2 Unfortunately, the unit appears to have been created
3 without any regard being paid to the legality of
4 the police's conduct. No statute was passed to give
5 them special powers. Instead, extraordinary lengths
6 were taken to keep the unit's existence secret,
7 including from Parliament.

8 Before very long, undercover officers were being
9 deployed for years at a time, given cover names,
10 accommodation and cover employment, and instructed to
11 infiltrate left-wing political or protest groups.

12 Posing as trusted fellow members, they would be
13 invited to and did attend private meetings, including in
14 private homes and properties, where they spied on
15 people. They were given very little direction as to who
16 to target and what to report; and in practice, reported
17 almost everything. They gathered huge volumes of
18 private and sometimes clearly confidential information
19 about members of the groups, their political views and
20 any impending plans for protests; and then they shared
21 that information with other agencies.

22 Sir, these activities plainly conflicted with
23 the law; and not just any law, the law set out in *Entick*
24 *v Carrington*, one of the bedrocks of the rule of law and
25 policing. Undercover officers trespassed in private

1 property. They operated without any warrant at all, on
2 instructions so wide they could select for themselves
3 who to target and what to collect. And they recorded
4 and shared with other agencies private information about
5 people's thoughts, political opinions and lives.

6 But those in charge of that unit, the special -- I'm
7 going to call the "SDS", the Special Demonstration
8 Squad, had a weapon the Earl of Halifax did not
9 have: secrecy. Neither the courts nor the public knew
10 what they were doing. And so they carried on doing it
11 for decades, with successive secretaries of state
12 authorising the continuation of the unit.

13 I need to take another leap forward in time.

14 In July 2010, alone in her car, a woman the Inquiry
15 knows as "Lisa" opened the glove box. She was on
16 holiday in Italy with her partner of six years,
17 Mark Stone. His passport was there. She opened it.
18 The photograph was him but the name was "Mark Kennedy".
19 He made excuses. But before long, by October 2010, his
20 story has unravelled. What happened is now well known.
21 It turned out that for seven years he had been an
22 undercover police officer in the National Public
23 Order Intelligence Unit, NPOIU, posing as environmental
24 activist Camden Mark Stone. It is now apparent he had
25 other sexual relationships with between six to 11 women.

1 Mark's story was not the only thing that unravelled.
2 After it appeared in the press, it eventually emerged
3 that for at least three decades, scores of officers from
4 the SDS and NPOIU had infiltrated social, political and
5 justice movements, posing as members. They had invaded
6 the private lives and homes of thousands of law-abiding
7 citizens, the vast majority of whom neither had, nor
8 ever would, commit any criminal offence, still less
9 a serious one.

10 Incredibly, Mark was just one of many officers who
11 had engaged in sexual relationships. Some had had
12 children. The secrecy shrouding the acts of the SDS
13 since 1968 had finally lifted.

14 Sir, it is as a result of this accidental discovery
15 that this Inquiry has been established; and before
16 I come on to the core of my statement, I want to reflect
17 on that.

18 In *Klass v Germany* in the 1970s, the very era we are
19 examining, the European Court of Human Rights said this
20 about secret surveillance powers:

21 "They are a menace to all citizens. They
22 characterise the police state."

23 This is the court's words:

24 "They pose a danger of undermining or even
25 destroying democracy on the ground of defending it."

1 Why did the court say that? Sir, in my submission,
2 in secrecy, abuse of power thrives. And, Sir, while
3 increasing the risk of abuse, secrecy also interferes
4 with people's ability to detect and correct it. That is
5 so even when there are safeguards and a fortiori when
6 there are none.

7 That is why in all democracies governed by the rule
8 of law, covert powers are reserved for the most serious
9 crimes and threats. In those cases, the risk to
10 democracy from the use of covert powers can reasonably
11 be said to be outweighed by the risk they seek to
12 curtail.

13 But no one should ever be under any illusions.
14 Covert powers are always dangerous to democracy, and
15 must always be sparingly used, and only where absolutely
16 necessary.

17 Sir, I'm here today on behalf of the category H
18 core participants, or CPs, who are women who were
19 deceived by NPOIU and SDS undercover officers into
20 intimate sexual relationships, together with the child
21 of one of those relationships, and one man who was
22 deceived into a close long-term friendship.

23 The Inquiry has already heard evidence from
24 undercover officers active in the Tranche 1 period --
25 that's 1968 to 1982. That evidence has shown that at

1 least six officers had sexual relationships with
2 numerous -- with many women.

3 In the next week, the Inquiry will hear evidence
4 from some of their managers. The category H CPs wish to
5 make clear that while they abhor and condemn the acts of
6 the UCOs, the undercover officers who so grossly debased
7 and deceived them, they do not accept that
8 the responsibility stops there. After all, young
9 policemen were sent into people's homes and private
10 lives to pose as activists for years. That created
11 the obvious risk that relationships would occur. And
12 yet no steps at all were taken to meet that risk. And
13 that is even as managers permitted the theft of
14 the identities of deceased children which we've just
15 been hearing about, spent public money on cover
16 accommodation and vehicles, and created cover employment
17 to avoid the risk of undercover officers being detected.

18 And of course, decisions were also taken to abandon
19 all the central principles of English common law and
20 core tenets of policing, as I've explained, when
21 the invasion of homes was authorised, simply to find out
22 how many officers to send to police demonstrations. And
23 we'll come on to some of the evidence about that and
24 about whether people's views were subversive or not.

25 It wasn't these undercover officers who kept

1 the true extent of the activities of the SDS and NPOIU
2 shrouded in secrecy for decades so that cessation of all
3 of this scrutiny and accountability, when it finally
4 came, came only by accident. The responsibility for all
5 of this lies with inspectors, chief inspectors,
6 superintendents, commissioners, MI5 officials and
7 politicians in the Home Office.

8 Sir, you will be exploring with those managers who
9 are giving oral evidence their responsibility for and/or
10 complicity with what went wrong. The conclusions to be
11 drawn from that evidence will be the subject of
12 submissions in due course.

13 In this oral opening, I will address the legal
14 issues raised by the SDS's operations and the legal
15 framework against which we say the issues raised by
16 the terms of reference must be assessed. And I will
17 also set out category H's position on that law.

18 Sir, the primary focus of this statement and of
19 the written statement, which is in much more detail, is
20 the common law. But I do say, in response to
21 observations that you made yesterday, Sir, that the UK's
22 international obligations under the European Convention
23 on Human Rights are also relevant to this Inquiry's
24 terms of reference, and that is for three reasons.

25 First, and most straightforwardly, this was

1 applicable and relevant law even though international.
2 The UK had, at international law, an obligation to
3 comply with those laws; had made a commitment to do so
4 and clearly intended to do so. Any failure to so comply
5 is relevant to this Inquiry's assessment of the adequacy
6 of the statutory policy and judicial regulation of
7 undercover policing. And that is one of the questions
8 that this Inquiry has been asked.

9 Indeed, in my respectful submission, it is difficult
10 to see how the Inquiry could conclude that regulation,
11 governance and oversight was adequate if it had failed
12 to ensure compliance with the UK's international
13 obligations.

14 The second reason, Sir, is, as already explained,
15 one of the great iniquities of secrecy is that it
16 obstructs accountability.

17 So, following one case in the European Court
18 concerning secret powers in 1985, the UK changed
19 the domestic law. Again, after another case, Khan, at
20 the end of the 1990s the UK changed domestic law.

21 In relation to the SDS's operations, it is
22 reasonable to assume that in the absence of secrecy,
23 a successful claim to the Court of Human Rights would
24 have led to a change in law and practice earlier than
25 the Regulation of Investigatory Powers Act, and,

1 furthermore, would have likely have been more effective
2 than that Act in eliminating some of these practices.

3 That has got to be, in my submission, relevant to
4 this Inquiry's recommendations as to how to ensure
5 greater accountability for secret practices in future.

6 Thirdly, and relatedly, the Inquiry is asked to
7 examine the effect on individuals in particular, and
8 public in general. The breach of their fundamental
9 rights at international law in relation to which, but
10 for secrecy, they could have achieved redress in
11 Strasbourg, is plainly a serious effect in a number of
12 different ways.

13 Sir, I should also address section 2 of
14 the Inquiries Act, which was addressed by both
15 the Metropolitan Police Service and the
16 Designated Lawyer's representative.

17 For the MPS, Mr Skelton accepted that
18 notwithstanding that provision, the legal framework was
19 relevant to this Inquiry's task.

20 Mr Sanders, on the other hand, tried to suggest
21 otherwise. He was wrong. Section 2 does not prevent an
22 inquiry from examining lawfulness when it is relevant to
23 the issue which must be addressed. What it says is that
24 no individual's civil or criminal liability may be
25 determined. That is a quite different prohibition,

1 aimed at leaving determinations of liability, and of
2 course the redress or remedies which flow from them, to
3 ordinary courts.

4 As far as this Inquiry's function is concerned, as
5 you said yesterday: how can an act be considered
6 justified when it was unlawful? And that must be
7 a fortiori or even more so when that act is of
8 the police sworn to uphold law and order.

9 If there were any doubt about this, it has been
10 resolved in the course of inquests and inquiries. And
11 just one case I mention here today is Pounder from 2009,
12 where the High Court quashed an inquest which had failed
13 to address lawfulness where rule 42 of the Coroners
14 Rules provided an almost identical prohibition to
15 section 2. If it comes to it, I can provide the Inquiry
16 with these examples; although Mr Sanders may retreat
17 from his provisional submissions.

18 Sir, turning to the law. What is the law?

19 Sir, more detailed submissions are in our written
20 opening, and this is going to be a short summary.

21 I want to start with freedom of expression, because
22 that is the right that those spied on by the SDS were
23 exercising. It is a right integral to democracy, and it
24 is protected both by common law and the Convention.

25 Lord Steyn in *ex parte Simms* said:

1 "In a democracy it is the primary right: without it
2 an effective rule of law is not possible."

3 Article 10 of the Convention consequently expressly
4 protects the freedom to hold opinions without
5 interference -- sorry, and to share them without
6 interference, and that includes being able to do so
7 without attracting the attention of the police and
8 without being monitored and placed under surveillance,
9 and confirmation for that comes from the recent case of
10 the IPT v Wilson.

11 To be lawful, any interference with the right of
12 freedom of expression by the state must meet a pressing
13 social need -- and this is all familiar territory to
14 you, Sir -- and be no more restrictive or intrusive than
15 required. Our courts have said, in this regard, that
16 there is no difference in principle between English law
17 and Article 10, and the references are in our written
18 statement to Attorney-General v Guardian Newspapers Ltd
19 and Derbyshire County Council v Times Newspapers
20 Limited.

21 Equally, as we've already heard and as I've already
22 touched on, the subject of muscular protection at common
23 law and under the Convention is the home and the family.
24 The common law has, for centuries, zealously protected
25 the sanctity of people's homes, and the freedom and

1 security of their persons and possessions. It has
2 consequently imposed limits on police interference with
3 those fundamental rights through the law of trespass.

4 As the courts have stated:

5 "Our law holds the property of every man so sacred,
6 that no man can set his foot upon his neighbour's close
7 without leave; if he does, he is a trespasser, though he
8 does no damage at all; if he will tread upon his
9 neighbour's ground, he must justify it by law."

10 That is *Entick v Carrington*.

11 The courts have also said:

12 "The fundamental principle, plain and incontestable,
13 is that every person's body is inviolate."

14 Any interference with it, however slight,
15 constitutes a trespass in the absence of lawful excuse.
16 The private citizen is thus entitled to assert
17 the inviolability of her home, her person, her goods and
18 her private information against trespass and breach of
19 confidence. Article 8 of the Convention too protects
20 home, family, private life and correspondence.

21 Now, importantly, Sir, as already touched on,
22 the police, like any other citizen, must strictly
23 justify their trespasses or other torts. The burden
24 lies on them to do so, and there are countless
25 references in our written statement and elsewhere to

1 that effect. That burden lies on them under common law
2 and under the European Convention, which is closely
3 modelled, in my submission, on the law of trespass.

4 I pause here to respond to something Mr Sanders said
5 yesterday. He suggested anything a public authority
6 does is lawful until set aside in a public law court.
7 I'm afraid that submission is wrong. It's correct that
8 a statutory instrument is presumed lawful until set
9 aside. It's not correct that a trespass to land or
10 person is presumed lawful until shown otherwise.

11 At common law, prior to the passage of the Police
12 and Criminal Evidence Act 1984, police could enter
13 property and execute searches when arresting offenders
14 and preventing imminent crime, injury or breach of
15 the peace. Importantly, however, as Lord Denning
16 confirmed in *Ghani v Jones*:

17 "The common law does not permit police officers, or
18 anyone else, to ransack anyone's house, or to search for
19 articles or papers therein, or to search his person,
20 simply to see if he may have committed some crime or
21 other. If police officers should so do, they would be
22 guilty of a trespass."

23 And that 1970 statement is of course echoing *Entick*,
24 which I opened with earlier on.

25 Even when a power is vested in a person to issue

1 search warrants, no warrant can be lawful which requires
2 the exercise of judgment or discretion by the official
3 executing the warrant as to which individuals or which
4 property should be targeted. That was the position
5 explained recently in Privacy International by
6 the divisional court. Were such a power to exist it
7 would be "totally subversive of the liberty of
8 the subject". That is Wilkes v Wood and that is 1763,
9 Lord Camden.

10 Sir, we've set out in the written legal framework
11 some of the other ways in which a police officer, like
12 a private person, might justify a trespass, but using
13 deception or tricks to gain an invite is not one of
14 them, and that is a point that you put to the police
15 representatives -- core participants yesterday.

16 Similarly, Article 8 of the Convention protects
17 people's homes, families and private lives from
18 interference by the state, and as I've said,
19 the rigorous standards set in relation to ordinary state
20 interference are enhanced where the powers exercised are
21 covert.

22 Sir, there are other rights in play also.
23 Article 3, which prohibits inhuman and degrading
24 treatment, Article 14, which prohibits discrimination on
25 the grounds of gender or political beliefs. All these

1 rights were addressed in the context of
2 undercover policing in the case of Wilson.

3 Sir, both Mr Skelton and Mr Sanders have attempted
4 to diminish the importance of the judgment in Wilson.
5 In that case, the IPT, or Investigatory Powers Tribunal,
6 concluded that the MPS and the National Police Chiefs
7 Council had violated Kate Wilson's Article 3, 8, 10, 11
8 and 14 rights over several years of infiltration and
9 surveillance of the social and environmental groups of
10 which she was a member. Six undercover officers from
11 the NPOIU were involved, and one of
12 the undercover officers, Mark Kennedy, had entered into
13 a sexual relationship with Kate Wilson.

14 Now, we have addressed that judgment in detail in
15 the final section of our legal framework and I won't
16 repeat that summary, but I do want to highlight a few
17 points concerning its relevance to this Inquiry at this
18 stage of the Inquiry.

19 The judgment is obviously highly relevant to
20 the question of whether the rights of those spied on by
21 the SDS were violated. Mr Skelton says it's a judgment
22 on its facts. That is of course correct. But the
23 parity between the acts and facts concerning the SDS and
24 those of the NPOIU in the Wilson period, and the parity
25 of the impact on individuals spied on, makes it all but

1 impossible to distinguish the IPT's conclusions in many
2 instances before this Inquiry.

3 Secondly, the MPS and the NPCC made significant
4 concessions which are applicable in this context too,
5 but it's important to note that the IPT's findings are
6 not confined to those concessions; they made additional
7 findings.

8 Thirdly, the IPT found that two managers in
9 the NPOIU knew about Mark's sexual relationship despite
10 those managers and the MPS's denials of knowledge. As
11 for other senior managers, the evidence was not clear
12 enough to impute actual knowledge, but the IPT concluded
13 that there was something akin to a "don't ask don't
14 tell" policy in the remainder of the unit. Whether that
15 is also true of the SDS management is one of the issues,
16 in my respectful submission, that this Inquiry will have
17 to address.

18 Fourthly, the MPS's and the NPCC's argument that
19 the deployment was necessary in a democratic society on
20 the basis that, as they said, the intelligence provided
21 allowed the police to provide proactive and measured
22 response to prevent crime and public disorder, and to
23 ensure the safety of the public and of those engaged in
24 legitimate peaceful protest, that argument was rejected
25 by the IPT, which concluded, on the contrary, that while

1 the deployment of undercover officers to gather
2 intelligence on serious criminality might justify some
3 intrusion into people's lives, it would be unlikely that
4 the test of proportionality and necessity would be
5 satisfied in relation to policing protests generally, or
6 preventing public disorder. In my submission, that is
7 a conclusion which has obvious relevance not just to
8 Article 8 but also to any attempts to justify trespass.

9 The IPT also found that the actions of
10 the undercover officers in gathering, recording, storing
11 and transmitting information about Kate Wilson's
12 political activities interfered with her Article 10 and
13 11 rights, as I've already mentioned, and since that is
14 what the SDS did for thousands of individuals throughout
15 the duration of its existence, again, those findings are
16 of clear significance. It is also significant, I say,
17 that neither the commission -- neither the MPS nor
18 the NPCC appealed any of the findings in this judgment.
19 Indeed, they accepted those findings.

20 Sir, turning to police and Security Service powers
21 in this relevant period.

22 During the period covered by Tranche 1, 1968 to
23 1982, neither the police nor the Security Service had
24 any statutory powers to conduct undercover surveillance,
25 and that means that all the common law and human rights

1 restrictions that I've been discussing applied squarely
2 to their actions, just as they do to overt police
3 action.

4 Finally, in relation to the law, policing by
5 consent.

6 There is a tradition in this jurisdiction of
7 something called "policing by consent", which is
8 expressed in nine principles known as the Peelian
9 principles, and they were set out in general
10 instructions issued to every new police officer from
11 1829 and remain the foundation for that tradition of
12 policing by consent. I've set some of those out in
13 the written statement, but I just want to highlight one
14 in particular, principle 5, in which officers were
15 injuncted:

16 "To maintain at all times a relationship with
17 the public that gives reality to the historic tradition
18 that the police are the public and the public are
19 the police, the police being only members of the public
20 who are paid to give full time attention to duties which
21 are incumbent on every citizen in the interests of
22 community welfare and existence."

23 That underlines once again why the police must
24 comply with the law in their actions: they are
25 the public, just as the public are the police. And it

1 also raises serious questions about the extent to which
2 the police can properly trick other members of
3 the public when carrying out their duties unless given
4 express permission to do so.

5 Sir, consideration of legality by the police.

6 It's a striking feature of the evidence from
7 Tranche 1, despite all this applicable law, that
8 the common law and human rights of individuals and
9 the impact on those rights of long term
10 undercover policing was rarely, if ever, considered.
11 There's no evidence of that so far that we have seen and
12 it's not clear why that was, and I do suggest that will
13 be an important area of investigation.

14 So, in the written opening statement, we have
15 summarised the evidence that has already been heard and
16 presented and I don't intend to repeat that now. But
17 I do just want to highlight a couple of points.

18 The evidence shows that there was no guidance or
19 training on privacy concerns or intimate relationships.

20 It shows that undercover officers were given free
21 rein to decide how to run their own surveillance, and
22 that tasking was usually broadbrush, with no restriction
23 on entering homes, and no restriction on surveillance or
24 on recording information. On the contrary, officers
25 were expected to Hoover up as much information as

1 possible.

2 No consideration was given to the welfare or privacy
3 of those under surveillance, and overall, they reported
4 very little crime, disorder or intelligence about real
5 risks to democracy. Often the intelligence gathered
6 showed an absence of any serious threats to public
7 order.

8 Managers were aware, the evidence shows, that there
9 was a risk of undercover officers engaging in
10 sexual relationships, but there was still no guidance on
11 this issue.

12 Finally, highlighting from the general points in our
13 written statement, managers describe a practice of
14 undercover officers maintaining their cover and
15 misleading the court if arrested and prosecuted.

16 Sir, the position of the category H
17 core participants on all of this is that it is clear
18 that inserting undercover police officers for long term
19 deployments into social and political groups meant that
20 the police was closely monitoring, recording and
21 influencing the lawful exercise of their fundamental
22 democratic rights, including freedom of expression and
23 political thought, that there was trespass into private
24 lives, that women were exposed to inherent and
25 discriminatory risks of degrading and abusive

1 sexual relationships when it was the state's obligation
2 to protect them from those risks, and that the police
3 force was being corrupted by these practices, and was
4 betraying the public's trust and the values of truth,
5 integrity and honesty which underpin law and order. By
6 their willingness to lie to courts, for example,
7 the police were attacking the very institutions which it
8 was their duty to support.

9 It's plain that all of this was incompatible with
10 the applicable, contemporaneous standards of law,
11 whether those standards were common law, administrative
12 law or international human rights law. All those
13 sources of law spoke then, and speak now, with one voice
14 on three basic principles: no general authorisation may
15 be given to the police or the Security Service to search
16 individuals or property for evidence of wrongdoing;
17 secondly, police powers to trespass on land, property
18 and person will only be lawful when necessary and
19 proportionate to meet a pressing social need, such as
20 prevention or investigation of serious crime or an
21 imminent breach of the peace; and thirdly, that the use
22 of covert powers by the police and the Security Service
23 is itself a danger to democracy and subject to
24 a particularly strict necessity test, both in terms of
25 the seriousness of the threat said to justify it and

1 the lack of any alternative method of meeting it. All
2 of these basic principles were breached, and that is
3 category H's position on the evidence and law.

4 Sir, in relation to sexual relationships, it is
5 obvious that the invasiveness of the undercover policing
6 method was extreme so that the invasion that was already
7 present from trespassing in people's homes and private
8 lives extended to their bodies and intimacy of romantic
9 relationships.

10 Sir, the MPS now disavows this as wrong. But it is
11 important to be aware that the position of the police on
12 this has not always been so clear; and we've highlighted
13 this in our written statement, that the Commissioner at
14 the time in 2012 told the Home Affairs Select Committee
15 that the fact sexual relationships may sometimes happen
16 in undercover work was almost inevitable.

17 Now, category H CPs agree that abusive
18 sexual relationships are an inevitable risk of long term
19 infiltration by undercover police officers, and that is
20 yet another reason why the undercover tactics should be
21 reserved for the most serious threats and crimes and
22 that every safeguard should be in place to prevent risks
23 from occurring when used. None of this occurred for
24 the duration of the SDS and NPOIU. That is already, in
25 my submission, clear. But the inevitability of this

1 risk, as understood at the time, alongside the lack of
2 any meaningful safeguards, does raise serious questions
3 about the direct and/or indirect involvement, knowledge
4 and awareness of managers and other senior officers.

5 Sir, in conclusion, the category H CPs make plain
6 their view that what happened to them was the inevitable
7 byproduct of an approach to undercover work which was
8 ill-conceived in policing terms because the end could
9 not justify the risks entailed, which, through lack of
10 boundaries and supervision, quickly spiralled out of
11 control, which operated unaccountably, in secret, and
12 which, at all stages, minimal regard was had to the
13 rights of and impact on members of the public.

14 The evidence shows that the maintenance of
15 the secrecy and integrity of the SDS and NPIOU's
16 undercover operations swiftly became an end in itself
17 with constitutional principles that I've mentioned,
18 the justice system -- in other words the courts -- and
19 rights of members of the public coming second.

20 Sir, I wanted to briefly address next steps.

21 In the circumstances that I've described,
22 the category H CPs respectfully suggest that
23 the starting point for the next phase of investigations
24 must be that unless the pattern of undercover policing
25 substantially deviates from that that is already

1 apparent for Tranche 1, it is already clear that
2 the SDS's activities were unlawful and unjustified, and
3 that must mean that the key question is how this managed
4 to happen given the hallowed principles of British
5 democracy that were at stake, and the fact that senior
6 police officers and Ministers must have known about that
7 -- those principles, and why it lasted so long and in
8 particular survived reforms to police practices
9 elsewhere, such as the Police and Criminal Evidence Act,
10 the introduction of the Human Rights Act and of course
11 RIPA.

12 Now, it nonetheless remains essential in order to
13 fulfil the Inquiry's terms of reference that the full
14 extent of the wrongdoing in Tranche 1 is established and
15 explored in the evidence of the managers and more senior
16 officials, and we've suggested in our written statement
17 a number of themes for exploration in that inquiry. And
18 if -- and I think, Sir, you've already put this to
19 the police, but if the other core participants disagree,
20 at least with the legal points that we've made
21 underpinning our position, they should be asked to say
22 why, because establishing the legal framework, and any
23 agreements about it and its consequences, would, we
24 suggest, significantly assist in identifying and
25 possibly narrowing issues under consideration, and it

1 would also assist in identifying the scope of any
2 further examination of the evidence.

3 We note in that regard that the police, the MPS and
4 Designated Lawyers have made a number of requests for
5 new evidence which you have rejected yesterday, but
6 the category H core participants suggest that in any
7 event, the point at which to decide on whether such
8 requests should be acceded to is after the legal
9 framework and any relevant disputes about it have been
10 established, because then it can properly be ascertained
11 whether these requests will be relevant to any issue
12 which the Inquiry still needs to address.

13 My final point is to just highlight that in
14 the written statement the category H core participants
15 have made some points about Rule 9 questions and also
16 disclosure. I'm not going to repeat them now, but that
17 is not because they are not of considerable importance
18 to the category H core participants but for time
19 reasons, and I do ask that they be carefully considered,
20 in particular the request for full and early disclosure
21 of documents which record the activities of
22 the undercover officers with whom they had
23 sexual relationships, and, more broadly, the police's
24 surveillance of them and of the groups of which they are
25 members. They have explained that waiting is a painful

1 process for them, and also that they may be of
2 assistance to the Inquiry once that material is produced
3 -- will be of assistance to the Inquiry.

4 So, Sir, unless there is anything else that I can
5 address, those are -- that is my oral opening on behalf
6 of the category H core participants.

7 THE CHAIRMAN: Thank you. I'm plainly not going to respond
8 in detail at the moment, but I would like, however, to
9 say two things.

10 First of all, I agree with you wholeheartedly that
11 the legal framework for the conduct of undercover
12 operations by a police unit is something that has to be
13 determined and cannot be shirked. I do not intend to
14 shirk it.

15 Secondly, I'm afraid I must repeat
16 the disappointment that I know that the category H
17 core participants have felt in telling them that
18 I cannot, without utterly disrupting the orderly
19 progress of the Inquiry, ensure that they get everything
20 before everybody else. I'm afraid they will have to
21 wait their turn along with everybody else, although I do
22 bear in mind, I'm well aware of the concern -- and
23 worse -- that this causes to them as a result of having
24 to wait, but I'm afraid it's unavoidable.

25 MS KILROY: Sir, well, they will have heard what you have to

1 say about it and we have explained why it is
2 a particular problem for them, and I must reiterate on
3 their behalf that it may engage the state's obligations
4 under Articles 3, 8 and 14, and I have suggested -- we
5 have suggested in the written opening statement that
6 the police themselves need to think carefully about
7 the possible disclosure directly to these women, because
8 it is wrong that they should be deprived of this
9 material for so long when the police have, on their own
10 admission, acted wrongly in relation to these women.

11 THE CHAIRMAN: Well, I can't answer on their behalf, but I'm
12 afraid the answer that I've given you on behalf of
13 the Inquiry is simply unavoidable. It's not out of any
14 wish to uphold a principle, or anything of that kind,
15 it's simply that we cannot do it, and that practical
16 reason, I'm afraid, has to surmount any other
17 consideration. If we can't do it, we can't.

18 Now, you have further opening statements to make,
19 have you not? We're now 25 past. Would you like to
20 start at 2.25?

21 MS KILROY: I'm in your hands, Sir. I mean, I will go as
22 quickly -- it will be quickly, obviously, the next two
23 opening statements, so I'm in your hands whether we
24 start early or at 25 past.

25 THE CHAIRMAN: Well, I think it takes time to organise

1 the courtroom, and everybody needs their lunch, and
2 apart from anything, I personally would like to be able
3 to listen carefully to what you have to say without
4 having to worry about having bolted my lunch.

5 We'll resume at 25 past. Thank you.

6 MS KILROY: Thank you, Sir.

7 (1.24 pm)

8 (The short adjournment)

9 (2.25 pm)

10 THE CHAIRMAN: Ms Kilroy.

11 MS KILROY: Good afternoon. Can you hear me, Sir?

12 THE CHAIRMAN: I can indeed, and I'm inviting you to resume.

13 Opening statement (Diane Langford & "Madeleine") by MS

14 KILROY

15 MS KILROY: Sir, I'm turning now to the opening statements

16 of two women who were spied on by the SDS in Tranche 1.

17 One is Diane Langford and other one is known to

18 the Inquiry as "Madeleine".

19 THE CHAIRMAN: Yes.

20 MS KILROY: Sir, their experiences exemplify what went wrong

21 with surveillance by the SDS, in my submission, and also

22 demonstrate the unlawfulness of its activities.

23 Sir, Diane has given a detailed account of her

24 political activism, her principles political activism,

25 from 1967 onwards, in her evidence and in her previous

1 openings.

2 That evidence records the non-violent, profoundly
3 democratic way in which she sought to transform
4 the social and political system, using debate, protest
5 and lawful means of community organisation and
6 persuasion.

7 As she explains in that evidence, she was
8 Mother of the Chapel, that is a shop steward, for
9 the union, the Society of Graphical and Allied Trades of
10 the Press Association for 18 years between 1974 and
11 1996. And it is clear, both from her evidence and from
12 the evidence of the undercover officers who spied on her
13 that, to quote her in her statement:

14 "I have never been involved in any criminal
15 activity. All my activism has always been open and
16 through the usual democratic means from lobbying
17 the government to attending demonstrations. I have
18 never been arrested for a criminal offence."

19 The evidence also shows that Diane's activities
20 posed no threat to public order; see paragraph 228 of
21 her statement. And she has never been involved in any
22 violence.

23 Despite this, the disclosure made to her by
24 the Inquiry shows that she was the subject of detailed
25 surveillance by undercover officers posing as fellow

1 political activists for nearly five years, between
2 July 1968 and February 1973.

3 Six undercover officers infiltrated her private life
4 in various capacities and reported on her during that
5 period. The surveillance was detailed and intrusive,
6 with undercover officers regularly entering her home,
7 attending private social gatherings and political
8 meetings, and recording detailed information about her
9 political views, family arrangements, marriage and
10 employment. They then stored and shared this private
11 information with other police officers and
12 the Security Service. Their reporting was often
13 accompanied by inappropriate personal commentary on
14 Diane's views and family arrangements.

15 Sir, I've already set out the applicable rights at
16 common law and under the convention in the category H
17 oral and written openings. Diane relies on those
18 rights, which are also summarised in her own written
19 statement, and I won't repeat them.

20 What I do want to spend a little time doing is
21 summarising the evidence that has already been adduced,
22 which shows that Diane's political activities, as
23 already explained, were the subject of intense and
24 long-term surveillance. The surveillance and reporting
25 of two of these officers, HN348 and HN45, was

1 particularly intense.

2 HN348 infiltrated Diane's life for two years and
3 HN45 for three, with both attending private meetings in
4 her home and the homes of fellow activists, and
5 compiling dozens of reports with detailed private
6 information about her political views, that of her
7 husband and about their private family life.

8 Sandra Davies, who is HN348, confirmed that
9 the meetings of the Women's Liberation Front she
10 attended were often held in private homes. She was
11 invited in her undercover identity, and she attended
12 the meetings. And she told her senior officers what she
13 was doing. And she confirmed in her evidence:

14 "... there was no suggestion I should not attend
15 because the meetings were held in people's homes."

16 Nor was she given any guidance not to report private
17 or personal details that she observed.

18 Now, the groups that Sandra Davies infiltrated were
19 involved in hosting meetings, leafletting and
20 demonstrations. They were all activities within
21 the bounds of the law. And as she herself acknowledged,
22 "the political ideology they were promoting did not
23 spill over into what they were doing". In other words,
24 there was no violence, there was no threat.

25 Sandra Davies was not aware of any criminal

1 activity, and there's no record of public disorder by
2 Diane or any other WLF members, nor were there -- any of
3 them arrested. That's also what Sandra Davies says.

4 And she observed, in her words, that WLF were more
5 talk than action; and for the entirety of her two-year
6 deployment, she did not see any subversive or disruptive
7 or violent extremist behaviour. And she explains that
8 she was tasked to observe them because "Special Branch
9 did not know much about them and wanted to find out what
10 was really happening".

11 Now, what she herself says about her
12 undercover policing was that it wasn't worthwhile, and
13 she queries whether police officers should be undercover
14 at all.

15 HN45 was given the broad task of infiltrating Maoist
16 groups, which groups were a matter for him, and he had
17 fluid membership of lots of groups. That's his
18 evidence.

19 "The SDS [he says] was trying to find out whether
20 these groups posed a risk to public order and the
21 security services also had an interest in gathering
22 information about any risks posed to state security."

23 His evidence was that there was no clear next step
24 once an officer got connected with a group; they were
25 expected to use their initiative, discretion and

1 judgment. But he claims he "would not have reported on
2 matters that did not fall within my broad remit".

3 He knew what that broad remit was, which was to
4 gather as much intelligence as he could on his target
5 groups and pass it back to the SDS. So, he reported on
6 names, occupations, addresses, positions of all members
7 on the groups he infiltrated without selection. And he
8 says that one of his main jobs was to find out about
9 membership of protest groups.

10 He also confirms, in relation to the Maoists, that
11 they were generally not violent; he doesn't remember
12 them being engaged in public disorder.

13 He says:

14 "... they were subversive in the sense that [their]
15 whole purpose ... was to subvert the political system
16 but they could not actually achieve this as they did not
17 have the means to do so and were largely pretty
18 ineffective."

19 As for MI5 or the Security Service, he says, they
20 "were interested in everything and you did not ask
21 questions about why they wanted certain information".

22 Now, broadly speaking, the evidence from
23 the managers which you're about to hear in oral -- hear
24 oral evidence from confirms this evidence, that
25 the tasking was extremely broadbrush, that managers

1 within the SDS had very little involvement in
2 decision-making and targeting and tasking of
3 undercover officers, that undercover officers were often
4 left to direct or to determine targeting themselves
5 based on their own judgment and discretion, and were
6 expected to know what to report without guidance and
7 instinctively. And it confirms exactly what HN45 said
8 was happening and HN -- and Sandra Davies.

9 The managers' evidence also confirms that
10 the violence associated with the March 1968
11 demonstration in Grosvenor Square was not repeated to
12 the same degree in October 1968, and there was
13 thereafter overall very little crime, disorder or
14 intelligence about real risks to democracy.
15 The evidence largely showed an absence of risk.

16 Despite this, the ongoing need for the SDS's
17 operations was never properly reviewed.

18 Sir, it is Diane's position, turning back now to
19 the principles of law that I set out earlier on in
20 the category H opening, that the SDS's operations in
21 respect of Diane breached all of those principles.

22 The authorisations to conduct the operations were
23 broadbrush, speculative, and did rely heavily on
24 the discretion of officers. Thus, as described, HN45
25 was given a broad task of infiltrating Maoist groups,

1 which groups were a matter for him. Sandra Davies was
2 tasked to observe WLF, because Special Branch didn't
3 know much about them and wanted to find out what was
4 happening. And that is simply not a lawful approach to
5 search and seizure powers, or their equivalent in
6 the undercover context.

7 Secondly, there was no pressing social need.
8 Maintaining public order, as I've explained by reference
9 to the Wilson judgment, could rarely, if ever, justify
10 the use of highly intrusive powers, and certainly not
11 where the main purpose was effective allocation of
12 police resources.

13 Now, both HN45 and Sandra regularly visited Diane's
14 home and the homes of others. They were trespassing,
15 and they reported on highly personal and confidential
16 matters.

17 As for investigating subversive activity, Diane's
18 political activities were lawful. No criminal offences
19 were being committed and no serious threats to the realm
20 were ever identified.

21 The fact that intrusive powers were being used
22 covertly rather than overtly meant that it was more not
23 less important that they could be strictly justified.
24 And since they couldn't ever have been justified, this
25 kind of intrusive surveillance or intrusive

1 investigation into someone's home, in an overt police
2 operation, they obviously could not be justified in
3 a covert operation. There's no evidence at all in
4 Diane's case of the strict justification required.

5 In all these circumstances, Diane agrees that
6 the surveillance of her and the groups with which she
7 was associated was clearly unlawful and unjustified.
8 She agrees with the next steps suggested by category H,
9 and agrees with the themes that they have identified
10 should be explored in the next phase of evidence.

11 Now, Sir, finally in relation to Diane, I want to
12 turn to Rule 9 questions and disclosure. I won't repeat
13 everything that's in the written statement, but I want
14 to emphasise that she was asked a lot of questions about
15 her political views in the course of this Inquiry. And
16 as she explains, she answered those questions about her
17 history, her political views, her family life, in
18 the spirit of cooperation.

19 But she wants to emphasise that she should never
20 have been put in that position of having to explain in
21 a public forum matters that are no business of
22 the state. The police's surveillance of her was
23 unjustified. They had no right to be in her home. They
24 were trespassing. There was no crime to investigate and
25 they had no lawful authority. They shouldn't have

1 recorded details of her family life or her views
2 expressed in the privacy of her own home or the homes of
3 others. There was no pressing need to do so. Their
4 action was for them to justify at the time, and they
5 haven't justified it.

6 On the question of disclosure, Diane wants to
7 observe that she has assisted the Inquiry to the best of
8 her ability on the basis of the documents with which
9 she's been provided, but she wishes to highlight that
10 the disclosure to her has been limited. She's not
11 received all the documents relevant to the surveillance
12 of her, or the groups of which she was a member, or her
13 family, or even all those held by the Inquiry in which
14 she's named for the Tranche 1 period. And she
15 understands there are reasons for that, as she has
16 explained; she was late designated as a core participant
17 -- not her fault -- but that late designation occurred;
18 and at that stage Tranche 1 documents had already been
19 reviewed and tagged.

20 But she does, as she says in the witness statement,
21 want to highlight that she could, if she had been
22 provided with more relevant information, have provided
23 more evidence relating to the lawfulness and
24 justification of the relevant deployments, as well as
25 the extent of intrusion into her life. And she does

1 respectfully request that that material is now provided,
2 so both she and the Inquiry can assess the full extent
3 of police wrongdoing in respect of her, her family and
4 the groups of which she was a member.

5 Sir, that's the opening in relation to
6 Diane Langford, and obviously I rely on the written
7 opening as well.

8 I now turn to "Madeleine".

9 Sir, in "Madeleine's" evidence and previous
10 openings, she has detailed the political activism which
11 began in her early teens and continued into her 20s,
12 inspired by her parents' experience of extreme poverty
13 and of war and their strong anti-fascism. She has
14 explained the beliefs which led to her joining
15 the International Socialists, and later
16 the Socialist Workers Party, at 14 or 15 years old, in
17 order to create a fairer and more equal society.

18 She has also told how as a bus conductor in her 20s,
19 she was a trade unionist in the Transport and
20 General Workers' Union, sitting on a regional women's
21 subcommittee. After that, her political activities
22 waned and she retrained as an artist, teaching in
23 schools and community groups.

24 Sir, it is plain from her evidence, and from that of
25 the UCOs who spied on her, that "Madeleine" has never

1 been involved in any violence, was never arrested and
2 never convicted for a criminal offence.

3 Despite this, the evidence shows that in 1970, when
4 still a child of 16, "Madeleine" had a Special Branch
5 registry file.

6 By the age of 23, an SDS undercover police officer,
7 Vincent Harvey, was infiltrating her home and private
8 life in his covert identity. For the next two years,
9 while frequently attending public Socialist Workers
10 Party meetings and at private gatherings at her home,
11 Harvey produced regular secret reports relating to her
12 and others which were shared with the Security Service.

13 The reports included physical descriptions of her
14 and details about her family relationships, her
15 political beliefs and her occupation.

16 Worst of all, in 1979, by the time "Madeleine" was
17 25, "Vince Miller", as Harvey was then known, started
18 a sexual relationship with her which lasted around two
19 months. The relationship had a deep emotional impact on
20 "Madeleine" for some time, and it was one of four
21 sexual relationships that he has admitted to while
22 undercover.

23 After Vince Harvey was withdrawn from his deployment
24 in the autumn of 1979, pretending to have gone to
25 the United States of America, he went on to assume

1 senior roles in the police force, including leading
2 Operation Pragada, an investigation into child abuse at
3 Lambeth Children's Services, and becoming National
4 Director of the National Criminal Intelligence Service.

5 In her evidence, "Madeleine" has expressed shock at
6 his role in both of those police institutions in
7 the light of what he did to her.

8 "Madeleine" has read and agrees with and adopts
9 the oral and written opening statements of
10 the category H core participants and also the law set
11 out in Diane Langford's statement; and she relies on,
12 without repeating, the legal framework summarised in and
13 attached to those statements. And she also relies on
14 the summaries of the evidence and themes identified for
15 exploration with witnesses.

16 I want to highlight a few relevant aspects of
17 the evidence in her case. That evidence shows that
18 Vincent Harvey had not been tasked to infiltrate either
19 the SWP or the branches that "Madeleine" was a member
20 of, or "Madeleine" herself. He was asked to observe and
21 then became involved in an active subversive group that
22 were of interest to Special Branch. In other words, he
23 chose the targets of his operation himself, and he used
24 his own judgment about what to report. His role was to
25 gather both information and intelligence regarding

1 potential public order problems and activities defined
2 as subversive by the Security Service. He wasn't
3 provided with any other information about the intended
4 targets of his work.

5 Now, it's important that his tasking was not changed
6 or refined at any point during his three-year
7 deployment.

8 He worked seven days a week, 14 hours a day and
9 earned substantial overtime. That's his evidence.

10 And he viewed his position as treasurer of SWP
11 committees and branches as a "fantastic" opportunity,
12 and used this position of trust to gather financial
13 information on members, including bank details,
14 addresses, occupations and living arrangements. And
15 I know that this is a common practice across the SDS.
16 He then reported this information to the SDS expecting
17 that it would be of use to the Security Service.

18 He reported information about children, because
19 the SWP had youth branches; and he thought it would be
20 useful to MI5 and Special Branch.

21 Sir, as I've already explained, the branches of
22 the SWP that "Madeleine" was involved with engaged in
23 entirely open and lawful political activities whose
24 central aim was to create a fairer society. They held
25 weekly public meetings, sold newspapers in public,

1 attended demonstrations in public, and some members
2 joined trade unions. They didn't support violence and
3 were strongly opposed to any form of terrorism. That's
4 her evidence.

5 And Julia Poynter, who has adduced evidence in this
6 last phase, having been identified in the course of this
7 Inquiry, was a fellow activist in the same group; and
8 she's confirmed "Madeleine's" evidence about this, as
9 well as other matters in relation to her relationship
10 with Vincent Harvey.

11 The evidence suggests that disorder and violence
12 involving the SWP, when it occurred, was instigated by
13 the National Front. It took place at events organised
14 by them and was basically, as a result, predictable.
15 Where violence was envisaged in self-defence against
16 the National Front by the SWP, there was, in
17 the evidence of HN354, Vincent Harvey, himself, often
18 a great deal of rhetoric and language that was much
19 stronger than action that followed.

20 As far as the issue of revolution, which came up in
21 evidence in relation to the SWP, "Madeleine" and her
22 fellow SWP members did not believe revolution was
23 imminent. As she explained, they did not think they
24 could overthrow any part of the state. There was an
25 awful lot talked about, says Vincent Harvey, and very

1 little action. They were far more interested in
2 building the working class movement.

3 That was Vince Harvey's evidence himself. They were
4 seeking to raise awareness in the working class and
5 build a mass movement through their campaigning
6 activities, including selling papers, trade union
7 activities and protests.

8 Now, on the sexual conduct, the evidence shows that
9 Vince Harvey said he had four sexual encounters.

10 Now, he has changed his evidence about this. He
11 initially said they were all some time after he'd split
12 up with a previous long-term partner, but he wasn't sure
13 about the timing of these encounters and his memory of
14 that time is not that clear.

15 But he has now accepted that two sexual encounters
16 took place at the start of his deployment when he was
17 still in a relationship.

18 Vince Harvey met "Madeleine" in 1977. He visited
19 her house. "Madeleine" recalls their relationship
20 starting at the end of summer 1979 and continuing for
21 two months. And she makes clear that her feelings grew
22 stronger while he started to withdraw, blaming a past
23 traumatic relationship. He soon disappeared all
24 together and she was very upset.

25 "Madeleine's" account is corroborated by

1 Julia Poynter, who had not, until recently, seen her for
2 30 years.

3 Now, HN354, Vince Harvey's recollection is that he
4 had sex with "Madeleine" only once, but in the light of
5 all this other evidence and his poor recollection, it's
6 clear that that is incorrect.

7 He was single, he says:

8 "... and in my 20s at the time ... had to mingle and
9 network socially and consume alcohol in order to
10 maintain [his] cover [he says]. [He] was living
11 a strange double life and ... did not think [he] was
12 putting anyone's feelings at risk."

13 And he says, and this is important when it comes to
14 questioning managers, he says as a single man in his 20s
15 "it would have appeared odd to have acted otherwise",
16 and "people would expect you to have some kind of
17 relationship", and he's obviously right about that.

18 But he also says that he did not tell his managers
19 or anyone else about what he describes as the one-night
20 stands he had while undercover. He says that was
21 because:

22 "... [he] didn't attribute it much importance."

23 Again, that is a significant revelation about
24 the way he felt about relationships like this. He
25 didn't conceal it because he was ashamed; he just didn't

1 think it was very important.

2 He finds it very difficult to answer whether sexual
3 activity in his cover identity was permitted. So he's
4 not in a position to say whether it was permitted or
5 not. He doesn't recall guidance for
6 sexual relationships, and he suspects it was left to his
7 own judgment how far to become involved in the private
8 lives of those met undercover.

9 He does say that HN34, that's Geoffrey Craft, had
10 told him not to start a relationship with Julia Poynter;
11 and he didn't have a relationship with Julia Poynter in
12 the event.

13 He accepts it was morally questionable for him to
14 have a sexual relationship with a member of the public
15 over a long time, and he also accepts "Madeleine" would
16 not have had a sexual relationship with him had she
17 known he was an officer.

18 He says stricter guidance and firmer supervision
19 would have led to him making different decisions on
20 sexual relationships.

21 As far as contraception is concerned, he says he
22 didn't use it because -- and I quote:

23 "... my perception was that as a full feminist
24 socialist supporter ... if there was any need for
25 protection, then she would have mentioned it ... this

1 was a member of the women's movement, and things like
2 that ..."

3 He also did not use contraception with the other
4 three women he had sex with, for the same reasons.

5 He doesn't say that "Madeleine's" evidence about
6 the length of the relationship is not genuine, he just
7 says he has a different recollection, but also accepts
8 the deficiencies in his recollection.

9 Sir, he says the SDS was a club within a club and
10 ranks were not particularly important. He called in and
11 spoke to managers every morning and attended meetings
12 with them in safe houses twice a week. When he was
13 withdrawn from his deployment, it wasn't because
14 the deployment had come to an end or had been revoked,
15 it was simply because he was promoted.

16 Sir, it is clear from this summary of the evidence,
17 when considered alongside the legal principles that I've
18 set out earlier on today, that the actions of the SDS
19 and Vincent Harvey in respect of "Madeleine", and the
20 SWP branches of which she was a member, were unlawful.
21 They violated a wide range of her most fundamental
22 rights at common law and international human rights law.
23 And she highlights the following.

24 No general authorisation may be given to the police
25 or the Security Service to search individuals or

1 property for evidence of wrongdoing, and yet
2 Vincent Harvey was sent into the field to pose as an
3 activist and operate undercover for four years -- that
4 was the original length anticipated -- without even
5 having a target organisation to infiltrate, still less
6 an identified individual. He was left to exercise his
7 own judgment on who and what to report on, when and
8 where to conduct his surveillance, and how much or how
9 little to interfere into private lives and homes for
10 three years. His deployment only ended because he was
11 promoted.

12 In terms of the justification required for trespass
13 to land and property and person, and the justification
14 required for interference with private and personal
15 lives, there was no pressing need for any invasive
16 surveillance of either "Madeleine" or her fellow SWP
17 branch members, still less a pressing need for invasive
18 surveillance of this depth and length. She had not been
19 identified as a target nor had her branch. She had not
20 committed any crime, nor did she pose any imminent
21 threat or a breach of the peace which could justify
22 the deployment into her life and home. And once
23 deployed, Harvey's surveillance confirmed this lack of
24 criminality and lack of any imminent threat of violence,
25 and yet the invasive surveillance continued.

1 The use of covert powers by the police, as already
2 mentioned this morning, is itself a danger to democracy,
3 and subject to a particularly strict necessity test,
4 a fortiori this strict test was not met in the case of
5 "Madeleine" and the Walthamstow and Leyton branches of
6 the SWP.

7 Given the lack of any proper justification for the
8 surveillance in the first place, the risk of sexual
9 abuse by officers to which she was exposed for at least
10 three years and possibly longer, and the lack of any
11 steps to avert that risk, amounts to a particularly
12 egregious violation of her rights. And that risk of
13 course eventuated in Harvey's behaviour. His casual and
14 contemptuous use of her body and her emotions for his
15 own ends -- as he explained, he didn't attribute it much
16 importance -- was inhuman and degrading treatment of her
17 by him and all those responsible for his deployment,
18 which can never be justified.

19 "Madeleine" agrees that the critical question for
20 this Inquiry is how and why these serious breaches of
21 her fundamental human rights were allowed to occur in
22 the first place, approved by senior officers and
23 ministers, who must have known that the SDS's practices
24 conflicted with centuries of law and practice.

25 She also wishes to highlight that it is as a direct

1 result of the departure from basic common law and human
2 rights principles that she was put at risk. Had
3 the SDS's invasive tactics been reserved for serious
4 crime or imminent violence, she would have been safe.
5 Had Harvey been given proper targets and tasking, she
6 would have been safe. Had there been tight boundaries,
7 clear guidance and adequate supervision, she would have
8 been safe. Had there been no trespass into the home,
9 she would have been safe.

10 The decisions of senior officers and ministers to
11 send young male undercover police officers out into the
12 field for years at a time on invasive surveillance
13 missions which amounted to vast fishing expeditions
14 conducted in accordance with the UCOs' own judgment and
15 discretion not only conflicted with all applicable laws,
16 it put members of the public at risk. It was
17 unforgivable.

18 And "Madeleine" also agrees with the category H
19 core participants that the next critical question is how
20 and why the unlawful conduct persisted for so long. It
21 is particularly shocking to her that the risks to which
22 she and other women were exposed in the 1970s continued
23 for four decades without any discernible attempts to
24 stop the practice or protect women. The consequence was
25 that Harvey's sexual relationship with her was followed

1 by many examples of male undercover officers using sex
2 with female members of the public to enhance their
3 legends, obtain sexual gratification and/or access
4 better sources of intelligence.

5 Sir, again, on Rule 9 questions and disclosure,
6 I refer to the points made in the written opening
7 statement. And again, I want to emphasise that
8 "Madeleine" has not received full disclosure of all
9 the documents relevant to her surveillance by Harvey and
10 others for the decade in which she was apparently
11 subject to police surveillance. She has not received
12 all of Harvey's reporting from the period of her
13 surveillance, or the reporting of "Phil Cooper", who
14 followed him.

15 She has not been given her registry file created at
16 the age of 16. And she emphasises the consequences for
17 her. She's uncertain about the full extent of and
18 responsibility for the unlawful inroads into her
19 fundamental rights. And she also says and explains that
20 it means she cannot assist the Inquiry as well as she
21 might otherwise do, to assess the veracity and accuracy
22 of Harvey's reporting.

23 And she points out that that is a matter of
24 considerable importance given his self-confessed lapses
25 of recollection. And she can't assist the Inquiry to

1 interpret the significance of contemporaneous events, or
2 identify links between undercover officers or chains of
3 responsibility beyond Harvey himself.

4 Just to give one simple example which she has given
5 evidence about in her latest witness statement, she
6 can't address reports about events which she attended,
7 including at her home, which do not mention her, and
8 cannot suggest reasons why her name might have been
9 omitted. And for those reasons, she agrees that further
10 disclosure should be made.

11 Sir, that is the opening statement -- oral opening
12 for "Madeleine". Unless there is anything else that you
13 would like me to address.

14 THE CHAIRMAN: There is nothing else that I invite you to
15 address. There are two things I would like to say about
16 the remarks that you have made on behalf of both of your
17 two clients.

18 First, specifically in relation to "Madeleine", she
19 has received all that the Inquiry has retrieved. As you
20 know, our source of intelligence reports at this time is
21 principally that which we have recovered from
22 the Security Service, and may or may not therefore omit
23 reports that didn't go to the Security Service, or which
24 have been misfiled there, or which have simply got lost.

25 We have done our best, is all I can say; and she

1 shouldn't expect us to produce anything significant for
2 her for the future.

3 We have not routinely gone to the registry files of
4 all those who are mentioned in the reports. That task
5 would be gargantuan, and it's not a good use of public
6 money or our time and resources, which are limited.

7 Secondly, and perhaps of greater importance for both
8 of your two clients, they have both observed that
9 the Inquiry has no right to know or investigate their
10 views, political views in particular, or to record them.

11 I, of course, accept that the Inquiry has no right
12 to ask. I have made it perfectly clear from the start
13 that insofar as the Inquiry seeks evidence from
14 Non-State Core Participants, it does so on the basis
15 that any information that they provide is voluntarily
16 provided by them; and I do not intend to use statutory
17 powers to compel them to provide any such material.

18 It follows from that that the Inquiry has no right
19 to demand it, which is self-evident from what I've just
20 said.

21 It does, however, follow that if they do provide
22 evidence about their views, for example, that
23 the Inquiry is, by statute, obliged to keep what it has
24 received from them as part of its records.

25 The purpose of asking questions about views and

1 activities at the time, which they are perfectly
2 entitled to keep to themselves, is to try and test
3 the accuracy of the undercover officers' reporting on
4 them. If there are glaring errors, that may or may not
5 be a significant fact.

6 I hope that both of your clients and anyone who may
7 be asked similar questions in the future understands
8 what the position is. I hope I have explained it
9 clearly and accurately.

10 MS KILROY: Well, that was very helpful, Sir, and they will
11 obviously be listening and we will discuss that. But
12 I think it is helpful to know the basis on which those
13 questions are asked. And obviously there is
14 a relationship between the comments that are made under
15 Rule 9 and what we say is the legal framework, and
16 that's drawn expressly in those comments, which is that
17 both Diane and "Madeleine" and the category H
18 core participants are saying these operations were
19 obviously unlawful in the first place, and they cannot
20 be justified by anything that either they may say or
21 that may be alleged in these reports.

22 But that will be a matter for further discussion and
23 argument in due course, I suspect. But that is
24 the basis on which they are concerned to emphasise that
25 their views are not relevant to the question of

1 was an undercover police officer working in the SDS,
2 HN299, "Mike Scott".

3 In the subsequent criminal trial, HN298 went on to
4 deceive the defence, prosecution and court as to
5 the nature of his role. 14 activists, including HN298,
6 "Mike Scott", himself, were convicted. What is striking
7 is that this was done with the full knowledge and
8 encouragement of the management within the SDS.

9 Lord Peter Hain and Professor Jonathan Rosenhead,
10 who I will refer to as "the core participants", welcome
11 the Chair's referral of the Star and Garter
12 demonstration to the panel
13 considering miscarriages of justice arising from
14 the evidence considered by the Inquiry. The basis of
15 the referral included concerns that the prosecution
16 constituted an affront to justice. They endorse
17 the Chair's comment that, and I quote:

18 "The prosecutor and the court were deliberately
19 misled about his [HN298's] identity and role in
20 the events which it was considering."

21 In many regards, the approach taken by the SDS to
22 the Star and Garter prosecution is the first instance of
23 wilful abuse of the criminal justice system by those
24 engaged in undercover policing. That became a repeated
25 pattern in the years that followed.

1 In order to assess the true extent of the failings
2 of the SDS in relation to the involvement of
3 undercover officers in criminal prosecutions, it is
4 imperative to examine the role of managers within
5 the SDS. What emerges is the following:

6 1. A lack of proper policies and guidance.

7 2. A lack of concern for the integrity of
8 the criminal justice system.

9 3. An overriding need to preserve the total secrecy
10 of the SDS and to prevent reputational damage to the
11 police.

12 These themes are also echoed in other areas of
13 concern to the core participants, including, 1,
14 the targeting of political groups; 2, the indiscriminate
15 collection of information, and; 3, undercover officers
16 taking on active roles within target groups.

17 Some of these concerns have already been articulated
18 in previous opening statements on behalf of Lord Hain
19 and Professor Rosenhead, in relation to the actions of
20 the undercover officers themselves. I will try to avoid
21 repeating the same material, but the inquiry is now
22 asked to examine these issues insofar as they relate to
23 SDS managers.

24 Turning to the Star and Garter prosecution itself.

25 The core participants have a number of concerns over

1 the actions of HN298 at the Star and Garter
2 demonstration and the subsequent prosecution.

3 Firstly, the factual innocence of the defendants.
4 Due to the location of the arrest, those prosecuted were
5 not in fact guilty of the offence charged, and this was
6 known to HN298.

7 Secondly, the lack of prior authorisation.
8 The actions of HN298 in participating in
9 the demonstration leading to his arrest and prosecution
10 were not sanctioned in advance.

11 Thirdly, the lack of disclosure. At no point was
12 the existence of an undercover officer amongst those
13 arrested disclosed to the defendants, arresting
14 officers, prosecution or the court. The court was
15 therefore misled on a fundamental issue rendering
16 the prosecution tainted.

17 Fourthly, breach of legal privilege. During
18 the preparation for trial, HN298 became aware of
19 confidential and privileged discussions between
20 the defendants and their lawyers. This was included
21 in reports sent to the SDS. Such information should not
22 have been obtained or passed on by the police.

23 The above matters are sufficient to render
24 the convictions of activists at the Star and Garter
25 demonstration unsafe. The core participants hope that

1 the Miscarriage of Justice Panel will act swiftly to
2 allow steps to be taken to quash the convictions. There
3 has been enough delay already.

4 However, the core participants also ask the Inquiry
5 to examine the role of SDS management in the decisions
6 that led to the Star and Garter prosecutions.

7 Turning now to the involvement of SDS management.

8 Even a cursory examination of the evidence shows
9 that the matters referred to above were done with
10 the full knowledge and even encouragement of the SDS
11 management. Details have been given in the written
12 opening, but in summary:

13 Firstly, Sergeant David Smith, HN103, an SDS
14 manager, was present at the first court appearance on
15 15 May 1972 for those arrested at the Star and Garter
16 demo, when each defendant pleaded not guilty and trial
17 dates were set. This shows that SDS management were
18 monitoring the case closely.

19 Second -- and, again, details are set out in
20 the written opening -- but the documents clearly confirm
21 that within days the matter was communicated to
22 the highest levels of Special Branch. A memo from
23 Deputy Commissioner Ferguson Smith confirms
24 the Assistant Commissioner was verbally briefed on
25 the matter.

1 Third, the senior management were strongly
2 supportive of the actions of HN298. Commander Rodger
3 states that HN298 acted with "refreshing initiative".
4 His recommendation is that:

5 "... rather than have HN298 withdraw from this field
6 ... we should take advantage of the situation to keep
7 abreast of [the activists ...] intentions."

8 Similarly, the deputy assistant commissioner stated:

9 "... we have discussed the problems posed by
10 DC HN298's arrest which I regard merely as one of
11 the hazards associated with the valuable type of work he
12 is doing. There is absolutely no criticism of
13 the officer."

14 Fourth, the potential court proceedings were
15 considered by SDS management at an early stage. A memo,
16 dated 16 May 1972, from HN294 to Commander Operations
17 states:

18 "The decision on which I should be obliged for your
19 guidance is whether DC HN298 should continue [in] his
20 attempt to learn more of them."

21 That is the activists:

22 "To do this he will probably have to apply, as they
23 are doing, for legal aid and attend meetings with all
24 those arrested to discuss tactics etc. Whilst I am
25 reasonably confident that DC HN298 could ..."

1 And I emphasise:

2 "... with assistance, carry this off, there is, of
3 course, the potential of embarrassment to police if his
4 true identity should ever be disclosed."

5 It is clear that SDS management contemplated
6 providing assistance to HN298 in participating in court
7 proceedings under a false identity. The only concern
8 that is raised is "embarrassment to the police".

9 The documents demonstrate that the management, at
10 all levels within the SDS and the higher ranks of
11 Special Branch, were not only aware of, but approved of
12 and assisted with, the proposed plan for HN298 to
13 participate in criminal proceedings without disclosing
14 his true identity. There is no evidence of any concerns
15 raised over, 1, misleading the court; 2, breaching legal
16 privilege, or; 3, for any other consequence beyond
17 reputational damage to the police.

18 I turn, now, to later prosecutions of
19 undercover officers, because the Star and Garter
20 prosecution appears to have set a template for
21 the policy of total secrecy around the involvement of
22 undercover officers in the criminal justice process.
23 The policy against disclosure and the lack of concern
24 for legal privilege also appears to have been embedded
25 in the Tradecraft Manual.

1 Similar concerns about a lack of disclosure to
2 defence and prosecution can be seen in the prosecution
3 of HN13, "Desmond/Barry Loader", in 1977.

4 HN13 infiltrated the Communist Party of England
5 (Marxist-Leninist), and was arrested on a number of
6 occasions at counter-demonstrations against the far
7 right.

8 He was arrested on 17 November [sic] 1977, during
9 a confrontation outside a police station on
10 a demonstration from Ilford to Barking. SDS documents
11 describe the incident as follows:

12 "HN13 who had been marching with his 'comrades' was
13 knocked to the ground, whilst trying to shield two young
14 children and was somewhat battered by police prior to
15 his arrest for Insulting Behaviour under the Public
16 Order Act."

17 HN13 faced trial alongside seven others for public
18 order offences. Charges against HN13 were dismissed,
19 but others were convicted.

20 He was also arrested on 15 April in 1978, three days
21 after the first trial had in fact finished. He was
22 arrested on a demonstration, this time at
23 Loughborough School during the Brixton by-election. On
24 this occasion, HN13 was found guilty of threatening
25 behaviour under section 5 of the Public Order Act 1936.

1 He was issued with a fine and bound over. Three
2 co-defendants were also convicted.

3 On both occasions, no disclosure was made to
4 the defence or prosecution that an undercover officer
5 was involved in the case in any way. A "court official"
6 appears to have been told that HN13 was "an informant"
7 whom the police wished to "safeguard from a prison
8 sentence".

9 However, seeking a reduction of sentence for an
10 informant on the basis, presumably, of assistance given
11 to police -- assistance which the court may have thought
12 did not relate to the matter directly before it -- is
13 very different from disclosing to the court that
14 a defendant currently facing trial alongside others is
15 in fact an undercover officer. Telling the court that
16 HN13 was an informant does not remedy the integrity of
17 the trial process.

18 Again, the fact that an undercover officer was
19 facing criminal proceedings was communicated to very
20 senior managers within Special Branch. Commander Watts
21 met HN13 personally within five days of his arrest.
22 The arrest of HN13 was communicated to Deputy Assistant
23 Commissioner Robert Bryan within four days of his
24 arrest, who in turn informed the Assistant
25 Commissioner "C", who then informed the Commissioner of

1 the Metropolitan Police. To ensure secrecy, Deputy
2 Assistant Commissioner Bryan assured Assistant
3 Commissioner "C" that he kept the relevant paperwork in
4 his personal safe.

5 At all stages, the only concern appears to have been
6 for the wellbeing of HN13 and to maintain secrecy over
7 the SDS operations. There is no mention of any concern
8 over the rights of co-defendants, who, on the face of
9 it, appear to be facing charges arising from incidents
10 involving excessive force from uniformed officers; nor
11 are any concerns expressed for the integrity of
12 the criminal justice system.

13 Such findings were mirrored in the Review of
14 Possible Miscarriages of Justice carried out by
15 Mark Ellison QC and Allison Morgan in 2015, which
16 criticised the policy of total secrecy for the lack of
17 consideration of its impact on criminal prosecutions.

18 The events at the Star and Garter therefore provide
19 the first instance of the issues that are raised in
20 subsequent prosecutions and considered in
21 the Ellison Review. The policy of total secrecy shown
22 in the Star and Garter demonstration and picked up as
23 policy by the SDS had the capacity to erode faith in
24 the criminal justice system. It should be a central
25 concern of this Inquiry.

1 Given the manner in which the Star and Garter and
2 HN13's prosecutions were dealt with, it is clear that
3 SDS management -- at all levels -- were swiftly made
4 aware of undercover officers facing criminal charges.
5 They actively promoted and supported the policy of total
6 secrecy, without any regard for the impact beyond
7 the SDS itself. It is in this context that
8 the core participants ask that the actions of SDS
9 management in Tranche 1 Phase 3 are examined.

10 I move on now to the topic of tasking and
11 supervision of undercover officers.

12 Many of the concerns underlying the approach of
13 the SDS to undercover officers involved in criminal
14 prosecutions -- the lack of proper policies and
15 training, the lack of sufficient oversight by SDS
16 managers and a lack of concern for the rights of those
17 spied on by undercover officers -- are echoed in other
18 areas. In particular, these features had an adverse
19 impact on the selection of targets for
20 undercover officers and their actions in taking on
21 active roles within target groups.

22 The annual reports of the SDS show that those
23 campaigning on anti-apartheid matters were targets of
24 SDS surveillance right from its inception.
25 The Anti-Apartheid Movement, or AAM, itself was

1 identified as a target for surveillance in the first
2 annual report of what was then termed
3 the "Special Operations Squad", later the SDS, in 1969,
4 and the AAM regularly features in reports going forward.
5 At least some of the undercover officers are explicit
6 that they were directed to target the Anti-Apartheid
7 Movement. As the witness statement of HN339
8 "Stewart Goodman" confirms, he was tasked by HN294 and
9 Phil Saunders throughout his deployment. He states:

10 "I was initially directed towards the AAM ...
11 I think my involvement with AAM was preparation for
12 later becoming part of a more militant group;
13 effectively it was my training ground and allowed me to
14 gain legitimacy and an activism background and then move
15 on to another group."

16 Anti-apartheid sporting boycotts, such as
17 the Stop the Seventy Tour, were also targeted.

18 It is noted that even when the formal targets of the
19 SDS had moved on from the anti-apartheid campaign, the
20 AAM remained of interest to the Security Service, who
21 requested information from the SDS on the anti-apartheid
22 movement up to the early 1980s.

23 It is also of note in relation to the core
24 participants that I represent that the Young Liberals
25 were recorded as a group that were of interest to

1 the Security Services in 1972.

2 Many SDS managers state that decisions on tasking
3 came from outside the SDS, either from C Squad and
4 Special Branch, or directly or indirectly from
5 the Security Services. As former SDS manager
6 Geoffrey Craft states:

7 "The Branch was the legs of the Security Service."

8 It is clear that such interests went well beyond any
9 sort of public order issues. This raises very
10 significant concerns over the politicised nature of
11 the work done by the SDS.

12 The influence of tasking from those outside the SDS
13 also appears to have had an impact on the nature of
14 the information collected by undercover officers.
15 The Inquiry has already received evidence about how
16 personal information irrelevant to public order concerns
17 was collected and passed on to the Security Services.
18 For example, undercover officers reported the presence
19 of Peter Hain's younger sisters, both still children at
20 the time, at meetings of the Young Liberals at his
21 parents' home. There does not appear to have been any
22 consideration of the legality of this action by the SDS
23 at any level.

24 The attitude of undercover officers towards their
25 managers in relation to collecting personal information

1 may be seen in the oral evidence of HN298. Referring to
2 the views of "the office admin and people in charge"
3 towards his attending meetings in the front room of
4 Peter Hain's family home, HN298 said the following:

5 "I think ..."

6 And I quote from his oral evidence:

7 "I think probably this kind of thing, they're
8 actually too frightened of these things. They happen
9 and they're confronted with them, and they don't really
10 want to make waves. And this is how these things work
11 ... They don't want you to make waves, but -- when
12 they're confronted with it ... they're in essence
13 obliged to go along with it."

14 The picture presented is of SDS managers that are
15 unable to exercise proper control over
16 undercover officers, SDS management taking a reactive
17 approach and are obliged to go along with decisions that
18 undercover officers make for themselves for fear
19 of "making waves".

20 The role of managers in overseeing the intrusive and
21 disproportionate nature of infiltration by
22 undercover officers is therefore critical to
23 the Inquiry.

24 In conclusion, many of these concerns expressed in
25 this opening statement over the indiscriminate recording

1 and retention of information by undercover officers were
2 reflected in a paper prepared by the Home Office on
3 Special Branches in October 1980. The Home Office paper
4 notes that some of the information that had historically
5 been collected "may not easily be justified". The paper
6 goes on to state that because officers were collecting
7 information on behalf of others, there was a danger
8 that:

9 "... there will be a premium on recording
10 information rather than not doing so."

11 The default position appears to be to include rather
12 than exclude personal information, acting on a "just in
13 case" basis.

14 The Home Office paper recognises that issues
15 relating to disproportionate data collection were
16 directly connected to the need for a clearly defined
17 role for policing in politically sensitive areas, but
18 that this did not alleviate the need for an independent
19 review of what data was collected and retained.

20 The authors of the paper wrote as follows:

21 "... the nature of information stored by
22 Special Branches is in many respects secondary to
23 the question of what Special Branches are there to do.
24 The more clearly the proper extent of their interest in
25 subversion is defined, for example, the more easy it

1 Opening statement by MR JACOBS

2 MR JACOBS: Good afternoon, Sir. I give this opening
3 statement on behalf of Celia Stubbs, instructed by
4 Simon Creighton of Bhatt Murphy solicitors.

5 Would it be possible to have on the screen {DOC/20},
6 please.

7 THE CHAIRMAN: While that is being done, you are perfectly
8 free to sit down, if you prefer. I don't mind.

9 MR JACOBS: Thank you, Sir, I think it's ... ah, thank you.

10 Celia Stubbs was the partner of Blair Peach, who was
11 killed by a police officer striking a blow to his head
12 during a protest against racism in Southall in
13 April 1979. Blair Peach is pictured in the photograph
14 on the screen.

15 The circumstances of the tragic death of Blair Peach
16 and the sustained cover-up that followed it is told in
17 Celia Stubbs' statement and was summarised in her
18 opening statement for Part 2 of this tranche of
19 the Inquiry.

20 In that opening statement, we said as follows:

21 "Celia Stubbs has always been a law-abiding citizen,
22 as was Blair Peach. She is here for answers and [for]
23 accountability. She is not, of course, under any
24 obligation to explain why she should not have been
25 the subject of surveillance: it is for the state to

1 justify why it engaged in such significant and covert
2 intrusions into the private lives and activities of her
3 and others involved in the campaign for justice for
4 Blair Peach. It is for [this] Inquiry to forensically
5 test the justifications being put forward."

6 It has always been apparent that policing public
7 disorder could not provide justification for
8 the intrusion into the peaceful campaigns pursued by
9 Celia Stubbs.

10 Nearing the close of the evidence of this tranche of
11 the Inquiry, Sir, it is unsurprising that the disclosure
12 has not revealed even the faintest suggestion that
13 Celia Stubbs has been involved in anything other than
14 important and lawfully pursued campaigns; not only in
15 relation to the death of Blair Peach, but also in
16 founding INQUEST, which continues its invaluable work
17 today in assisting bereaved families four decades after
18 it was established.

19 It would also be fanciful to suggest that
20 the intelligence gathered by undercover officers on
21 Celia Stubbs and the Blair Peach campaign was simply
22 incidental to reporting on political activists who were
23 involved in public disorder and included only in
24 a "hoovering" or indiscriminate approach to
25 intelligence-gathering. That could not explain

1 the maintenance of covert intelligence on Celia Stubbs
2 and the campaigns with which she was associated over
3 a period of decades.

4 It is also undermined by the emerging evidence as to
5 the uses to which covertly-gathered intelligence was
6 put.

7 Whether or not the SDS was conceived as a response
8 to concerns relating to public disorder, it quickly
9 morphed into a source of information to serve
10 the interests of Special Branch more generally, and of
11 the Security Service. And it is evident that
12 Special Branch had a keen interest in intelligence
13 regarding campaigns which sought to ensure that police
14 fully account for their conduct in public. That
15 interest was not to protect the public from harm, it was
16 to protect the police themselves from having to account
17 for their actions. Special Branch wanted to stay one
18 step ahead of the legitimate and understandable concerns
19 of Celia Stubbs and were willing to make use of covert
20 policing to do so.

21 The photograph can be taken down now. Thank you.

22 Sir, I address tasking in respect of
23 the Blair Peach campaign, and in a slightly shorter
24 format to that in our written opening.

25 The managers who have given written evidence

1 generally deny any knowledge of why
2 the Blair Peach campaign was reported on, or the extent
3 to which information provided by the SDS was further to
4 specific tasking.

5 That, in part, is unsurprising as to date
6 the Inquiry has not been given any cogent explanation as
7 to how tasking took place generally.

8 It is clear, at least in general terms, that
9 the motivation for the undercover policing in the SDS
10 and the tasking was far broader than public disorder,
11 and satisfied a range of interests across the various
12 parts of Special Branch, the Home Office and
13 the Security Service. It is also clear from
14 the recently disclosed transcripts of the closed
15 hearings that directions were being given to
16 undercover officers directly by the Security Service.

17 One of the managers, Angus McIntosh, insists that
18 those who campaigned in relation to the death of
19 Blair Peach:

20 "... were not reported on because they were seeking
21 to discredit and criticise the police [but because] ...
22 they were people who were or would have been identified
23 by the UCOs as being activists on the public order
24 scene."

25 However, he also says that he could not remember

1 what public order problems arose in connection with
2 Blair Peach's death.

3 That insistence that the reporting on the campaign
4 was motivated by concerns relating to public order is
5 undermined by the fact that the campaign was not
6 associated with disorder. Moreover, although
7 Angus McIntosh offers a general denial of the interest
8 in the campaign being anything other than public
9 disorder, when it comes to explaining the reporting on
10 the funeral of Blair Peach, he says that he would not
11 have known to what use such information would have been
12 put, but his understanding is that it was "for
13 the Security Service, and for vetting, and
14 identification/tracing". It clearly had nothing to do
15 with public disorder.

16 That there was specific tasking relating to
17 the Blair Peach campaign has been confirmed by
18 the evidence of HN21. In his closed evidence he
19 indicates a recollection that "one of the management"
20 asked him to attend Blair Peach's funeral and it "could
21 have been Geoff Craft".

22 Ultimately, Sir, there remains a gaping hole in
23 the evidence about the reasons why undercover officers
24 were tasked to report on the Blair Peach campaign. That
25 there still exists such a hole raises serious concerns

1 about the ongoing refusal of the Metropolitan Police to
2 be open and honest about its actions.

3 The absence of documentary evidence on tasking does
4 not of course indicate that such tasking did not take
5 place. We know that tasking sometimes took place
6 orally, but more fundamentally, we also know there are
7 huge gaps in the documents.

8 Mark Ellison QC, in his review of claims by
9 Peter Francis that he was tasked to find intelligence
10 that could be used to smear the family of
11 Stephen Lawrence, came to the view that the destruction
12 of documents meant that little weight could be attached
13 to the fact that no record can be found to confirm any
14 relevant aspect of SDS activity. Sir, we invite you to
15 take the same approach.

16 Sir, I return to the reporting on Celia Stubbs and
17 the Blair Peach campaign and its content.

18 We have seen in the evidence that it commenced in
19 the 1970s and continued at least into the 1990s. It
20 followed not only her campaign in respect of the death
21 of Blair Peach, but also her involvement in other
22 justice campaigns, including in founding INQUEST, and
23 her involvement in the Hackney Community Defence
24 Association and Colin Roach Centre.

25 Since the hearings for part 2 of this tranche,

1 Celia Stubbs has received documents disclosed by
2 the Metropolitan Police in response to a subject access
3 request. They are primarily Special Branch documents,
4 and it appears likely that at least some of
5 the disclosed documents recite information from
6 undercover officers, although were not obtained or
7 disclosed by this Inquiry.

8 We say that should be of significant concern to you,
9 Sir, and worthy of further investigation by the Inquiry
10 team.

11 Indeed, one of the documents, a report of
12 10 April 1989 on a meeting of the Blair Peach 10th
13 Anniversary Committee is stated to be from "a secret and
14 reliable source", which indicates an undercover officer.

15 Sir, if it would help to see the document, it's at
16 doc 072 {DOC/72}, which can be brought up on the screen.

17 THE CHAIRMAN: This is a document which you obtained from
18 the Metropolitan Police on the subject access request?

19 MR JACOBS: That's correct.

20 THE CHAIRMAN: It has been redacted by them. There has been
21 no participation by the Inquiry in the redaction of this
22 document.

23 MR JACOBS: That's correct, Sir.

24 And if you look, for example, over to the next page
25 {DOC/72/2}, you will see that the entirety of it is

1 redacted.

2 Clearly, if it had been obtained or provided to
3 the Inquiry, then the approach to redaction might be
4 very different.

5 Sir, that can be taken down.

6 Although heavily redacted, the reports give some
7 further insight, we say, into the interests of
8 Special Branch, which, as has become increasingly clear
9 to the Inquiry, were served generally by the SDS. They
10 help answer the question as to why information was
11 gathered on Celia Stubbs and the campaigns with which
12 she was associated; and they are appended, as I can see
13 you have, Sir, to our opening statement.

14 If doc 073 {DOC/73} could be brought up on
15 the screen.

16 This is a document of 11 October 1974, and it
17 appears to us to have been the first photograph and
18 detail of Celia Stubbs. And this is likely when her
19 registry file reference was created. And you'll see,
20 Sir, that it includes details of her passport, her
21 marriage and her children.

22 A Special Branch report of 1978 noted details of
23 Blair Peach's car and relationship with Celia Stubbs.

24 If we could have up on screen doc 075 {DOC/75}.

25 Sir, you'll see that this is a Special Branch

1 report, again provided in response to the subject access
2 request, which describes an incident of Celia Stubbs
3 wearing an Anti-Nazi League lapel badge and being
4 assaulted by two members of the National Front and
5 suffering bruises and lacerations to her face.

6 You may note, Sir, that this is the only incident in
7 the documents in which Celia Stubbs is associated with
8 an incident of disorder, and it is her being a victim of
9 a vicious attack by two members or supporters of
10 the National Front.

11 THE CHAIRMAN: Yes. Forgive me for interrupting you again,
12 but for the avoidance of doubt for those looking at
13 these documents, these are all retrieved from
14 the Metropolitan Police under the subject access
15 request, and there is nothing in the text of this
16 document to indicate that it had anything to do with
17 the SDS.

18 MR JACOBS: Sir, in relation to this document, yes. We
19 would say in relation to the last document where it
20 says "secret and reliable source" --

21 THE CHAIRMAN: I wasn't making that point in relation to
22 that document. But you have produced some documents
23 which look as though they had something to do with
24 the SDS. But I think I'm right in saying the majority
25 of those that you have from this source aren't.

1 MR JACOBS: Sir, that's right. What we would say is that
2 the evidence we do have relating to the SDS is that it
3 served the interests of Special Branch generally. So
4 where the documents indicate what is of interest to
5 Special Branch, then a reasonable inference can be made
6 that it's likely also a matter of interest to the SDS.

7 THE CHAIRMAN: Well, that is a matter that may or may not be
8 right. All I was trying to do, and I would invite you
9 to do it, if we're looking at further documents, is to
10 indicate whether or not you say they do, may have or do
11 not originate from the SDS.

12 MR JACOBS: Sir, of course.

13 THE CHAIRMAN: Thank you.

14 MR JACOBS: That document can be taken down.

15 The vast majority of reporting on Celia Stubbs
16 followed the death of Blair Peach and then continued for
17 the next two decades.

18 Could we have up document 076 {DOC/76}.

19 Sir, while we're waiting for that to be brought up,
20 it's a Special Branch report of 19 June 1979. It
21 certainly doesn't indicate on its face that it's an SDS
22 document or originates from the SDS. But what it does
23 say is that the report:

24 "... concerns those persons, known to this Branch,
25 who have made written statements to Police concerning

1 the death of Blair Peach during an anti-National Front
2 demonstration at Southall on 23.4.79."

3 Sir, at paragraph 2 you can see it says:

4 "Appendix 1A shows a list of all persons who have
5 made statements to Police concerning this matter.
6 Appendix attached shows a list of those persons who have
7 been positively identified as having previously come to
8 the notice of this Branch, together with the personal
9 details they gave to Police and a brief resumé of
10 information concerning the individuals, recorded in this
11 Branch."

12 And "this Branch" being Special Branch.

13 So we can see, Sir, it's a collation of the key
14 information held by Special Branch on all individuals
15 giving evidence in respect of Blair Peach's death.

16 The information itself, the appendix, is redacted;
17 we don't see it. In our submission, it's likely, Sir,
18 that information gathered by the SDS would have been --
19 would have fed into it, because the evidence tends to
20 suggest that the intelligence gathered by the SDS simply
21 fed into the general pool of intelligence held and used
22 by Special Branch.

23 Sir, the document does not spell out why
24 Special Branch was collating and reporting information
25 it held on all individuals who had given statements to

1 the police, but in our submission, it is difficult to
2 see any motivation other than that it was looking for
3 opportunities to discredit accounts given of police
4 brutality which resulted in Blair Peach's death.

5 That can be taken down. Thank you.

6 Sir, we had previously observed in our opening
7 statement for Part 2 that in April 1980 another
8 Special Branch memorandum recorded a meeting with
9 the Deputy Assistant Commissioner of Operations of
10 the Metropolitan Police regarding the Friends of
11 Blair Peach Committee and consideration being given to
12 applying for a High Court injunction to prohibit
13 the further publication of the names of the Special
14 Patrol Group officers allegedly involved in Peach's
15 murder. Sir, we say that these documents show that
16 intelligence was used by Special Branch -- and that
17 would have included SDS intelligence -- not for
18 responding to public disorder but for responding to
19 the campaign.

20 Sir, we also say that much of the Special Branch
21 reporting reveals the prejudices and the disdain that
22 the Metropolitan Police and Special Branch held towards
23 those seeking to hold police to account for their
24 conduct.

25 Could we have on screen {DOC/78/1}. Thank you.

1 Sir, this is an undated report. It describes
2 Celia Stubbs first coming to notice in 1976. Sir, if
3 you look in the body of text, and in particular in
4 the middle, you'll see a sentence beginning:

5 "Following the death ..."

6 And it says:

7 "Following the death of Blair Peach [Celia Stubbs]
8 became a useful propaganda tool for the left-wing
9 publicity machine. Since 1980 she does not appear to
10 have been involved in any public order incidents. She
11 would appear to be a member of the pressure group
12 'INQUEST' purely because of her association with PEACH."

13 Sir, Celia Stubbs' partner had been killed by
14 a police officer and the circumstances of the death were
15 known to the Metropolitan Police but concealed until
16 the Cass Report was published in April 2010. Though she
17 never did achieve justice for Blair Peach, her
18 campaigning was valiant and it was dignified. To
19 Special Branch, however, as we suspect this document to
20 be, she was a mere "propaganda tool for the left wing
21 publicity machine". We say it reveals the utterly
22 misplaced disdain for justice campaigns that drove this
23 policing. It was this institutional mentality or
24 mindset which left the SDS, and Special Branch more
25 broadly, willing to engage in the gross invasions of

1 privacy that it was committing to obtain information
2 that had no legitimate purpose.

3 Sir, a similar tone is evident in {DOC/79/1}, and if
4 that document could be brought up, please. This is
5 a Special Branch report of 1 February 1982 of a
6 12-person meeting of INQUEST, and I'm happy to indicate,
7 Sir, that it's Special Branch rather than SDS, as far as
8 we know, although it is a meeting -- a report of a very
9 small meeting of just 12 persons.

10 The author of the report observes -- and if we can
11 go to the next page, so {DOC/79/2} -- at paragraph 9, so
12 toward the bottom of the page, it says:

13 "There seems to be little doubt that Inquest has
14 sprung out of Celia STUBBS' desire to keep
15 the Blair PEACH affair from the public gaze. She
16 realises that interest has waned and has hit upon
17 the idea of reviving it by linking up with other
18 notorious cases of recent years. Most of the others
19 involved are merely looking for a cause to adhere to.
20 Without STUBBS the group simply would not exist.
21 However, they are articulate and committed types and it
22 does not seem beyond the bounds of possibility that they
23 could eventually achieve the quasi respectable status of
24 groups such as NCCL."

25 Sir, you will be aware that that was the National

1 Council for Civil Liberties, now Liberty.

2 So we say that the Special Branch narrative is
3 disturbing. It is important to note as background
4 the consistent role that NCCL had played in promoting
5 better policing and the close attention given to it by
6 Special Branch from its inception. In relation to
7 Southall itself, the NCCL had contributed to
8 the Unofficial Committee of Enquiry that investigated
9 the events and subsequently published two reports, one
10 of which focused directly on Blair Peach's death.
11 The Commissioner of Police at the time, David McNee, was
12 invited to cooperate with the unofficial enquiry but
13 refused this invitation and a public inquiry never took
14 place. To Special Branch, however, it appears that
15 persons victimised by police who went on to campaign in
16 an effort to hold police to account were to be regarded
17 or perceived as subversive. We also say that is evident
18 in the annual report for 1979, which disparages those
19 embarking on campaigns around the events in Southall.

20 The portrayal of the campaigning of Celia Stubbs as
21 opportunistic is disturbing and it provides valuable
22 insight into the reasons why undercover officers were
23 tasked to report on her. That report was written
24 40 years ago and, today, INQUEST, the organisation that
25 Celia Stubbs helped to found, helps hundreds of bereaved

1 families each year seek justice for their loved ones who
2 have lost their lives in police and prison custody,
3 immigration detention, mental health settings and
4 involving multi-agency failings.

5 That document can be taken down.

6 Notwithstanding that INQUEST simply assists families
7 through the legal process of an inquest and is not, and
8 never has been, remotely subversive, it was the subject
9 of frequent Special Branch reporting, including
10 reporting from SDS officers. One apparent "front
11 sheet" -- which, again, we suspect to be Special
12 Branch -- has the basic details of INQUEST under
13 the heading "Police Accountability Groups". It appears,
14 then, that Special Branch had, perhaps still has, a file
15 with its collated intelligence from overt and covert
16 sources on "police accountability groups".

17 Celia Stubbs believes this brings into focus an
18 especially important point for you, Sir, to assess and
19 to include in your report. It should be made known
20 publicly through this Inquiry that during the time with
21 which this tranche is concerned, Special Branch collated
22 intelligence on "police accountability groups" such as
23 INQUEST in an apparently determined and coordinated
24 fashion and that the SDS fed into that. It was not
25 because such groups posed a threat to security, but

1 because they sought properly to call police to account
2 and achieve legal redress for wrongdoing.

3 The Inquiry's terms of reference challenge it to
4 determine what were the motives for undercover policing.
5 It is apparent that in very substantial part the SDS
6 served the broader interests of Special Branch and other
7 agencies such as the Security Service. Without
8 disclosure and inquiry into those matters, the ability
9 of the Inquiry to shine a light on the motives of
10 undercover policing are, in truth, limited. However, we
11 say that the following key points emerge as to the uses
12 to which information gathered on Celia Stubbs and
13 the campaigns with which she has been associated was
14 put.

15 First, there is no evidence that such intelligence
16 was used in any meaningful way to address concerns of
17 public disorder. In fact, there was no indication that
18 such concerns even existed, other than on the perverse
19 and self-serving basis that anyone who seeks to hold
20 police to account for their wrongdoing and insist they
21 act in accordance with the law must necessarily be
22 a threat to public order.

23 Second, as I have already referenced, Sir, it
24 appears that SDS information was used in April 1980 to
25 assist the Deputy Assistant Commissioner of Operations

1 of the MPS in considering seeking an injunction to
2 prohibit the Blair Peach campaign publishing the names
3 of the officers suspected of having been involved in his
4 killing.

5 Third, again, Sir, as I have referenced,
6 Special Branch information was collated on all
7 individuals who provided a statement in respect of
8 the killing of Blair Peach.

9 Fourth, information on justice campaigns appears to
10 be placed in the Special Branch file reserved for
11 "police accountability groups".

12 So we say that where there is evidence as to how
13 information was put to use, it is all concerned with
14 responding to campaigns for justice.

15 Sir, what conclusions should you draw from these
16 matters?

17 The inexorable conclusion, we say, is that
18 the motive for covert policing of Celia Stubbs and the
19 groups with which she was associated was not public
20 disorder, it was assisting the Metropolitan Police and
21 responding to and staying a step ahead of campaigns that
22 sought to require the police to account for their
23 actions in public and to achieve justice. These
24 campaigns used lawful methods and posed no risk of
25 public disorder.

1 Sir, I turn, as a final topic, to missing documents
2 and the closed hearings.

3 Paragraphs 44 to 51 of Celia Stubbs' opening
4 statement to Part 2 addressed the fact that the SDS
5 reports were prepared as a matter of course before and
6 after large demonstrations and are available for events
7 such as the 56-page report for the "Battle of Lewisham".
8 However, for the protest at Red Lion Square, and for
9 Southall, nothing has been produced to the Inquiry.
10 That is, for those events which saw the deaths of
11 Kevin Gately and Blair Peach, the reports appear to have
12 gone missing. They must have existed, and the
13 transcripts of the closed hearings make it clear that
14 one undercover officer, HN41, reported extensively on
15 the events preceding Southall and what occurred on
16 the day itself.

17 Celia Stubbs notes the steps taken by the Inquiry to
18 locate the missing documents as described in
19 Counsel to the Inquiry's second addendum disclosure
20 note. She is, however, disappointed that the Inquiry
21 has not been willing to search what is described as
22 the "significant number" of non-special Branch files
23 available to review. The disclosure note describes
24 the steps it has taken to identify relevant material as
25 being "proportionate". We say that these reports are

1 crucial to understanding, in accordance with
2 the Inquiry's terms of reference, the "contribution made
3 by undercover policing towards the prevention and
4 detention of crime", and also the "effect upon
5 individuals ... and the public in general" of undercover
6 police operations. The relevance goes not only to
7 the role played by the SDS in advance planning for large
8 scale protests, but also whether the SDS was
9 subsequently complicit in concealing information and
10 police misconduct. As is clear from the evidence to
11 date, there was a revolving door of information between
12 the SDS, Special Branch, uniform policing and outside
13 agencies such as the Security Services. It is obviously
14 possible, we say, that the reporting could exist other
15 than in the Special Branch files. The use of
16 the term "proportionate" in this context should not
17 distract or deflect from the Inquiry's duty to mount
18 a thorough and effective investigation into all of
19 the uses made of the reports generated by undercover
20 policing.

21 Of significant interest is that HN41, in his closed
22 evidence, described that SDS managers did not want
23 undercover officers to attend the rally at Southall.
24 That is because it was known to the SDS that uniformed
25 officers were planning to "clamp down on

1 the demonstrations" and dangers were "more than normal".
2 That increased danger posed by the uniformed officers
3 would have been faced by members of the public and
4 undercover officers alike, and that was obviously
5 a concern for the SDS. HN41 also described
6 the "disastrous mistake" in public order planning of
7 closing down part of Southall. That offers a glimpse
8 into the information likely within the report that may
9 have been profoundly important in exposing the approach
10 of the police to the rally and the violence which
11 resulted in the death of Blair Peach. It reinforces
12 the belief of Celia Stubbs that the reasonable inference
13 from such reports going missing is that they were
14 considered damaging to the police and have been
15 deliberately destroyed.

16 Further, it is evident from HN41's account of
17 being "smuggled in" to Scotland Yard to give a statement
18 as the "Murder Squad" had heard of his presence at
19 Southall, that the officers investigating Blair Peach's
20 death were well aware of the SDS presence and likely
21 knowledge of events, but that knowledge was never
22 revealed in the inquest.

23 It is concerning, we say, that this evidence was
24 dealt with in closed hearings and is now only available
25 in redacted form, not least because it is the only

1 direct evidence from undercover police officers in
2 relation to the events at Southall and the subsequent
3 investigation into Blair Peach's death. It provides
4 confirmation that there was advance intelligence from
5 the SDS, liaison with undercover officers present at
6 the demonstration, and liaison between the SDS and other
7 departments after the event in relation to
8 the investigation into the death. This evidence raises
9 many more questions, we say, which could be put to
10 the witness HN41, and underscores the concerns raised by
11 Celia Stubbs and other core participants about
12 the extent of their ability to participate effectively,
13 and we would invite the evidence to be revisited.

14 This Inquiry is not, of course, the first instance
15 in which such reports were required to be disclosed but
16 have not been. Reports of the type referred to by
17 undercover officers and SDS managers to this Inquiry
18 would have fallen to be disclosed into the coronial
19 inquests into the deaths of Kevin Gately and
20 Blair Peach, and also to Lord Scarman's public inquiry
21 into the events of Red Lion Square. The requirement for
22 disclosure may have placed the Metropolitan Police in
23 somewhat of a dilemma as it wished to keep the existence
24 and role of the SDS concealed. However,
25 the Metropolitan Police had no authority to respond to

1 such dilemmas by withholding obviously relevant and
2 potentially crucial documents. Sir, you will be aware
3 that there were similar failures to disclose undercover
4 reporting to the Macpherson Inquiry.

5 We say that there appears, ultimately, to have been
6 two sides to the deployment of undercover officers as
7 a means of managing reputational damage to
8 the Metropolitan Police.

9 First, there was reporting on the activities of
10 groups which sought to hold officers to account for
11 their actions for the purposes of being able to
12 effectively preempt or respond to them.

13 Second, there was the destruction or withholding of
14 evidence, undercover officer and SDS reports, that would
15 have been reputationally damaging and of assistance to
16 those groups in their campaigns.

17 Sir, I turn to our conclusion.

18 Nearing the end of the evidence to this tranche of
19 the Inquiry, it is clear that there was never any
20 justification for the covert policing in respect of
21 Celia Stubbs and the Blair Peach campaign. That is no
22 revelation as it is known that Celia Stubbs is and
23 always has been a law-abiding citizen whose life was
24 turned upside down by the conduct of officers serving
25 within the Metropolitan Police, who took the life of her

1 partner as he campaigned, peacefully, against racism.

2 A more fundamental question is why
3 the Metropolitan Police pursued these activities. As in
4 the Inquiry's terms of reference, to "examine
5 the motivation for ... undercover police operations in
6 practice".

7 The answer is that the motivation in respect of
8 the covert policing of Celia Stubbs was to enhance
9 the ability of the Metropolitan Police to respond to
10 the Blair Peach campaign and resist its legitimate
11 demands that officers be held to account for their
12 actions. That conclusion will only become clearer as
13 the Inquiry moves to its next tranche, and it becomes
14 apparent that the reporting on Celia Stubbs was only
15 the first of very many instances of covert policing of
16 peaceful justice campaigns.

17 Celia Stubbs hopes that the Inquiry will understand
18 how traumatic it has been for her to discover the extent
19 and nature of the undercover reporting on her over
20 the years that she pursued this campaign.

21 Her trauma is made worse by the steps taken by
22 the Metropolitan Police to obstruct access to
23 the relevant material. It is the task of this Inquiry
24 to understand and highlight the extent of the harm
25 caused by all of these aspects of undercover policing.

1 It is therefore appropriate for the final words of this
2 opening statement, Sir, to be directly from Celia Stubbs
3 and what she says is this:

4 "Following the disclosure of the Cass Report in
5 2010, I with other friends from the campaign felt that
6 it had run its course. It was then I had legal advice
7 that there was a case for the inquest to be reopened now
8 we had information that had been hidden from us at
9 the original inquest in 1980. I declined this as I just
10 could not face the publicity that this would engender.
11 Since I have learnt about the surveillance the SDS and
12 Special Branch have carried out on me stretching over
13 nearly 30 years and how I have been held up
14 as 'a propaganda tool', I have felt more distressed but
15 also angry. To put it bluntly, police officers took my
16 partner's life and then concealed the truth.
17 The concluding job of this Inquiry is to uncover
18 the truth."

19 Sir, that's our opening statement. Thank you.

20 THE CHAIRMAN: Thank you very much.

21 May I make just one observation. You rightly say
22 that the Inquiry should look for documentary evidence
23 about the use to which SDS intelligence was put in
24 advance of major demonstrations such as at that Lewisham
25 and at Southall. They're known in the trade language,

1 I think, as "threat assessments". The Inquiry has
2 sought these documents; the Metropolitan Police have not
3 been able to find them.

4 I don't know at this stage what if any other
5 documents might have existed or, if they did, could now
6 be recovered other than threat assessments which might
7 illuminate this part of the story.

8 Are you able to make any suggestions?

9 MR JACOBS: Sir, our understanding from the note provided by
10 Counsel to the Inquiry is that there had been a review
11 of files specifically held under Special Branch but that
12 there are quite a number of other available files which
13 haven't been perused. The rationale given is that it
14 would not be proportionate on the basis that it's
15 suspected that the document probably isn't in those
16 files anyway.

17 Our concern would be that, actually, given
18 the revolving door of information, as we put it, between
19 Special Branch, between uniformed branch and so on, it's
20 actually not unlikely, it appears to us, that in respect
21 of a significant event such as Southall the relevant
22 reports did find their way beyond Special Branch and
23 might be in those files that haven't been searched.

24 THE CHAIRMAN: Well, all I can say is what my understanding
25 at present is of the manner in which SDS reporting on

1 these major events was dealt with. It was sanitised by
2 a Special Branch unit, then put into a threat assessment
3 which collated information gathered from a wide variety
4 of sources and informed the A8 or uniformed police
5 response to the forthcoming demonstration. The Inquiry
6 has a mammoth task in looking for documents and, once it
7 has obtained them, in collating them, in seeing that
8 they're properly redacted, in seeing that they're shown
9 to those to whom they need to be shown, and there is
10 a finite limit on what we can do and the general trawl
11 of police records crosses that limit, I'm afraid.

12 MR JACOBS: I hear what you say, Sir.

13 THE CHAIRMAN: We have conscientiously looked for specific
14 bits of information in Metropolitan Police records. I'm
15 not talking necessarily about the matters I've just
16 mentioned, but it has been a very time-consuming and
17 problematic task and I'm afraid there has to come
18 a point at which we simply have to say, unless someone
19 can point us to a specific place where a specific
20 document is to be found, we can't do it.

21 Thank you in any event, and I'm grateful to you for
22 concluding your opening remarks within the time that you
23 said you would and the time that is available. Thank
24 you.

25 MR JACOBS: Thank you, Sir.

1 THE CHAIRMAN: We'll adjourn until tomorrow at 10.

2 (4.27 pm)

3 (The hearing adjourned until 10.00 am on Wednesday,

4 11 May 2022)

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