

Monday, 20 February 2023

(10.00 am)

THE CHAIRMAN: Mr Barr.

Closing statement by MR BARR

MR BARR: Thank you, Sir.

Inquiring publicly into the actions of an undercover police unit which was gathering intelligence about political activists half a century ago is no easy task. However, we have now reached the point at which we have obtained, prepared for publication and adduced evidence about the formation of the Special Demonstration Squad, the SDS, and its operation from 1968 until the early 1980s. We have investigated 56 undercover officers, UCOs, all of whom joined the SDS at some point between 1968 and 1979. We obtained witness statements from 36 of these officers, 16 former undercover officers and two risk assessors gave oral evidence in open hearings, and a further five gave closed oral evidence. 21 civilian witnesses provided witness statements, and 12 of them gave oral evidence.

We have also investigated the management of the SDS, obtaining witness statements from 13 former managers or administrators who served within the SDS and calling seven of them to give oral evidence.

Witness statements from six former police officers

1           who were involved either in the SDS's higher chain of  
2           command or as disseminators or consumers of SDS  
3           intelligence have been put into evidence, as have four  
4           witness statements from former Home Office officials,  
5           all of whom discharged functions with some connection to  
6           the SDS.

7           The evidence of witnesses is valuable and on some  
8           issues invaluable. However, at this remove in time,  
9           there can be no doubting the utility of contemporary  
10          written records. The discovery of very extensive  
11          surviving records from the Tranche 1 era enables a much  
12          more effective forensic exercise than would have been  
13          possible had we had to rely upon human memories alone.

14          I do not propose either to rehearse or to analyse in  
15          detail the evidence that we have received. We have  
16          already produced detailed openings for each of  
17          the hearings in Tranche 1, as well as submissions on  
18          the law, which it would serve no purpose to repeat.  
19          Rather, I shall summarise the broad conclusions which,  
20          it appears to us, can be drawn from the evidence.

21          On issues in which core participants have  
22          a particular interest, they, or their counsel, will make  
23          more detailed submissions. I shall, in places, seek to  
24          identify emerging themes and trends, although I am  
25          conscious, Sir, that for the purposes of your interim

1 report, you may decide that some such issues are best  
2 left until you have heard all the evidence. As in  
3 previous submissions, I shall also use "SDS" throughout  
4 to refer to the undercover unit which, at least in its  
5 early years, was referred to formally and informally by  
6 a variety of other names.

7 Metropolitan Police Special Branch was already  
8 gathering intelligence about groups and individuals on  
9 the far left of the political spectrum, amongst others,  
10 before the Special Demonstration Squad was established.  
11 It collected such intelligence from numerous sources.  
12 A common source was plain-clothed police officers who  
13 attended and reported on meetings held by activists.  
14 Such officers could attend public meetings but were not  
15 always successful in their attempts to attend private  
16 meetings. They either did not deceive others as to  
17 their identity, or did so briefly, using only temporary  
18 and superficial cover. Intelligence was recorded in  
19 the same format and on the same forms as were first used  
20 by the SDS. Special Branch used these sources to build  
21 up a detailed picture, not only of the groups, but also  
22 their members and sympathisers, especially leading  
23 members.

24 In 1967, and particularly 1968, there was an  
25 increase in violent political demonstrations, both in

1 London and across Europe. Especially prominent were  
2 massive demonstrations against the Vietnam War, a cause  
3 which united not only far-left groups, but also large  
4 sections of the public. The shocking violence and  
5 narrow margin by which protesters were prevented from  
6 breaking through to the American Embassy on  
7 17 March 1968 prompted great concern within  
8 the Government and the Metropolitan Police Service.  
9 Both were determined to avoid a repeat of the violence.  
10 The SDS was born of this concern and formed on either  
11 30 or 31 July 1968. Its principal purpose at this stage  
12 was to obtain and coordinate intelligence relating to  
13 the forthcoming October demonstration. Initially, the  
14 SDS gathered intelligence using a wide range of methods  
15 of which undercover policing was but one. Very quickly,  
16 however, the SDS became a purely undercover police unit.  
17 It was and remained a part of Special Branch.

18 The first recruits to the SDS were allocated to the  
19 unit by management and instructed to attend an initial  
20 meeting. Thereafter, recruitment was typically by way  
21 of a targeted approach to an existing Special Branch  
22 officer whom it were thought might make a good  
23 undercover officer. In its very early years, the SDS  
24 was predominantly, but not exclusively, male. Three  
25 female officers served in the unit in 1968 and two more

1 were recruited as UCOs in 1970 and 1971 respectively.  
2 After their deployments ended in 1973, SDS UCOs were all  
3 male throughout the remainder of the Tranche 1 era.

4 In the period between its formation and the October  
5 demonstration, most of the groups infiltrated by the SDS  
6 were involved in preparations for that demonstration, or  
7 were supportive of it. The depth to which the groups  
8 were infiltrated and the level of intrusion into  
9 the lives of individuals in 1968 was notably less than  
10 it was in later years. In some cases, there was not  
11 a great deal of difference between the traditional  
12 approach adopted by plain-clothed police officers and  
13 that of a very early SDS undercover officer. They  
14 concentrated on attending meetings, did not spend  
15 a great deal of time with their groups outside meetings  
16 and slept in their real homes. What was different was  
17 the continuous use of a cover identity and a change of  
18 appearance, which enabled the officers to appear to be  
19 genuine activists. The result was greater access to  
20 private meetings and social events at which activists  
21 spoke more freely. SDS undercover officers sometimes  
22 entered the homes of activists and others in their  
23 undercover identities. This happened occasionally in  
24 the very early days of the SDS, but more frequently  
25 later. There is no evidence that the legality of doing

1 so was given any consideration.

2 The intelligence gathered by the SDS formed the  
3 basis of a series of reports produced by  
4 Chief Inspector Dixon and  
5 Detective Constable Roy Creamer. Their reports, which  
6 are in Chief Inspector Dixon's name, were fed up the  
7 chain of command. They must have helped to inform the  
8 Home Office. In the result, the main body of  
9 demonstrators marched without serious disorder on  
10 27 October. The only serious trouble was occasioned by  
11 breakaway Maoist and anarchist demonstrators in  
12 Grosvenor Square. There is no doubt that in official  
13 circles the SDS was credited with contributing to the  
14 successful outcome. There was even mention of  
15 undercover officers in the press. The Times lauded the  
16 Home Secretary's handling of the demonstration and  
17 attributed his success to intelligence received from  
18 the police. Special Branch received a letter of thanks  
19 from the American ambassador.

20 Assessing the actual contribution of undercover  
21 policing to the outcome on 27 October 1968 is more  
22 difficult. The Vietnam Solidarity Campaign's leadership  
23 promoted a peaceful outcome. The breakaway groups'  
24 intentions were well known. Special Branch had sources  
25 other than the SDS's undercover police officers.

1           However, it might be said that the undercover officers'  
2           reports were timely, authoritative and consequently  
3           provided further assurance to those planning the police  
4           response. They helped to avoid an overreaction.

5           The perceived success of the SDS, combined with  
6           continuing concerns about forthcoming mass  
7           demonstrations rapidly led to a decision to maintain the  
8           unit. Chief Inspector Dixon set out his vision for the  
9           unit's continued existence in a paper entitled  
10          "Penetration of Extremist Groups". Of note are the  
11          respects in which his vision was not followed in  
12          practice. His advice, that deployments should last no  
13          more than a year, and that undercover police officers  
14          must not take office in a group, chair meetings or draft  
15          leaflets was ignored.

16          The Home Office played a pivotal role in the  
17          continued existence of the SDS. It funded cover  
18          accommodation for the SDS, which required periodic  
19          approval. From the financial year 1972/73 onwards,  
20          approval was granted for each financial year in response  
21          to a letter from a very senior officer, usually the  
22          Assistant Commissioner (Crime). From the outset, there  
23          was unease within the Home Office about the SDS. It  
24          feared embarrassing revelations: ostensibly the fact  
25          that the Home Office was funding the unit's unorthodox

1 accommodation. Contemporary documents emanating from  
2 the Home Office repeatedly impressed upon senior police  
3 officers the need to ensure that the SDS's ongoing  
4 existence remained a secret.

5 However, it was not until 1984 that anyone in the  
6 Home Office asked for more details and was then  
7 permitted to see a copy of an SDS Annual Report. One  
8 might infer from these facts that the Home Office was  
9 more concerned about the SDS remaining a secret than it  
10 was about precisely what the SDS was doing. Although  
11 the Home Office can rightly say that operational  
12 decisions are properly matters for the police, it is  
13 nevertheless striking that the Home Office was so  
14 uninquisitive about such sensitive operations.

15 For example, Sir Hayden Phillips stated that --  
16 I quote:

17 "All I recall was that my predecessor and immediate  
18 superior had taken the view that our role was to support  
19 the MPSB and I authorised continued funding  
20 accordingly."

21 That is a long way from the caution originally  
22 advocated by Sir James Waddell in 1968, who asked the  
23 MPS to keep the reasons for the SDS's existence under  
24 review and did not think that the SDS should become  
25 a permanent feature of the Branch.



1 Home Office officials might have taken comfort from  
2 senior police officers who enthusiastically supported  
3 the SDS and referred to the unit in glowing terms  
4 whenever they sought continued funding from the  
5 Home Office. The evidence shows that senior officers  
6 visited the SDS periodically and received reports from  
7 the unit to inform successive bids for funding from the  
8 Home Office. These reports spelt out in some detail  
9 what the SDS had been doing and to what effect. They  
10 trumpeted the work of the SDS. We noted in the evidence  
11 on occasions a disconnect between the evidence of  
12 undercover officers and the terms in which managers  
13 represented their deployments in the Annual Reports.

14 Further anti-Vietnam War demonstrations did not  
15 materialise on the same scale after October 1968.  
16 However, 1969 brought the unwelcome resumption of  
17 serious violence in Northern Ireland. There was also  
18 militant anti-apartheid protest, which included the use  
19 of direct action by the Stop the Seventy Tour campaign  
20 in 1970. It fuelled concerns that anti-apartheid was an  
21 issue that was likely to continue to generate large  
22 scale protest. These two developments, together with  
23 other disturbances were more than enough to persuade the  
24 Home Office and senior police officers of the continuing  
25 need for the SDS. It was also argued that the time

1 taken for an undercover police officer to win the trust  
2 of some groups was such that infiltration had to be  
3 conducted proactively rather than reactively.

4 In these circumstances the SDS morphed, after the  
5 October demonstration, into something quite different  
6 from what it had originally been. The unit had been  
7 created to deal with a specific large scale threat to  
8 public order. It had conducted numerous short term,  
9 relatively shallow infiltrations broadly directed to  
10 gathering intelligence about that forthcoming  
11 demonstration. Officers had been given no specific  
12 training, and in some cases no time to create a cover  
13 identity either. Early undercover officers deployed  
14 very rapidly when they joined the SDS.

15 After the October demonstration, the SDS quickly  
16 became an undercover police unit which conducted  
17 long-term infiltrations of groups on the far left of the  
18 political spectrum. It continued to operate without  
19 providing its undercover police officers with any  
20 bespoke formal training. However, there was a trend  
21 towards officers spending longer and longer in the back  
22 office before deploying, time that was spent learning  
23 informally, becoming accustomed to the ways of the SDS  
24 and building an undercover identity.

25 The size and management structure of the SDS varied

1           only a little after the October demonstration. It was  
2           normally led by a Detective Chief Inspector. He was  
3           supported by at least one and sometimes as many as three  
4           Detective Inspectors. There was also at least one and  
5           sometimes as many as three Sergeants. Typically, one  
6           Sergeant dealt with reporting whilst another was  
7           responsible for other administrative matters, but the  
8           unit was so small that those of managerial rank  
9           sometimes discharged other tasks and covered for  
10          colleagues. The number of undercover officers varied  
11          a little, but was typically 12. A pattern begins to  
12          emerge, even during the Tranche 1 era, of former SDS  
13          undercover police officers returning to the unit to take  
14          up managerial posts. Early undercover officers HN135,  
15          Mike Ferguson, and HN218, Barry Moss, who used the cover  
16          name "Barry Morris", each went on to lead the SDS before  
17          the end of Tranche 1. We will be investigating the  
18          impact that former undercover officers who returned as  
19          managers add on the culture and practices within the  
20          unit as we progress through Tranches 2 and 3.

21                 There was no formal recruitment or selection process  
22          for undercover officers. Special Branch officers were  
23          usually approached and interviewed. Some recruits  
24          describe having asked to join and then being considered.  
25          New undercover officers were mostly

1 Detective Constables, although some were  
2 Detective Sergeants. It became the norm, after the  
3 first few years, for the SDS to recruit officers who  
4 were either married or in long-term intimate  
5 relationships. Almost all witnesses gave answers to  
6 the effect that a reason for this practice was to help  
7 anchor the officer to reality. Many also either stated  
8 or alluded to the fact that there was a belief that it  
9 would serve to discourage undercover officers from  
10 forming intimate relationships whilst in their  
11 undercover identities. We regard this as important  
12 early recognition that there was a risk of such  
13 relationships.

14 A practice also developed by which managers would  
15 visit prospective undercover officers, often in their  
16 own homes, to meet their partners. It probably started  
17 in 1978 when HN96, cover name "Michael James", was  
18 recruited. Managers sought to assure themselves that  
19 the officer would have a supportive home environment and  
20 to give assurances to the officer's partner. SDS  
21 managers, like their undercover colleagues, received no  
22 bespoke training when they joined the SDS. It is  
23 tempting to attribute problems which occurred to  
24 the lack of bespoke training for all concerned, or  
25 a lack of regulatory oversight for that matter, but

1 I refrain from doing so at this stage. These are issues  
2 which need to be investigated in future tranches before  
3 conclusions can be reached safely after consideration of  
4 all the evidence. We are keenly aware that in Tranche 4  
5 we will be receiving evidence about a unit whose members  
6 had specific training and operated under the statutory  
7 framework by the Regulation of Investigatory Powers Act  
8 2000. Despite these developments, we know that deeply  
9 problematic activities continued. Explanations other  
10 than training and regulation need to be considered. For  
11 example, were there deep-seated cultural problems which  
12 proved to be impervious to both training and statutory  
13 regulation?

14 Legend building by new undercover officers was  
15 initially rudimentary. The very earliest undercover  
16 officers deployed immediately. For example, HN329,  
17 cover name "John Graham", stated that he deployed  
18 "straight away", never had cover employment, but did  
19 rent a bedsit. Cover accommodation, cover employment  
20 and changes to dress and appearance rapidly became the  
21 norm. Vehicles followed with driving licences in the  
22 officer's cover identity being normal in Phase 2.  
23 However, in other respects, undercover identities  
24 remained superficial. Cover accommodation was typically  
25 a bedsit. Only two Tranche 1 officers shared cover

1 accommodation, HN106, cover name "Barry Tompkins", and  
2 HN96, cover name "Michael James".

3 SDS officers appear to have been given considerable  
4 latitude when constructing their undercover identities  
5 such that HN298, cover name "Michael Scott", took the  
6 extraordinary step of adopting the name of a living  
7 adult. It is of particular concern that HN298 later  
8 went on to be convicted in that name. Despite  
9 persistent efforts, we have not been able to trace the  
10 record of this conviction.

11 A marked change occurred in the early to  
12 mid-seventies. The practice of basing cover identities  
13 on at least some of the particulars of a deceased child  
14 was introduced. No written instructions about how to  
15 find and use a deceased child's identity, or part  
16 thereof, when constructing a cover legend have survived  
17 from this time, if they ever existed. However, the  
18 practice was certainly introduced. Almost all the  
19 subsequent SDS undercover officers in the Tranche 1 era  
20 adopted at least a part of the name of a deceased child.  
21 Some gave evidence that they conducted research in the  
22 location where the child in question had lived.

23 For example, HN304, cover name "Graham Coates", made  
24 a detour to the location of his own volition. HN96,  
25 cover name "Michael James", stated that he had been

1 instructed to visit Blackpool and was assisted by the  
2 local Special Branch to establish that Michael James'  
3 family no longer lived at their former address.

4 However, in most cases the evidence is that officers  
5 did no more than conduct research using the registers of  
6 births and deaths before selecting a deceased child for  
7 legend building purposes. There appears to have been no  
8 consistent practice as to the age at death of the child  
9 who should be selected. One school of thought was that  
10 a child who had died very young would leave much less  
11 evidence of their real life for anyone investigating  
12 the officer to find. The opposing school of thought was  
13 that death certificates of an older child would be much  
14 more time-consuming to find; few researchers would be  
15 inclined to stick at the task for long enough to uncover  
16 the deception.

17 At the heart of the rationale for adopting the name  
18 of a real individual was that it afforded protection, at  
19 the material time, from anyone who might decide to check  
20 whether the undercover officer had a real birth  
21 certificate. The register of births in those days was  
22 kept in hard copy and entries were made in order in  
23 books. A person who did not adopt the identity of  
24 a deceased individual was vulnerable to  
25 a straightforward check of the register, which would

1 give rise to a strong suspicion that they were not who  
2 they said they were. Whole centuries could not be  
3 inserted into the record because they were compiled in  
4 order in hard copy.

5 Even on a utilitarian analysis, there were strict  
6 limits to the level of additional protection that  
7 adopting a deceased child's identity would afford from  
8 hostile enquiry. Anyone persistent enough to search  
9 through the register of deaths might eventually find the  
10 child's death certificate. This is precisely the fate  
11 which befell HN297, Richard Clark, cover name  
12 "Rick Gibson", one of the earliest officers to use  
13 a deceased child's name.

14 At a moral level, adopting the name of a deceased  
15 child is deeply problematic. Deceased children leave  
16 bereaved parents, siblings and other loved ones.  
17 Typically, former members of the SDS appear to have  
18 taken the view that this did not matter because they  
19 believed that relatives would never find out. It is  
20 unclear precisely why the SDS adopted the practice of  
21 using aspects of deceased children's identities in the  
22 construction of cover legends. There had been no  
23 previous compromise of an SDS officer because he did not  
24 have a verifiable birth certificate. It is known that  
25 others, including the KGB, used the technique. It had



1           also received wide publicity because of its use in the  
2           Day of the Jackal. We have not been able to establish  
3           who initially decided upon, or authorised, the SDS's use  
4           of the practice.

5           We have received a variety of accounts about how  
6           decisions about targeting were made and by whom. They  
7           are not all reconcilable and there does not appear to  
8           have been a single rigid approach. Individual UCOs  
9           recalled varying experiences. Some were tasked at the  
10          outset of their deployments quite specifically. Others  
11          were given much vaguer briefs, based upon fields of  
12          activism or geographic areas. Most describe a process  
13          of discussion with, and steering from, their SDS  
14          managers. Two state that they were essentially left to  
15          their own devices, HN298, cover name "Michael Scott",  
16          and HN299342, cover name "David Hughes". Both these  
17          officers mixed with a significant number of different  
18          groups.

19          The Security Service communicated either to  
20          Special Branch officers or direct to SDS managers those  
21          groups that it had an interest in, gaps in coverage that  
22          it wished to see filled, and on occasions some very  
23          specific intelligence requirements. For example, the  
24          Security Service on occasion made very specific requests  
25          for intelligence about the Socialist Workers Party, the

1 SWP. The Security Service did not decide how SDS UCOs  
2 were deployed, but its requirements as a major consumer  
3 of SDS intelligence were clearly influential. It was,  
4 for example, very interested in the  
5 Workers Revolutionary Party, a party that was  
6 infiltrated by the SDS despite it posing no public order  
7 threat and pursuing its revolutionary aims through the  
8 ballot box. Ultimately, responsibility for targeting  
9 remained with the police.

10 The UCOs investigated in Tranche 1 infiltrated  
11 groups on the extreme left wing, or which were suspected  
12 of being influenced by the extreme left wing. The most  
13 frequent targets were Trotskyist groups, particularly  
14 the International Socialists, who became the SWP in  
15 1977, the International Marxist Group and the  
16 Workers Revolutionary Party. Maoist groups were also  
17 targeted, as were anarchists, anti-apartheid groups,  
18 groups campaigning about Ireland and groups campaigning  
19 for race or sex equality.

20 The evidence suggests that the groups infiltrated by  
21 the SDS were the kinds of groups that were of interest  
22 to Special Branch and which Special Branch would have  
23 gathered intelligence about with or without the SDS.  
24 More notable are those groups which were of interest to  
25 Special Branch and/or the Security Service but were not

1 infiltrated by the SDS, in particular the Communist  
2 Party of Great Britain and the extreme right wing. In  
3 both cases, it appears that the most likely reason is  
4 that there were alternative sources of intelligence  
5 available. In the case of the far right, there might  
6 also have been some reticence about the risks involved,  
7 although SDS managers did go so far as to make clear  
8 that the unit could, if needed, infiltrate the far  
9 right. Moreover, the SDS did in fact go on to  
10 infiltrate the far right later.

11 The groups infiltrated by the SDS were also in the  
12 main the kind of groups which featured in reports  
13 produced for the various counter-subversion committees,  
14 evidence of whose activities is contained in the  
15 documents adduced in our Module 2C investigation.  
16 The SDS was also reporting on public order issues that  
17 were of specific interest to the Home Office and the  
18 Cabinet Office. For example, the October demonstration  
19 at the start of the Tranche 1 era and the aftermath of  
20 the Brixton riots at the end of that period were both of  
21 particular interest to these departments. In other  
22 words, the work of the SDS went with the grain of  
23 concerns that were being discussed at the top of  
24 Government.

25 There are, though, limits to the extent to which the

1 work of the SDS correlated with concerns within  
2 Government. As I have already observed, the SDS did not  
3 target the Communist Party of Great Britain, the CPGB,  
4 and the intelligence which it provided in relation to  
5 subversion within industry was limited. This despite  
6 both the CPGB and industrial unrest being of real  
7 interest to the Government of the Tranche 1 era.

8 A striking feature of SDS intelligence reports is  
9 the sheer breadth the intelligence gathered.  
10 Information about individuals and groups was hoovered up  
11 for later analysis without a great deal of filtering by  
12 the SDS. Some officers stated that they knew what to  
13 report based on previous experience with Special Branch.  
14 Many officers took the view that it was for others to  
15 decide what was relevant and what was not, because they,  
16 the UCOs, did not have the full picture. Consequently,  
17 they cast their nets wide. They were not told to do  
18 otherwise, they saw precedents whilst working in the  
19 back office before deploying, their reports were signed  
20 off by managers and their product was gratefully  
21 received by customers.

22 In relation to individuals, more attention was paid  
23 to leaders and committed activists than to others.  
24 However, reporting was by no means limited to such  
25 people. Individual attendees at meetings are often

1 listed in reports where they could be identified.  
2 Supporters and sympathisers of groups are sometimes  
3 mentioned as well as members. In some instances, people  
4 are identified in reports for no more than expressing  
5 interest in a group.

6 A wide range of information was recorded about  
7 individuals where it could be obtained. For example,  
8 names, addresses, employment particulars, physical  
9 appearance, race, sexual orientation, intimate  
10 relationships, marital status, children, health issues,  
11 finances and vehicle particulars, as well as political  
12 beliefs and political activities. The extent to which  
13 officers became involved in the lives of the activists  
14 upon whom they were reporting is striking. There are  
15 instances of UCOs attending weddings and of babysitting  
16 children.

17 Reporting relating to children was not always  
18 ancillary to the activities of their parents.  
19 The political activities of teenagers were sometimes  
20 recorded independently. The Security Service had an  
21 interest in the efforts made by political groups on  
22 the extremes of the political spectrum to influence  
23 school aged children and the activities of the youth  
24 wings of political parties which it considered to be  
25 subversive. The SDS serviced these intelligence

1 requirements where it could do so. There were also  
2 fears that politicised teenagers posed a public disorder  
3 threat. As with other facets of the SDS's work, what it  
4 did in recording details about children was not out of  
5 kilter with wider Special Branch operations. For  
6 example, a registry file was opened on the  
7 core participant we refer to as "Madeleine" in 1970 when  
8 she was 16 years old.

9 The tone of SDS intelligence reports is, on many  
10 occasions, sarcastic or otherwise unprofessional.  
11 The attitudes betrayed by the language used in reports  
12 are significant. There is sexism, there is racism,  
13 there are many examples. Such reporting was known to  
14 managers and accepted because they signed off  
15 the reports. There appears to have been no  
16 anti-discrimination training for either officers or  
17 managers, despite the coming into force during this era  
18 of the Sex Discrimination Act 1975 and the Race  
19 Relations Act 1976. Sir, you will need to consider  
20 whether racism and/or sexism influenced targeting, and,  
21 in the case of justice campaigns, whether it influenced  
22 the deployment. That will involve considering not only  
23 the evidence of attitudes contained in the reporting but  
24 in other written and oral evidence that you have heard.  
25 The same applies to the sexual activities of undercover

1 police officers with members of the public in their  
2 cover identities. This may be an issue that you choose  
3 to wait to deal with in your final report once we have  
4 the benefit of the full evidential picture for both  
5 the SDS and the NPOIU.

6 Reports often centred upon how disorganised, divided  
7 and ineffective groups were. Such observations served  
8 to cast further doubt upon whether the people and groups  
9 reported on really were a sufficient threat, either to  
10 public order or to parliamentary democracy, as to  
11 justify deploying undercover police officers into their  
12 midst.

13 Reporting on groups sought to build up as full  
14 a picture as possible of a given group's activities.  
15 Everything from a group's constitution, policies,  
16 literature, membership details, financial affairs,  
17 leadership, factions, interpersonal dynamics, aims,  
18 conferences, social events, meetings, demonstrations and  
19 other political activities were reported upon. Very  
20 long and detailed reports on the proceedings at national  
21 conferences were common and often drew praise.

22 We do not suggest that detailed professional  
23 reporting on a group or an individual by an undercover  
24 police officer is in principle wrong, but the threat  
25 posed by the group or individual must be sufficiently

1           serious to justify such reporting on them. It is one  
2           thing to infiltrate an organised crime gang and report  
3           relevant intelligence, it is quite another to infiltrate  
4           a law-abiding political party or protest group which is  
5           neither a threat to public order nor threatens the  
6           safety or wellbeing of the State.

7           Securing a position as treasurer or membership  
8           secretary within a group was a route often taken by  
9           undercover officers. It afforded access to accurate and  
10          comprehensive intelligence about the group's financial  
11          and membership details. This practice was particularly  
12          common amongst, but not limited to, those officers who  
13          infiltrated the Socialist Workers Party. Two UCOs,  
14          HN80, cover name "Colin Clark", and HN155, cover name  
15          "Phil Cooper", secured access to the SWP's central  
16          office, where they obtained and reported much  
17          confidential information.

18          HN296, Richard Clark, rose through the ranks of the  
19          Troops Out Movement, becoming a branch secretary,  
20          regional organiser and then convenor of the secretariat.  
21          The taking of officers of this nature was unusual and  
22          many officers gave evidence to the effect that roles  
23          such as secretary were deliberately avoided because of  
24          the risk that the officer would become involved in  
25          decisions which would influence the direction of the



1 group.

2 Mr Chessum gave important evidence about  
3 the influence which Richard Clark had in TOM and his  
4 effects within the group. There can be no doubt that  
5 managers were aware that UCOs were taking office within  
6 target groups. They signed off the reports which record  
7 their election to these offices. Having  
8 an undercover officer assume positions within groups  
9 such as the SWP and TOM is deeply problematic, even more  
10 so where the role involves participating in  
11 decision-making on behalf of the group.

12 We have not found evidence that elected politicians  
13 were specifically targeted. Elected politicians are  
14 sometimes mentioned in SDS intelligence reports. For  
15 example, prominent figures on the left of the  
16 Labour Party appear in reports from time to time.  
17 However, the references to them are usually incidental  
18 to reporting on extreme left-wing groups. Typically,  
19 politicians such as these are referred to in reports  
20 because they have spoken at events attended by the UCOs'  
21 target group. Occasionally, there was closer contact,  
22 although it too was incidental to the targeting of an  
23 extreme left-wing group.

24 Similarly, we have not found evidence that trade  
25 unions were specific SDS targets or that individual

1 trade unionists were reported upon solely because of  
2 their trade union activities. However, trade union and  
3 trade unionists are both mentioned in SDS reporting.  
4 There was a clear interest in the activities of members  
5 of extreme left-wing groups within trade unions,  
6 especially so when this were thought to be clandestine.  
7 The influence of left-wing groups within trade unions  
8 was reported on.

9 One SDS undercover officer joined a trade union, the  
10 Transport and General Workers' Union, to enhance his  
11 cover, HN299/342, cover name "David Hughes".

12 Specific justice campaigns often feature in SDS  
13 reporting. This tended to occur when an infiltrated  
14 group supported the campaign in question, for example  
15 the reporting on the Shrewsbury Two Action Committee and  
16 the Newham 8 Defence Campaign was ancillary to  
17 deployments into other groups. There is also reporting  
18 about protests against the police and the activities of  
19 police monitoring groups in the Tranche 1 era. As we  
20 discussed in our recent opening statement for Module 2B  
21 and Module 2C in the Tranche 1 era, there is evidence of  
22 a freestanding interest within the Metropolitan Police  
23 in gathering intelligence about campaigns which it  
24 considered to be anti-police and police monitoring  
25 groups.

1           The Friends of Blair Peach Campaign is an example of  
2 a justice campaign critical of the police which was  
3 the subject of reporting by officers operating within  
4 sympathetic groups. Reporting continued despite  
5 evidence that the campaign was not causing public  
6 disorder. The sensitivity of the case did not prevent  
7 SDS attendance at the funeral. We have heard moving  
8 evidence from Celia Stubbs about the impact which these  
9 revelations have had upon her.

10           The Women's Liberation Front, or WLF, was  
11 infiltrated by the SDS and existed specifically to  
12 champion sexual equality. However, it was a Maoist  
13 group and may have been targeted because it was Maoist.  
14 Similarly, most extreme left groups in the Tranche 1 era  
15 campaign for sex equality and they appear to have been  
16 infiltrated not because they did so but because they  
17 were on the extreme left and considered to be either  
18 a threat to public order, or subversive, or both.  
19 Nevertheless, it is striking that an undercover  
20 police officer was deployed into the very small WLF,  
21 which was campaigning for things many of which are  
22 either required by law or considered entirely normal  
23 today, particularly so when the WLF itself was not  
24 involved in criminality other than flyposting, posed no  
25 threat to Parliamentary democracy and was not a threat

1 to public order. We submit that this deployment, which  
2 lasted for almost two years, is a particularly clear  
3 example of unjustified targeting. The aims and  
4 objectives of the WLF included: equal rights for women,  
5 equal pay, equal opportunities in employment, education,  
6 training, social and political life, to fight against  
7 discrimination with regard to marriage, divorce,  
8 inheritance of property, taxation and insurance; and  
9 discrimination against children born in and out of  
10 wedlock, the right to contraception and abortion  
11 facilities, women's involvement in political and social  
12 activities, and to support the struggle of workers and  
13 oppressed people around the world.

14 Reporting on campaigning for race equality arose in  
15 various ways. On occasion, the SDS specifically  
16 targeted groups which were single issue groups, for  
17 example, the Anti-Apartheid Movement and the  
18 Stop the Seventy Tour Campaign. The Anti-Apartheid  
19 Movement is another example of a particularly  
20 questionable target. The Anti-Apartheid Movement did  
21 not have subversive aims. It also co-operated with the  
22 authorities when organising and conducting  
23 demonstrations. Its demonstrations, although large, do  
24 not appear to have been a threat to public order.

25 More frequently, officers reported on race-related

1 activism, having infiltrated extreme left-wing groups  
2 whose campaigning on race equality was but a part of the  
3 group's activity. The Socialist Workers Party is but  
4 one of many examples of such groups. The deployment of  
5 HN106, cover name "Barry Tompkins", developed  
6 a significant focus on race-related campaigning. It  
7 started with a brief to find groups on the far left  
8 other than the ones which the SDS already had well  
9 covered. HN106 infiltrated a number of groups,  
10 including the Revolutionary Communist Group, through  
11 which, in its various manifestations, he became involved  
12 in the East London Workers Against Racism. It is  
13 a deployment which appears to have some similarities  
14 with the later deployment of HN81, cover name  
15 "David Hagan", who reported on the Stephen Lawrence  
16 Campaign via the Movement for Justice in the 1990s.

17 Occasionally, officers appear to have been steered  
18 mid-deployment to a race-related issue which was of  
19 concern. In particular, the SDS sought to gather  
20 intelligence in the aftermath of the Brixton riots.  
21 HN356, cover name "Bill Biggs", moved from  
22 South East London SWP to the newly formed Brixton CPS  
23 soon after the riots.

24 There was, in general, little awareness of what  
25 legal professional privilege is amongst SDS

1           undercover officers. Still less was there a recognition  
2           of the fundamental importance of legal professional  
3           privilege to the rule of law. On occasions, SDS  
4           undercover police officers became privy to legally  
5           privileged material and reported it back. It was not  
6           filtered out of the formal reports which were produced  
7           and filed. Consequently, we have found instances of  
8           privileged material being recorded in SDS intelligence  
9           reports. We have found no evidence to suggest that  
10          legally privileged material was specifically sought out  
11          by SDS officers, or requested by its customers in the  
12          Tranche 1 era, however, procedures should have been in  
13          place to prevent the violations of legal professional  
14          privilege which clearly occurred.

15                 Similarly, there appears to have been little  
16                 awareness of the importance of protecting independent  
17                 journalism. Again, protections should have been in  
18                 place to prevent inappropriate reporting.

19                 Special Branch was the single largest consumer of  
20                 SDS intelligence. Written SDS intelligence reports were  
21                 usually filed by Special Branch as well as being  
22                 circulated to parts of the organisation which it was  
23                 felt needed to be aware of them. Once filed, they could  
24                 be retrieved and used for various purposes. The most  
25                 obvious purpose for which Special Branch appears to have

1 used SDS intelligence was to inform reports which were  
2 made to assist the A8 Branch to keep the peace. SDS  
3 intelligence played a role not just in relation to  
4 mainly demonstrations but in relation to demonstrations,  
5 pickets and other forms of protest of varying size.

6 The role played by the SDS to assist with keeping  
7 the peace was not confined to written reports. Valuable  
8 real-time, or near real-time intelligence was also  
9 telephoned in when it was too urgent to use the normal  
10 written channels of communication. For example,  
11 intelligence was telephoned in during the  
12 Battle of Lewisham.

13 Another purpose for which SDS intelligence reports  
14 might have been relied upon by Special Branch was for  
15 vetting purposes. We cannot rule out that SDS  
16 intelligence reports were leaked by Special Branch  
17 officers to private sector organisations, which then  
18 used them for blacklisting purposes. The provision of  
19 intelligence of this sort to private sector  
20 organisations such as the Economic League was against  
21 regulations. However, as we have noted in previous  
22 submissions, there appears to have been some recognition  
23 that Special Branch officers were, in practice, likely  
24 to be tempted to do so.

25 Information gathered by the SDS may also have been

1           relied upon in Special Branch reports provided to  
2           Government, especially the Home Office. It is also  
3           likely to be used by R Squad, the research department,  
4           and other parts of Special Branch.

5           Most SDS intelligence reports were copied to the  
6           Security Service. The provision of SDS intelligence to  
7           the Security Service appears to have occurred throughout  
8           the Tranche 1 era. The Security Service filed the SDS  
9           intelligence which it received. The Security Service  
10          appears to have considered SDS intelligence useful. It  
11          was monitoring most of the groups infiltrated by the SDS  
12          and had its own vetting function. It appears that SDS  
13          intelligence might on occasions have formed part of the  
14          body of evidence used by the Security Service to compile  
15          reports for at least some of the various  
16          counter-subversion committees which we considered in  
17          Tranche 1, Module 2C.

18          There was a considerable overlap between the groups  
19          and individuals of interest to the Security Service and  
20          those of interest to Special Branch. The basis of the  
21          Security Service's interest was its duty to consider  
22          counter-subversion whereas Special Branch's remit was  
23          based upon its duty to keep the Queen's Peace, as it  
24          then was, and to assist the Security Service. Witness Z  
25          stated that as far as can be ascertained from surviving



1 written records there is no evidence that the  
2 Security Service passed on SDS intelligence to any third  
3 party outside Government.

4 On occasion, information appears to have been passed  
5 to the Security Service from the SDS orally. In the  
6 Tranche 1 era, this usually took place through meetings  
7 with SDS managers. Such meetings were more frequent  
8 towards the end of the Tranche 1 era. At least two SDS  
9 undercover officers met directly with the  
10 Security Service, HN106, cover name "Barry Tompkins",  
11 and HN336, cover name "Dick Epps". The fact that we  
12 have found so many intelligence reports from as long ago  
13 as the Tranche 1 era gives rise to questions about why  
14 they have been retained for so long and for what  
15 purpose. We suggest that this is an issue best pursued  
16 in future tranches and considered at the end of the  
17 evidential hearings.

18 There is some evidence that the SDS played an  
19 evidential role in the detection and prosecution crime,  
20 but it is limited. Early in the life of the SDS, HN323,  
21 Sergeant Helen Crampton was involved in the prosecution  
22 and conviction of a member of Black Power for incitement  
23 to riot. The case was regarded as important. The then  
24 Director of Public Prosecution considered it as well as  
25 the Attorney General, who consulted the Home Secretary

1           about it.

2           The original intention was that evidential work  
3           should form a part of the SDS's work. In practice, the  
4           SDS quickly became, and remained, a purely  
5           intelligence-gathering unit. We have found no other  
6           example in the Tranche 1 era of SDS undercover officers  
7           giving evidence for the prosecution as a result of SDS  
8           operations.

9           There is evidence of SDS intelligence leading to the  
10          identification of suspects and their arrest. The 1978  
11          Annual Report records the arrest of two anarchists  
12          wanted for conspiracy to cause explosions. The role of  
13          SDS undercover officers in court proceedings in their  
14          cover identities is a matter of concern. The foremost  
15          example is that of HN298, cover name "Michael Scott".  
16          He was convicted with others in the name of a real  
17          living person. He violated the legal professional  
18          privilege of his co-defendants, his real identity was  
19          not disclosed to the prosecution, nor was it disclosed  
20          to the court. Consequently, the court was misled and  
21          a miscarriage of justice occurred. The work of this  
22          Inquiry has helped to put that right. The evidence of  
23          Christabel Gurney, Ernest Rodker and Professor Rosenhead  
24          were overturned last month.

25          The SDS appears to have put the security of its

1 operation over and above its duty to the court and the  
2 rule of law. The priority accorded to protecting the  
3 secrecy of the SDS's work is consistent with other  
4 evidence that we have received, including the visit  
5 which HN45, cover name, "David Robertson", received from  
6 very senior officers, Vic Gilbert and Roland Watts,  
7 after his cover was blown. On his evidence, it was made  
8 clear to him that, should he ever need to explain  
9 himself, he was expected to pretend that he was acting  
10 on his own initiative.

11 Sir, you will need to consider whether a further  
12 referral to the Miscarriage of Justice Panel should be  
13 made arising from the evidence of the deployment of  
14 HN13, cover name "Barry Loader". He was prosecuted  
15 twice, in Barking and Lambeth Magistrates' Courts. On  
16 the first occasion, when he was tried with others, the  
17 documents record that the court was told that one of the  
18 defendants was an informant. However, Mr Craft's  
19 evidence is that he informed the court that HN13 was an  
20 undercover police officer. On the second occasion the  
21 documents indicate that the court was informed that HN13  
22 was "a valuable informant in the public order field".  
23 This is a level of information which falls short of  
24 confirming that the man before the court was really an  
25 undercover police officer acting in a false identity.

1 His case was tried separately from that of three other  
2 activists but all four were convicted.

3 HN68, cover name "Sean Lynch", was convicted in his  
4 cover identity, together with five others, for  
5 obstruction at Bow Street Magistrates' Court in 1970  
6 after they all entered guilty pleas. There is no  
7 evidence that the court was aware of HN68's real  
8 identity. There is also some evidence that HN68 may  
9 have been convicted of flyposting in his cover identity.

10 HN339, cover name "Stewart Goodman", was stopped by  
11 police on suspicion that he was driving with excess  
12 alcohol. He gave his real name, but thinks that he may  
13 have been prosecuted in his cover name after  
14 Chief Inspector Saunders informed the court who HN339  
15 really was.

16 Many Tranche 1 SDS officers participated in the  
17 commission of minor offences, typically flyposting or  
18 obstruction. Managers clearly regarded such offending  
19 as justified by the nature of the operations that  
20 the UCOs were participating in. One officer, HN298,  
21 cover name "Michael Scott", committed a crime of  
22 violence by hitting an activist leader, Gerry Lawless.  
23 No action was taken, either by Lawless or the SDS.

24 There is uncontested evidence that five SDS  
25 Tranche 1 undercover police officers became involved in

1 sexual activity with women who they met undercover. Two  
2 of these five officers are known to have had sexual  
3 contact with more than one woman. Another ultimately  
4 married the activist with whom he began a relationship  
5 and had a child with her. The other sexual contact  
6 involved ranged from isolated encounters, through  
7 friendships which became sexual, to what appeared to  
8 "Madeleine" to be potentially the beginning of an  
9 intimate long-term relationship. The motives of  
10 the officers varied from case to case. Motives included  
11 sexual gratification, advancing or protecting  
12 a deployment and, in HN300's case, seemingly love.

13 The deceived women were mostly, but not always,  
14 activists and members of target groups. Two of the  
15 undercover officers have had to remain fully anonymous.  
16 In the case of HN302, we can consequently only say that  
17 he served in the 1970s. All the other deceiving  
18 officers served in the mid-1970s, or later. The Inquiry  
19 has heard oral evidence from the three surviving  
20 undercover officers who have admitted sexual activity in  
21 their undercover identities. We have heard evidence  
22 about the other two, who are both deceased. We have  
23 also had the benefit of the accounts of two of  
24 the deceived women, whom we refer to by the pseudonyms  
25 "Madeleine" and "Mary".

1           HN300, cover name "Jim Pickford", was married to his  
2           second wife and had children when he deployed as an  
3           undercover police officer. Real questions arise as to  
4           his suitability for the role based on the evidence of  
5           his contemporaries. He is described as having had an  
6           alcohol problem, being a philanderer who chased after  
7           women and as a man who fell in love all over the place.  
8           HN304, cover name "Graham Coates", said in evidence that  
9           HN300 -- I quote "could not be in the presence of  
10          a woman without trying it on". We are particularly  
11          grateful to HN300's second wife and children, whose  
12          evidence confirms that HN300 left his second wife to  
13          marry a woman whom he had met whilst operating as an  
14          undercover police officer. The fact that HN300's third  
15          wife was heard referring to HN300 in his cover name  
16          indicates that the relationship started whilst he was in  
17          that role. HN300's second wife provided evidence that  
18          HN300 went on to have a child with his third wife. She  
19          has also confirmed that HN300's third marriage failed.

20                 We note that this appear to be at least some  
21          parallels between HN300's case and that of HN314,  
22          Jim Boyling, cover name "Jim Sutton", whose actions some  
23          20 years later we will be investigating in Tranche 3.

24                 Of some importance is the evidence of what was known  
25          in the SDS of HN300's sexual conduct whilst deployed.

1 It will be for you, Sir, to decide who knew what, and  
2 when, and I will not set out all of the relevant  
3 evidence here. I know that others are going to make  
4 more detailed submissions on this issue. It perhaps  
5 suffices to say that there is a very strong body of  
6 evidence to demonstrate that HN300's reputation as  
7 a womaniser was well known within the SDS. Further,  
8 the evidence of a closed officer was to the effect that  
9 he told HN244, Detective Inspector Angus McIntosh, at  
10 least that HN300 had fallen in love with an activist,  
11 enough to lead to HN300's departure from the SDS.  
12 Although this specific evidence was not accepted by  
13 Mr McIntosh in evidence, it is consistent with more  
14 general evidence from HN304, cover name "Graham Coates".

15 HN2097, Richard Clark, is another officer who was  
16 the subject of unflattering evidence from his  
17 contemporaries. He was described, amongst other things,  
18 as a womaniser and a carnivore. There is evidence that  
19 he was involved in the sexual deceit of as many as four  
20 women. Two of the women were active within South-East  
21 London Troops Out Movement. At least one of the other  
22 two was associated with Big Flame, the group that Clark  
23 was attempting to infiltrate when it was discovered that  
24 he was not who he said he was. It is particularly  
25 troubling that Richard Clark was deployed as a man with

1 a carnivorous sexual appetite into a university setting,  
2 the more so because he was significantly older than most  
3 undergraduates. The risk of sexual misconduct was  
4 surely foreseeable.

5 Richard Clark's motive may not have been limited to  
6 sexual gratification. "Mary's" impression was that  
7 HN297 deceived her to bolster his cover. Whatever his  
8 motive, she was clear that there was absolutely no way  
9 that she would have consented to sex with him had she  
10 known that he was an undercover police officer. His  
11 actions understandably left her feeling used and  
12 invaded, both by him and the State.

13 There is clear evidence that Richard Clark's  
14 colleagues knew something of his sexual activity with  
15 activists. He appears to have told them himself.  
16 Whether Clark's managers knew is less clear. They deny  
17 it, which brings their evidence into conflict with that  
18 of HN304, cover name "Graham Coates".

19 HN354, Vince Harvey, cover name "Vince Miller",  
20 admitted to sexual activity with four different women  
21 during his undercover work for the SDS. Two of the  
22 women were not activists and the sexual activity in  
23 these cases consisted of a one-night stand, on his  
24 account. The third woman was "Madeleine", and the  
25 fourth, like "Madeleine", was also a member of the SWP.



1           Sir, there remains some differences of fact between  
2           "Madeleine" and Vince Harvey that you will need to  
3           decide although we note that "Madeleine's" evidence  
4           benefits from corroboration. The corroborative evidence  
5           comprises of a near contemporary document and the  
6           evidence of Julia Poynter. Both tend to show that  
7           the sexual contact was not confined to a one-night stand  
8           but occurred over time. "Madeleine" puts the period at  
9           about two months.

10           Mr Harvey was the first undercover police officer  
11           who has admitted to having sex with a member of the  
12           public whilst in his undercover identity to give oral  
13           evidence to the Inquiry. He accepted that what he did  
14           was wrong and that he did not think that "Madeleine"  
15           would have consented to sex with him had she known that  
16           he was a police officer. He did not use contraception.  
17           He did not tell anyone, because he did not attribute  
18           much importance to it.

19           "Madeleine" is the first deceived woman to give oral  
20           evidence to the Inquiry. Vince Harvey's cover story had  
21           the effect of evincing sympathy from her. She feels  
22           betrayed, vulnerable and disgusted. Sir, I have dealt  
23           with this evidence only briefly, conscious that  
24           advocates for both "Madeleine" and Mr Harvey will be  
25           addressing you in more detail in due course.

1           HN21 admitted to having become friendly with, and  
2           then having sex with, a woman who was not an activist.  
3           He had met the woman through an evening class which he  
4           was taking in his undercover identity. He stated that  
5           a lot of alcohol was involved on both his and her part.  
6           The encounter occurred on an evening when HN21 was  
7           staying to protect her from the unwanted sexual advances  
8           of another man. HN21 gave evidence that the pair  
9           remained close enough to have kissed and cuddled on  
10          a couple of further occasions and then had sex again  
11          some six or seven months after the first encounter. He  
12          does not know if the woman would have consented to sex  
13          if she had known who he really was. He used  
14          contraception. He accepted that what he did was wrong  
15          and unprofessional, but his guilt appeared to be focused  
16          more upon the fact that he was being unfaithful to his  
17          wife than the fact that he was a police officer on duty.  
18          He did not consider that at the time. He did not tell  
19          anyone about these events, which he regarded as  
20          a mistake.

21          HN302 gave evidence that he became friendly with  
22          a woman through attending meetings which he was using to  
23          build up his cover. This took place over an extended  
24          period of perhaps six months. He socialised with her  
25          both in company and alone. They had sex after he

1 invited her back to his bedsit. He used contraception.  
2 Although she had been involved in activism he did not  
3 see her again after that. He said that he did not draw  
4 a distinction between a friendship and sexual activity,  
5 because he was trying to live a parallel life and was  
6 trying not to be a police officer. He thought having  
7 sex might enhance his cover, but it didn't. He did not  
8 tell his managers, because he thought it was part and  
9 parcel of living in his undercover identity. He does  
10 not think that he would have been given more than advice  
11 that he had perhaps made a mistake had he informed his  
12 managers.

13 We can see from these admitted sexual relationships  
14 alone that instances of sexual activity between  
15 undercover police officers in their cover identities and  
16 members of the public were not uncommon from the  
17 mid-seventies onwards. In addition to the admitted  
18 cases, there is at least some evidence that a further  
19 three Tranche 1 undercover officers were involved in  
20 sexual activity with members of the public. In each of  
21 these cases, Sir, you will need to evaluate the evidence  
22 and reach a conclusion.

23 Mr Neil Hardy volunteered information to the Inquiry  
24 and later made a statement about HN126, cover name  
25 "Paul Gray". In his witness statement, Mr Hardy states

1           that he was an Anti-Nazi League activist when he met  
2           HN126. He gives his reasons for believing that there  
3           was a deceitful intimate relationship between  
4           "Paul Gray" and a now deceased activist, Ros Gardner.  
5           There is evidence to corroborate the fact at that times,  
6           "Paul Gray" and Ms Gardner, moved in the same circles  
7           during HN126's deployment. The Inquiry has forwarded  
8           HN126 the opportunity to respond to Mr Hardy's  
9           allegation, which he categorically denies.

10           The documents raise suspicions that HN106,  
11           "Barry Tompkins", might have been involved in sexual  
12           activity with two different woman. The evidence in  
13           relation to the first woman comes from  
14           a Security Service document made after a meeting with  
15           SDS management which records that HN106 had "probably  
16           bedded" the woman and been "warned off" by his managers.  
17           The evidence in relation to the second woman is that she  
18           is described in documents as "Barry's girlfriend".  
19           HN106 was too ill to give oral evidence but has provided  
20           a witness statement in which he denies engaging in any  
21           sexual activity with activists. His explanation in  
22           relation to the second woman, whom he stated was not an  
23           activist, is that there was a close friendship which  
24           developed after her husband left her, and that sometimes  
25           he slept in her spare room.

1           Finally, there is the case of HN155, cover name  
2           "Phil Cooper". The dispute of fact in this instance is  
3           whether he confessed to sexual activity in his cover  
4           identity to police risk assessors in 2017. Both risk  
5           assessors have given oral evidence to the Inquiry to  
6           the effect that he did so and stand by the written  
7           record of their dealings with HN155.

8           We have found no evidence of any positive management  
9           instruction in Tranche 1 that SDS undercover officers  
10          should engage in sexual activity with anyone undercover.  
11          Accordingly, the key questions, on the evidence, we  
12          suggest turn upon what managers did or did not know of  
13          the sexual activity that was occurring, whether managers  
14          did enough about such sexual activity as any of them  
15          were aware of, whether managers were aware of the risk  
16          of sexual misconduct, whether they did enough to present  
17          UCOs from engaging in sexual activity with members of  
18          the public in their false identities, and whether the  
19          actions of members of the SDS, both officers and  
20          managers, were affected by their attitudes to women.  
21          I shall leave detailed submissions to the  
22          core participants with the greatest interest in these  
23          issues, but as I have touched upon already, there is  
24          evidence of at least some management knowledge of some  
25          of the sexual activity that took place.

1           There is also evidence that the risk of sexual  
2 misconduct was both obvious and recognised. More could  
3 and should have been done to reduce the risk of sexual  
4 misconduct by UCOs. There was no formal training.  
5 There is some evidence that advice was given not to  
6 participate in sexual activity, but it seems to have  
7 been haphazard. If you accept the evidence that  
8 managers had some knowledge of sexual activity, then  
9 the response to it was inadequate.

10           A theme which we shall need to explore in later  
11 tranches is whether the absence of a disciplinary  
12 response was influenced by the prevailing culture,  
13 including attitudes to women and/or the desire to keep  
14 the activities of the SDS secret. The evidence of more  
15 than one SDS witness on the issue of sexual  
16 relationships was striking in that it focused upon  
17 the risk to the SDS or the risk to the UCO or the impact  
18 upon the UCO's real life partner. The impact on the  
19 member of the public with whom the UCO was engaging in  
20 sexual activity was either not a concern, or not the  
21 first concern.

22           Sir, I am aware that you are considering how far to  
23 go in dealing with the more thematic aspects of this  
24 part of the Inquiry in your interim report and what is  
25 best left for a decision once we have the benefit of all

1 the evidence that the Inquiry will hear about deceitful  
2 sexual activity.

3 There is ample evidence that long-term undercover  
4 deployments of the kind that became the norm in the SDS  
5 were very stressful. There was a constant fear of being  
6 found out and of what the consequences would be were  
7 that to happen. Plus, the disorientating effect of  
8 leading two very different lives in parallel.

9 The mental health of a striking number of officers was  
10 adversely affected by their work. Most officers were  
11 positive about the support which they received from  
12 their managers, but there was a lack of specialist  
13 support. There was also a lack of aftercare. This is  
14 an issue on which we will be hearing a lot more evidence  
15 in Tranches 2 and 3. So too is the way in which the  
16 partners of SDS officers were treated. In Tranche 1,  
17 two former heads of the SDS, HN218, Barry Moss, and  
18 HN34, Geoffrey Craft, accepted, with hindsight, that  
19 better care and attention could have been paid to them.

20 The evidence shows that the existence of the SDS was  
21 well known to many senior police managers in the chain  
22 of command. They visited the unit, received its  
23 Annual Reports and lobbied for continued funding from  
24 the Home Office, extolling the virtues of the unit as  
25 they did so. They are likely to have been aware in

1 broad terms of what the SDS was and what it was doing,  
2 but less likely to have been aware of the details.  
3 The SDS must have been at least reasonably well known  
4 within Special Branch more generally, albeit shrouded  
5 with some mystery. This is so because Special Branch  
6 was a relatively small institution. Those who served in  
7 the SDS were recruited from within Special Branch and  
8 usually returned to its more conventional postings after  
9 their time with the SDS.

10 The Security Service knew about the SDS from the  
11 latter's very inception, although the number of people  
12 within the Security Service who knew appears to have  
13 been deliberately limited to a select few. Conrad Dixon  
14 had a pre-existing working relationship with the  
15 Security Service before the SDS was established and met  
16 with members of the Security Service on 2 August 1968,  
17 which was two or three days after the SDS was founded.  
18 The Security Service received most of the SDS's  
19 intelligence reports throughout Tranche 1, and from 1974  
20 onwards filed SDS intelligence as such. The degree of  
21 direct personal contact that the Security Service had  
22 with the SDS varied over time, but was sometimes  
23 frequent.

24 There was certainly some knowledge of the SDS within  
25 the Home Office. It received and approved requests for



1 funding and, in 1970, the then Home Secretary was  
2 personally consulted about such funding. In 1984,  
3 Mr Harrington was permitted to inspect and make notes on  
4 the SDS's 1983 Annual Report.

5 We have dealt at some length in our Tranche 1  
6 Phase 3 and Tranche 1 Module 2B and 2C opening  
7 statements with Home Office documents about the role of  
8 Special Branch assisted the Security Service with  
9 counter-subversion work. Some of the offices involved  
10 in those conversations knew of the existence of the SDS.  
11 The concerns raised within the Home Office in the late  
12 1970s and early 1980s about Special Branch's role in  
13 counter-subversion were apposite. I invite you, Sir, to  
14 consider whether an opportunity relevant to the SDS was  
15 missed when those concerns were not acted upon, in  
16 particular insofar as they relate to persons who were  
17 acting lawfully and were not threatening either  
18 the safety or wellbeing of the State.

19 The result of much debate emerged in 1984 in  
20 the form of the Home Office Guidelines on the Work of  
21 a Special Branch and accompanying confidential letter.  
22 These documents continued to permit counter-subversion  
23 work to be carried out by Special Branch, including  
24 the SDS, against people who were obeying the law and  
25 only potentially subversive.

1           It is likely that knowledge of the existence of  
2           the SDS was disseminated within some of the high level  
3           counter-subversion committees discussed in our recent  
4           opening statement for Module 2B and Module 2C in the  
5           Tranche 1 era by those on the committees who knew about  
6           the SDS. The membership of these committees included  
7           representatives from various parts of Government, but  
8           with an emphasis on the Home Office and the  
9           Cabinet Office. By way of examples, the Subversion at  
10          Home Committee, chaired by the then Cabinet Secretary,  
11          Sir Burke Trend appears from the cryptic contents of its  
12          January 1969 minutes to have been aware of the existence  
13          of the SDS. Deputy Assistant Commissioner Vic Gilbert  
14          sat on the Subversion in Public Life Committee. He had  
15          had direct contact with the SDS because he is one of the  
16          senior officers who HN45, cover name "David Robertson",  
17          stated spoke to him after he was compromised.

18          The primary stated purpose of the SDS was to provide  
19          intelligence for public order purposes. There can be no  
20          doubt that the SDS did that. Its UCOs provided  
21          intelligence before, during and after demonstrations and  
22          other forms of protest. Intelligence provided in  
23          advance of demonstrations as to likely numbers,  
24          demeanour and other matters no doubt assisted those  
25          charged with policing public order to calibrate the

1 police response. In some cases, SDS intelligence would  
2 simply corroborate other sources. In other instances,  
3 particularly in relation to secretive groups which did  
4 not cooperate with the police, other sources will  
5 usually have been fewer and potentially less reliable.  
6 Intelligence during events must have helped police on  
7 the ground. Other forms of assistance, such as  
8 identifying hotheads or offenders from photographs had  
9 value.

10 However, it is hard to identify a single instance in  
11 which assistant intelligence averted a public order  
12 calamity in the Tranche 1 era. Without the SDS, the  
13 police would still have had all their other sources  
14 valuable to them.

15 I do not propose to conduct a systematic analysis of  
16 every group infiltrated by the SDS, but the threat to  
17 public order posed by different groups differed widely,  
18 both between groups and over time. The evidence from  
19 UCOs about some groups was to the effect that the group  
20 was not a public order threat at all. I have already  
21 mentioned the National Civil Rights Movement,  
22 Women's Liberation Front and Workers Revolutionary Party  
23 in that regard. Sometimes the public order  
24 justification offered was the fear that a group might  
25 become a public order threat. Other groups were

1 involved in public disorder, notably the  
2 International Socialists, who became the  
3 Socialist Workers Party, and grew considerably in size  
4 during the Tranche 1 era. The International  
5 Marxist Group, although small, could provoke trouble out  
6 of all proportion to its size, as events at  
7 Red Lion Square show. Some Maoists and some activists  
8 could do the same. The Stop the Seventy Tour Campaign  
9 was not violent, but it was uncooperative with police  
10 and used direct action to further its aims.

11 There were times which were particularly febrile  
12 from a public order perspective, the autumn of 1968  
13 principally amongst them. The peaks of tension between  
14 the far left and the far right, especially but not  
15 limited to 1977, were also challenging for police. But  
16 there were other times when things were quieter.

17 The utility of SDS intelligence for public order  
18 purposes is only one part of the equation. The level of  
19 intrusion into people's lives arising from SDS  
20 operations, particularly once long-term deployments  
21 became the norm, was very considerable. Moreover,  
22 the intrusion resulting from the SDS's operations was  
23 into very sensitive areas of people's lives, their  
24 political lives, their financial affairs, their legal  
25 affairs, their families, their friendships and even, in

1           some instances, their sex lives.

2           Operations were not limited to times of heightened  
3 risk, nor confined to the shadow paddling of the early  
4 SDS undercover officers. They were long- and highly  
5 intrusive operations conducted continuously.

6           In these circumstances, we submit that the need for  
7 and value of the public order intelligence provided by  
8 the SDS was not an adequate justification for the  
9 intrusion caused by the SDS model of long-term  
10 undercover policing in the Tranche 1 era.

11           The SDS's ancillary purpose was to assist the  
12 Security Service to defend the realm against subversion.  
13 The principal difficulty that we have with what occurred  
14 is quite simply stated: the groups infiltrated were not  
15 subversive; they do not meet the Harris definition which  
16 was adopted by the Security Service in 1972 and made  
17 public in 1975. Most, although not all, wished to  
18 overthrow Parliamentary democracy. However, on the  
19 evidence that we have received, they did not threaten  
20 the safety or wellbeing of the State, a definition that  
21 uses the present tense. None were anywhere close to  
22 toppling multi-party democracy. None had international  
23 backing of the kind enjoyed by the CPGB. Some fanned  
24 the flames of industrial unrest, although that activity  
25 was not the focus of SDS report. Some organised

1           demonstrations or counter-demonstrations which were  
2           violent. Insofar as they did either of these things,  
3           though, they could not be said to have threatened the  
4           wellbeing of the State. Or, if we are wrong about that  
5           and they did so, then the scale and duration of any such  
6           threat was not serious enough to justify the level of  
7           intrusion that in fact occurred.

8           Personal information recorded by SDS officers may  
9           have been used when files were later interrogated for  
10          vetting purposes. However, vetting occurred both before  
11          and after the SDS's existence. The level of intrusion  
12          into people's lives occasioned by SDS infiltrations does  
13          not seem to be justified by any additional relevant data  
14          that the SDS might have collected. It is certainly not  
15          a purpose which features prominently in the documents.

16          There is no evidence that anyone took legal advice  
17          about, or considered, the legality of the methods that  
18          the SDS was using. Someone should have done so. Had  
19          they considered domestic law, there would have been  
20          areas of concern which should have prompted at least  
21          relevant training and supervision, especially in  
22          relation to trespass to property and the taking of  
23          confidential information. Some of the circumstances in  
24          which SDS UCOs obtained access to private homes and took  
25          confidential information appear to have been of doubtful

1           legality. The threat to public order, or to national  
2           security, if it existed at all, appears simply not great  
3           or immediate enough to amount to a defence.

4           There was no statutory framework for undercover  
5           policing during the Tranche 1 era, nor was there any  
6           system of judicial oversight. A statutory framework was  
7           only introduced in 2000, very shortly after the  
8           Human Rights Act 1998 came into force. In the absence  
9           of a statutory framework, it is highly questionable  
10          whether the United Kingdom was compliant with its  
11          international law obligations under Article 8 of  
12          the European Convention on Human Rights at any point  
13          during the Tranche 1 era in relation to the undercover  
14          policing conducted by the SDS. How important that  
15          observation is to the work of this Inquiry in Tranche 1  
16          is perhaps another matter. The much bigger questions,  
17          I suggest, in relation to statutory frameworks is why  
18          things continued to go wrong after the introduction of  
19          the Regulation of Investigatory Powers Act 2000, and  
20          whether the current statutory framework is adequate.  
21          Those are questions for later tranches.

22          Since I am touching upon legal issues, this is  
23          a convenient place at which to say a little about  
24          the core participants' written closing statements. We  
25          are grateful for the submissions received and the

1 considerable thought and industry which they reflect.  
2 However, the submissions made by the teams led by  
3 Mr Scobie KC, Mr Menon KC, Ms Heaven and Mr Sanders KC  
4 urge you to impugn the evidence given to the Home  
5 Affairs Select Committee and/or accuse politicians of  
6 misleading Parliament. Parliamentary privilege prevents  
7 you, Sir, from entertaining any such submissions. Such  
8 issues are a matter for Parliament alone.

9 There is also mention in some submissions of case  
10 and the burden of proof. This Inquiry is being run on  
11 an inquisitorial basis. There is no question of  
12 deciding between competing cases, or imposing a burden  
13 of proof upon any participate.

14 I turn finally to some concluding remarks. The SDS  
15 was created in 1968 to deal with a specific large scale  
16 public order threat for which there was a concrete basis  
17 for concern. It used relatively short and shallow  
18 deployments to gather valuable intelligence about the  
19 October 1968 demonstration. The unit then became  
20 a permanent feature, deploying undercover officers  
21 continuously into far-left groups often with vague  
22 remit. Individual deployments which lasted for several  
23 years became the norm. Officers became involved in the  
24 lives of those they were spying on. Although they were  
25 not ordered or encouraged to do so, in some instances



1 this went as far as sex. Reporting was extensive,  
2 unfiltered, deeply personal and often recorded in  
3 unprofessional terms. We cannot rule out that some of  
4 it, once filed, was leaked to the private sector and  
5 misused to blacklist activists.

6 The whole operation was secret and a very high  
7 priority was accorded to keeping it that way. Courts  
8 were sometimes misled. Miscarriages of justice occurred  
9 as a result. An officer whose cover was compromised was  
10 told to pretend that he was acting independently.  
11 Discipline was not enforced. Aspects of deceased  
12 children's identities were used, even though they added  
13 only a limited further protection. These operations  
14 have caused a lot of harm. Democratic freedoms have  
15 been infringed, outrage and pain has been caused.  
16 The damage is not limited to members of the public.  
17 Former undercover officers have suffered psychiatric  
18 injury.

19 The primary reason for conducting these operations  
20 was to gain intelligence to assist police to maintain  
21 order on the streets. However, the level of threat  
22 posed to public order was often not commensurate with  
23 a need to deploy undercover police officers for this  
24 purpose, not in the way that they operated.  
25 The benefits which the unit's intelligence brought to

1 public order policing do not, in our submission, justify  
2 the means. The ancillary reason for the SDS's work was  
3 to assist the Security Service to counter subversion.  
4 However, the evidence of the SDS's own officers and  
5 other contemporary documents show that the groups  
6 targeted by the SDS did not meet the official definition  
7 of "subversion". Many of those targeted were  
8 revolutionaries, but they did not threaten the safety or  
9 wellbeing of the State. In the words of Commissioner of  
10 Police for the Metropolis, Sir Robert Mark, they were  
11 a bad joke.

12 There was a remarkable lack of oversight, former  
13 training and instruction. However, the SDS was not  
14 a rogue unit, it was part of a larger  
15 intelligence-gathering apparatus and counter-subversion  
16 effort, which also operated in secrecy. The SDS was  
17 known to the chain of command within the  
18 Metropolitan Police Service, senior officers visited  
19 the unit on occasion and met its undercover officers.  
20 They received Annual Reports about the unit's work. The  
21 existence of the SDS was known to some within the  
22 Security Service, the Home Office and, to a lesser  
23 extent, the Cabinet Office.

24 We remain of the view expressed in last month's  
25 submissions. There was no effective review of the SDS's

1 operation. No one appears to have considered whether  
2 the level of intrusion occasioned by the SDS long-term  
3 undercover police deployments was justified. No one  
4 appears to have addressed their mind specifically to the  
5 legality of SDS operations. No one appears to have  
6 considered whether, after its introduction, both limbs  
7 of the Harris definition were met. There is a strong  
8 case for concluding that, had they done so, they should  
9 have decided to disband the SDS.

10 THE CHAIRMAN: Thank you very much, Mr Barr. We will  
11 resume, I think, shortly after midday with Mr Skelton  
12 for the CL team. Thank you.

13 (11.51 am)

14 (A short break)

15 (12.00 pm)

16 THE CHAIRMAN: Mr Skelton, I'm not entirely sure that  
17 the device is fully operational yet. I'll pause while  
18 it becomes so.

19 MR SKELTON: Thank you, Sir.

20 THE CHAIRMAN: Ah, it is now. Mr Skelton, now is the time  
21 for your closing submissions on behalf of  
22 the Metropolitan Police Commissioner. My understanding  
23 is that you're going to take a little over an hour. If  
24 you think it sensible, take a break when you wish to so  
25 as it fits in more or less so one can have a convenient

1 lunch.

2 MR SKELTON: Thank you, Sir.

3 THE CHAIRMAN: Thank you.

4 Closing statement by MR SKELTON

5 MR SKELTON: Sir, in its written closing statement and in  
6 this oral statement, the MPS endeavours to draw  
7 conclusions from a detailed analysis of the evidence so  
8 for obtained by the Inquiry in Tranche 1 which covers  
9 the formation of the SDS in 1968 and its operations  
10 until 1982. In doing so, the MPS does not shirk from  
11 accepting that certain conduct by the SDS and its  
12 officers was indefensible. However, it also seeks to  
13 judge the SDS fairly by reference to the wider  
14 socio-political, legal and policing context in which the  
15 SDS did its work, but also with the benefit of a modern  
16 perspective, recognising that some of the values of  
17 the past may have been wrong and should have been known  
18 to be wrong at the time.

19 In doing so, Sir, the MPS seeks to draw  
20 a distinction between matters that have been thoroughly  
21 investigated in Tranche 1 and in respect of which  
22 findings may safely be made at this stage, matters that  
23 have not yet been investigated, or investigated fully,  
24 where the Inquiry may wish to defer making findings  
25 until a later point in its work, matters in respect of

1           which it would be unfair to speculate or draw firm  
2           conclusions because of the passage of time and the  
3           non-availability of relevant evidence, and matters that  
4           are outside the Inquiry's terms of reference or lawful  
5           remit.

6           Sir, this oral opening is not a repetition of the  
7           MPS's written closing statement and its appendices, but  
8           it will cover the same themes and in places it will  
9           repeat what has been written. I'm going to cover  
10          the following general topics: sexual relationships,  
11          institutional sexism and misogyny, the legal framework,  
12          the responsibilities of the police, the historical  
13          context and justification and value, and then I will  
14          make some remarks on a few discrete topics: training,  
15          personal reporting and language, criminality and the use  
16          of deceased children's identities, before making some  
17          very short concluding remarks.

18          So the first of those topics, Sir, is sexual  
19          relationships.

20          I would like to address this at the outset because  
21          it's so important and because it resonates with public  
22          perception of the MPS and the conduct of its officers in  
23          the present day. During the T1 period, 1968 to 1982,  
24          SDS officers had sexual relationships with women with  
25          whom they had contact while deployed. The MPS said at

1 the opening the Inquiry's evidential hearings in 2020  
2 and repeats now those relationships were unacceptable  
3 and wrong. They should not have happened and they have  
4 caused and continue to cause immense hurt and suffering.

5 During this tranche, the MPS has read and listened  
6 to and wishes to make clear that it accepts the evidence  
7 of "Madeleine" and "Mary", who gave evidence to the  
8 Inquiry about the relationships they had with  
9 undercover officers and the effects these have had on  
10 them. The MPS reiterates its unreserved apology to them  
11 and the other women with whom undercover officers had  
12 sexual relationships.

13 Sir, it's not possible to determine at this remove  
14 how many UCOs had sexual relationships during this  
15 period or the identities of all of the women involved.  
16 The available evidence indicates that it was a small  
17 minority of UCOs who served in the SDS during this  
18 period, although this doesn't detract in any way from  
19 the wholly objectionable conduct that did occur, and  
20 most SDS officers maintained the professionalism and  
21 personal integrity that was to be expected of police  
22 officers in their position and knew that they should do  
23 so. Several SDS officers expressed the clear view in  
24 their evidence to this Inquiry that this type of conduct  
25 was wrong and this would have been well understood at

1 the time, or should have been.

2 Nevertheless, the deployment of male police officers  
3 into groups in which they had regular and in most cases  
4 long-term contact with women created a clear risk that  
5 left unchecked some officers would start  
6 sexual relationships with those women, and that risk,  
7 together with the unacceptable nature of such conduct,  
8 should have been fully and openly recognised by the  
9 SDS's managers. So too should the consequential risk  
10 that any sexual relationships could have a grave impact  
11 on the women concerned, none of whom, it can be safely  
12 assumed, would have wanted to have any form of sexual  
13 contact with an undercover police officers.

14 So the SDS's managers should have taken robust and  
15 effective measures to prevent sexual relationships from  
16 occurring, and specifically they should have made clear  
17 to the UCOs in formal, explicit instructions and  
18 training that such relationships were prohibited and,  
19 absent an exceptional excuse, such as the need to  
20 prevent otherwise imminent loss of life, would amount to  
21 serious professional misconduct. The MPS again  
22 apologises unequivocally for the fact that none of this  
23 happened.

24 The evidence adduced by the Inquiry does not  
25 indicate that the SDS's managers in the T1 period

1           authorised or encouraged UCOs to engage in sexual  
2           relationships to improve their cover or to further  
3           efforts to gather intelligence. However, there is some  
4           evidence suggesting that some managers may have been  
5           aware that sexual relationships were occurring, or were  
6           in possession of sufficient information to appreciate  
7           a risk that they were and gave informal guidance that  
8           such relationships should be avoided. This knowledge  
9           has been denied by the few managers who are still alive  
10          and are in a position to give evidence in response.

11                 So, faced with these conflicting and incomplete  
12          accounts from a few elderly witnesses who are drawing on  
13          memories that are over 40 to 50 years old, the Inquiry  
14          may consider that it's no longer possible or fair to  
15          make reliable findings as to what was known or was not  
16          known or said by individual SDS managers at the time.  
17          However, for the avoidance of doubt, the MPS's position  
18          is that whatever the SDS managers in fact suspected,  
19          knew or said at the time, they failed to take effective  
20          steps to stop relationships from happening.

21                 So I'm now going to say a few words about  
22          institutional sexism and misogyny. As its list of  
23          issues make clear, the Inquiry is actively investigating  
24          the important question of whether the actions of  
25          SDS officers and the SDS managers were affected by



1 sexism. In their closing statements, the Category H  
2 Non-State Core Participants argue powerfully that you  
3 should look beyond undercover policing and consider the  
4 wider culture and practice in the MPS in the 1970s and  
5 thereafter with a view to identifying more pervasive  
6 sexism and misogyny. These submissions of course  
7 resonate in the present day when trust and confidence in  
8 policing has continued to be undermined by the appalling  
9 criminal acts and behaviour of MPS officers in a series  
10 of high profile cases involving misconduct towards  
11 women. The MPS has no wish to resist the investigation  
12 of this issue, or any conclusions that may justifiably  
13 result. However, if the Inquiry chooses to investigate  
14 it, then the process by which it does so should be  
15 thorough, open and fair. So the Inquiry will need to  
16 conduct its own investigation, not simply relying on  
17 the findings of others, and this may include  
18 consideration of the evidence adduced in subsequent  
19 tranches in which sexual relationships and the  
20 mismanagement of officers' conduct are likely to feature  
21 to an even greater extent than they have done in  
22 Tranche 1.

23 It may also include consideration of the 1983 Police  
24 In Action Report by the Policy Studies Institute as well  
25 as other potentially relevant reports and papers, some

1 of which have been referred to in the closing statements  
2 for this tranche. But for present purposes, Sir, the  
3 MPS's position is that it would not be appropriate to  
4 make generalised findings about policing culture and  
5 practice unless and until that work has been done.

6 I turn now to the legal framework.

7 Sir, a neutral observer reading the closing  
8 statements made to be at the conclusion of Tranche 1  
9 might be forgiven for thinking that the SDS is on trial  
10 in a court, not under investigation by an Inquiry, such  
11 is the level of legal argument and the volume of case  
12 law that is now being put before you. I will not add  
13 unnecessarily to that misapprehension today not least  
14 because you have already had the MPS's detailed written  
15 submissions, but given the importance of the question of  
16 how the Inquiry can and should approach its assessment  
17 of the legal framework, I'll try and summarise the key  
18 points that the MPS has made in its written closing  
19 statement.

20 First, the terms of reference, which are the  
21 starting point.

22 These require the Inquiry to identify and assess the  
23 adequacy of the statutory policy and judicial regulation  
24 of undercover policing. They do not, as has been  
25 suggested by your counsel, require the Inquiry to

1           determine -- in quotes -- "whether undercover policing  
2           was conducted lawfully, the legality of tactics or the  
3           lawfulness of undercover policing as it was carried out  
4           by the SDS". Instead their focus is on the nature and  
5           adequacy of the ways in which undercover policing was  
6           authorised, regulated and governed over time by the  
7           primary and secondary legislation, Government policies,  
8           policing policies and the judiciary. As is well known,  
9           in the T1 era this framework was for the most part  
10          non-existent or underdeveloped. In particular, there  
11          was no legislation to govern undercover policing, which  
12          wasn't introduced until the enactment of the  
13          Regulation of Investigatory Powers Act, RIPA, in 2000,  
14          Part 2 of which provided for the authorisation of Covert  
15          Human Intelligence Sources, or CHIS, a point which  
16          I will repeat today, Sir, is that you may wish to  
17          investigate why, for many years, the Government didn't  
18          consider it necessary or helpful to introduce the kind  
19          of legislation that was needed for the regulation of all  
20          undercover deployments by the police in this country,  
21          not just those by the SDS.

22                 Second, section 2 of the Inquiries Act 2005.

23                 Public inquiries find facts and in many cases make  
24                 recommendations. Unlike courts, they do not make  
25                 the law or produce judgments that determine civil or

1 criminal rights. However, their findings may need to be  
2 underpinned, explicitly or implicitly, by legal  
3 standards, such as what is permissible in terms of  
4 the use of force by a State agent. In such cases  
5 inquiries are not making the law but rather identifying  
6 the law as it is known to apply to certain activities.  
7 The prohibition in section 2 of the Act together with  
8 the explanatory note reflect this important and nuanced  
9 position. So far as the MPS is aware, the domestic  
10 civil courts have never determined any cases in which  
11 allegations of trespass to property, breach of  
12 confidence or breach of human rights prior to  
13 2 October 2000 have been levelled against UCOs and the  
14 criminal courts have never determined any cases in which  
15 UCOs have been accused of burglary arising from their  
16 work. So determination of the legality of the SDS's  
17 work would therefore require the Inquiry to assume,  
18 wrongly, the judicial function of a court. None of the  
19 public inquiries cited in Counsel to the Inquiry's legal  
20 framework submissions have taken such an approach. To  
21 do so in this Inquiry would breach section 2 of the Act.

22 Third, principles of fairness and reasonableness.

23 In the absence of a court judgment determining  
24 definitively that the SDS's operations, or aspects of  
25 them, were unlawful under the civil or criminal law, as

1           it applied in the period 1968 to 1982, it would also be  
2           unfair and unreasonable for the Inquiry to make such  
3           a determination for itself. A finding of unlawfulness  
4           could only be made as it would by a court by examination  
5           of the facts in a specific case, ie particular occasions  
6           when UCOs entered the private property of an activist on  
7           which he or she was gathering intelligence, and this has  
8           not occurred. Even if it did occur, the exercise  
9           wouldn't be a reasonable or fair one in the context of  
10          the Inquiry's inquisitorial proceedings. In a civil or  
11          criminal trial, the Commissioner and the officers  
12          concerned would be entitled to basic safeguards such as  
13          the right to call their own witnesses, which don't apply  
14          in a public inquiry.

15                 Findings of illegality in respect of the T1 era  
16          would also not be reasonable or fair unless, before  
17          reaching them, the Inquiry had given careful explicit  
18          consideration to the question of whether such findings  
19          could safely be made 40 to 50 years after the index  
20          events. As the MPS said in its first opening statement  
21          for Tranche 1, the immense passage of time means that  
22          the Inquiry is deprived of the evidence of many key  
23          witnesses, senior officers, politicians, civil servants  
24          and intelligence officers and many relevant documents.  
25          To quote what was there said:

1            "In some cases, it may be clear what is missing and  
2            it may be that reliable inferences can be drawn from  
3            what remains or what those lost documents might have  
4            contained, but that may not always be the case."

5            The Inquiry and its participants may be wholly  
6            unaware that significant relevant evidence once existed  
7            but has now been lost and erroneous conclusions might be  
8            unwittingly and unfairly drawn as a result.

9            Sir, you have seen the MPS's submissions on the four  
10           legal allegations that have been considered by your  
11           counsel, trespass to property, burglary, breach of  
12           confidence and breach of Article 8 of the  
13           European Convention on Human Rights. Beyond repeating  
14           that each of those allegations would need to be  
15           considered on the facts of a specific case, I will not  
16           restate what is said about the first three issues, but  
17           I would like to say something about Article 8, because  
18           consideration of it has wider implications for the  
19           Inquiry's work.

20           The Convention, like the English common law, is  
21           a living instrument which both responds to and  
22           influences the individual and collective values and  
23           morays of the societies it serves, together with their  
24           governments. It is possible to identify and chart how  
25           in the mid to late 1970s, the Strasbourg Court, and in

1 the early days the European Commission, developed the  
2 principles that now underpin consideration of Article 8,  
3 the right to respect for private and family life. These  
4 include consideration of the requirement for necessity  
5 by reference to the concept of pressing social needs.  
6 The requirement for interferences in Article 8 rights to  
7 have some basis in domestic law, and for that law to be  
8 accessible and foreseeable, and more specifically in  
9 the context of secret surveillance by a State of its  
10 citizens, the need for procedural safeguards, such as  
11 independent, preferably judicial oversight. However,  
12 for many of the T1 period, these principles simply  
13 didn't form part of English law and this is exemplified  
14 by the case of *Malone v Metropolitan Police Commissioner*  
15 in which the English High Court declined to find that  
16 the UK's communications interception regime was unlawful  
17 but a few years later the European Commission and  
18 Strasbourg Court took a different view, a finding which  
19 was rectified ultimately by the enactment of the  
20 Interception of Communications Act 1985, which came into  
21 force the next year.

22 The more difficult task than to chart the evolution  
23 of human rights law in the UK and Strasbourg is that of  
24 identifying what the values and morays, or to use  
25 Strasbourg terminology the pressing social needs, of UK

1 society in the 1960s and 1970s were and how they've  
2 evolved over the last 50 years. This task has not been  
3 undertaken by the Inquiry as yet and would require  
4 a very different kind of evidence from that which has so  
5 far been obtained.

6 In the context of Article 8, what the Inquiry can  
7 more readily do in fulfillment of its terms of reference  
8 is to identify that there was no statutory framework, no  
9 common law framework and no procedural safeguards for  
10 undercover policing during the T1 era. It may be  
11 thought that the various Governments of the time either  
12 didn't consider this absence to be problematic, legally  
13 or morally, just as they hadn't in respect of  
14 the Interception of Communications regime, or that they  
15 didn't consider it necessary or expedient to do anything  
16 about it. That, Sir, is a question only the Home Office  
17 can answer.

18 In any event, there are many reasons why the Inquiry  
19 might conclude that this state of affairs was  
20 unsatisfactory without recourse to the retrospective  
21 application of human rights laws that were not part of  
22 English law at the time.

23 Sir, during the T1 P3 opening statements you put to  
24 me that on the whole my understanding is that the police  
25 forces of this country have always sought to operate



1 within the civil law, hence the need for warrants to  
2 perform acts that would amount to breach of the civil  
3 law, and you invited submissions on this issue.  
4 The MPS's position, in summary, is that the police, like  
5 other agents of the State, should act within the  
6 confines of civil, criminal and public law; to do  
7 otherwise would undermine the rule of law and as  
8 a consequence the principle of policing by consent,  
9 which will only be given by the public if the police are  
10 seen to act lawfully. The courts of England and Wales  
11 have, however, recognised that in some limited  
12 circumstances the police and other State agencies do go  
13 beyond the boundaries of the law in pursuit of law  
14 enforcement and national security objectives. The MPS's  
15 written closing statement refer to several cases in  
16 which the courts, applying the public policies that  
17 underpin the execution of the law, including the wider  
18 public interest and the principle of proportionality,  
19 have declined to censure certain authorised activities  
20 of the State which would otherwise be unlawful. Why  
21 this is the case and whether it is acceptable are moral  
22 and political not just legal questions which require  
23 a more careful consideration by the Inquiry and its core  
24 participants than can be afforded in these closing  
25 statements in this tranche.

1           The next topic I would like to cover is the  
2           responsibilities of the police, in particular public  
3           order and subversion. First public order.

4           The principal role of the police, as has long been  
5           recognised, is the maintenance of the Queen's or King's  
6           Peace, ie public order. However, the maintenance of  
7           public order or public tranquility must always be  
8           balanced against the basic democratic right to  
9           demonstrate and protest. The tension in policing terms  
10          is in ensuring a fair balance between individual rights  
11          and the general interests of the community. What is  
12          considered an appropriate or acceptable policing  
13          response to public order differs from different  
14          countries. The evidence in the T1 period shows that  
15          there was a real concern at the highest level about  
16          maintaining a traditional British policing response to  
17          public order, in other words a response that minimised  
18          confrontation and the use of force by the police. For  
19          that model of policing to work, it required and indeed  
20          still requires as much advanced information as possible  
21          about the event in question so that the level of  
22          policing is commensurate with the task and neither  
23          provokes nor fails to prevent disorder and its  
24          escalation into serious violence. That is why the work  
25          of the MPSB, or Special Branch, was so important to

1 public order policing; all the more so in an era when  
2 political protest was instrumental to so much public  
3 disorder.

4 The second issue is subversion. The 1970 ACPO terms  
5 of reference for Special Branch stated that its officers  
6 were responsible to their chief officers and their  
7 function was to acquire security intelligence, both  
8 secret and overt, (a) to assist the chief officer in the  
9 preservation of public order, and (b) as directed by the  
10 Chief Officer to assist the Security Service in the task  
11 of defending the realm from attempts at espionage and  
12 sabotage and from the actions of persons and  
13 organisations which may be judged to be subversive of  
14 the security of the State.

15 The wording of the second of Special Branch's  
16 responsibilities of course echoed that of the directive  
17 given by the Home Secretary, Sir David Maxwell Fyfe, to  
18 the Director General of the Security Service in 1952,  
19 seven years after the end of the Second World War.

20 The 1970s terms of reference were applicable to the  
21 work of all Special Branches, including MPSB and the SDS  
22 as part of MPSB throughout the T1 era. They were not  
23 replaced until 1984 when the Home Office produced its  
24 Guidelines on the Work of a Special Branch which also  
25 emphasised the importance of Special Branch officers and

1 their two primary tasks of gathering information about  
2 threats to public order and assisting the  
3 Security Service. As your counsel have pointed out, the  
4 1984 Guidelines incorporated the subsequent definition  
5 of "subversion" given by Lord Harris of Greenwich,  
6 Minister of State at the Home Office, to the House of  
7 Lords in 1975 which itself derived from an internal  
8 Security Service definition dating back to 1972. Under  
9 the Harris definition to be considered subversive, the  
10 activities in question needed to satisfy two limbs, that  
11 is to be, one, generally regarded as threatening  
12 the safety or wellbeing of the State, and two, intended  
13 to undermine or overthrow Parliamentary democracy by  
14 political, industrial or violent means. However,  
15 Lord Harris didn't elaborate, it may be thought  
16 deliberately, on precisely what kind of conduct that  
17 would satisfy the first limb of the definition, ie what  
18 kind of conduct would constitute the requisite threat.

19 The Home Office guidelines in 1984 were accompanied  
20 by a confidential covering letter which is significant  
21 for the width of its interpretation or arguably  
22 application of Special Branch's second function to  
23 gather information on potentially subversive  
24 organisations or individuals, even if they were  
25 currently acting lawfully. From one perspective, Sir,

1           it may be thought unethical and anti-democratic for  
2           the Government to take such an approach to the  
3           activities of its citizens, or at least it could be in  
4           respect of those individuals and groups who in fact have  
5           no real capacity to threaten the State. But from  
6           another perspective, it may be thought sensible to take  
7           a precautionary approach to questions of national  
8           security and to monitor certain groups of people before  
9           they become actively dangerous, ie before it is too late  
10          to stop them.

11                 Prior to and throughout the T1 period, the  
12          Security Service saw itself and was seen by Government  
13          as the only State body competent to determine whether  
14          a group was or wasn't subversive. That is why  
15          the service, not Special Branch, produced  
16          the overarching papers on subversion for  
17          the Cabinet Office throughout the T1 period and  
18          routinely advised the Government on subversion via  
19          formal channels such as the various committees on  
20          subversion which you have seen and directly by meetings  
21          between the Director General, the Prime Minister, senior  
22          Cabinet ministers and senior civil servants.

23                 Special Branch's function was to gather intelligence  
24          on subversion for the Security Service, not to analyse  
25          it. The Service's function was both to gather

1 intelligence and to assess it, which it did, based on  
2 the entirety of the Government's intelligence-gathering  
3 apparatus, including its own intelligence and that  
4 produced by Special Branch and the SDS. It was  
5 therefore necessary for Special Branch to consult with  
6 and defer to the Security Service on the critical  
7 question of what constituted subversion and which  
8 individual groups met that definition. That process of  
9 consultation and advice is referred to directly by the  
10 Home Office in its confidential covering letter for the  
11 1984 Guidelines to which I have referred.

12 It was not, therefore, constitutionally appropriate,  
13 necessary or practical for the MPS to challenge the  
14 Security Service's assessments on those matters.

15 In their statements to you, Counsel to the Inquiry  
16 have advanced a narrow interpretation of the Harris  
17 definition of subversion which they submit should have  
18 been applied by Special Branch and which, if it had  
19 been, should have led the police to conclude that it was  
20 wrong to use undercover police officers to monitor  
21 the activities of the left wing activist groups,  
22 particularly the ones that the SDS infiltrated.

23 Sir, such a legalistic approach is wrong in  
24 principle. It also doesn't do justice to the evidence  
25 that the Inquiry has obtained, particularly from

1 the Cabinet Office, which indicates that the groups that  
2 the SDS monitored in the 1970s were perceived to be  
3 subversive by the Government and the Security Service  
4 and so legitimate targets for close monitoring by  
5 the State's intelligence apparatus, of which the SDS was  
6 but one part.

7 If the Inquiry does wish to make high level  
8 generalised findings of this nature, it would need to  
9 conduct a more detailed investigation of the issue of  
10 how subversion was viewed in this period and to  
11 interrogate more carefully the working relationships  
12 between the Cabinet Office, the Home Office,  
13 the Security Service and Special Branch, topics which  
14 I've already touched on.

15 I turn now to the historical and socio-political  
16 context in which the SDS did its work.

17 The Inquiry is aware that the SDS was formed in late  
18 July 1968 comprising a small group of officers under  
19 the supervision of Detective Chief Inspector Conrad  
20 Dixon with instructions to ascertain what information  
21 they could about the upcoming Vietnam Solidarity  
22 Campaign, or VSC, Demonstration scheduled to take place  
23 in Central London in October 1968. However, the SDS was  
24 only one element of a wider policing response to large  
25 scale public disorder and so it's essential to place it

1 in its historical, political and policing context.

2 In each of the MPS's opening statements during  
3 Tranche 1, it has emphasised the importance of  
4 the Inquiry obtaining neutral independent evidence from  
5 an expert historian so that the work of the SDS can be  
6 properly contextualised and understood in this way. In  
7 the absence of such evidence it now falls to the MPS and  
8 other core participants to provide their own versions of  
9 what they judge to be the relevant historical context  
10 with the inevitable, if unwelcome, consequence that  
11 those versions will be criticised and dismissed as  
12 partisan and incomplete. Nevertheless the exercise is  
13 an important one. The MPS's written closing statement  
14 therefore contains an account of some of the key events  
15 that bear upon the formation and function of the SDS  
16 during the T1 period. I won't repeat that summary  
17 today, but you will see that particular attention is  
18 given to the year 1968, including the 17 March  
19 demonstration against the Vietnam War, concerns about  
20 public disorder, concerns about subversion,  
21 the formation of the SDS and the October 1968  
22 demonstration and then the aftermath of that  
23 demonstration, including the involvement of  
24 the Cabinet Office and the Home Office and the  
25 Home Secretary's comments to Parliament on



1           7 November 1968 during which he said -- and I quote:

2           "There are groups of people who go under the name of  
3           Maoists, anarchists, Trotskyites and half a dozen other  
4           small factions who are determined to provoke trouble  
5           with established authority, mostly in the person of the  
6           police, on any occasion when they can find suitable  
7           excuse for so doing. I have no sympathy with these  
8           people, nor have the overwhelming number of people in  
9           the country. A careful watch must be kept on any  
10          intentions that they may have."

11          Attention is also given in the MPS's written closing  
12          statement to the Home Office's authorisations of the  
13          SDS's work, which was much more than approval for  
14          funding of officers' accommodation, as  
15          Counsel to the Inquiry have implied.

16          The contemporaneous documents indicate quite clearly  
17          that the Home Office was fully aware of the nature of  
18          the SDS's work and expressed no legal or moral qualms  
19          about the use of its long-term undercover deployments.

20          So I'm going to move on now to the topic of  
21          justification and value, if I may and I'd like to say  
22          this by way of introduction. The Inquiry's terms of  
23          reference require it to assess the adequacy of  
24          justification of undercover policing, identifying  
25          the contemporaneous justifications for the SDS's

1           deployments as opposed to the adequacy of those  
2           justifications is, relatively speaking, a simple task.  
3           The general aims of the SDS at their highest may be  
4           summarised in these terms. In furtherance of  
5           the responsibilities and function of Special Branch, as  
6           set in the 1970 terms of reference, the SDS obtained  
7           intelligence that could not be obtained from other  
8           sources and which assisted Uniform Branch in policing  
9           public order and assisted the Security Service in its  
10          counter-subversion work. The available evidence shows  
11          that the SDS was widely believed to be and was  
12          successful in meeting those two goals which, in the late  
13          1960s and 70s were closely intertwined, as I have said,  
14          as public order was often fomented by groups whom the  
15          Security Service judged to be subversive.

16                 Contemporaneous justifications can also be  
17          identified within documents prepared at the time,  
18          including the SDS's annual reports, MPSB's annual  
19          reports and in exchanges between the MPS and the  
20          Security Service and within Government-level papers that  
21          the Inquiry has published. Further contemporaneous  
22          justifications can and should be identified by inference  
23          from the historical context. These would not, of  
24          course, have been recorded, but may well have been  
25          apparent to the managers at the time. The Inquiry can't

1 be confident that it has secured all that type of  
2 evidence at this stage.

3 The thornier question, Sir, is whether  
4 the contemporaneous justifications were adequate. It's  
5 not clear how the Inquiry intend to approach its  
6 assessment of this. It may be at a high level, as  
7 CTI attempt in their opening statement for Tranche 1  
8 Modules 2B and 2C, or it may be more detailed, year by  
9 year, group by group, deployment by deployment or report  
10 by report. A more detailed and contextualised approach  
11 is in principle preferable but would of course require  
12 a complete evidential picture, which is lacking, so care  
13 must be taken.

14 With a view to assisting the Inquiry, the MPS has  
15 sought to evaluate in summary form the evidence that the  
16 Inquiry has so far obtained in respect of the principal  
17 fields into which the SDS deployed; that is the Vietnam  
18 Solidarity Campaign, the Stop the Seventy Tour, the  
19 International Socialists, Socialist Workers Party and  
20 splinter groups, the Socialist Labour League and Workers  
21 Revolutionary Party, the International Marxist Group,  
22 Maoist groups, anarchist groups and Irish support  
23 groups. This analysis is contained in appendix C to  
24 the written submissions, which should be read alongside  
25 appendix B, a chronology of relevant historical events

1 during the T1 period, and appendix D, a summary of  
2 the SDS's work in the specific context of the  
3 Battle of Lewisham in 1977.

4 Sir, I'm not going to attempt to summarise those  
5 documents today. Instead I'd just like to make a few  
6 comments on the question of justification and then look  
7 at the conclusions that can be drawn from the evidence.

8 First and most importantly the MPS frankly  
9 acknowledges that Special Branch officers who authorised  
10 the deployments by the SDS did not consider their  
11 intrusive nature and the right to privacy of the  
12 individuals targeted, nor did they balance these factors  
13 against their value. For them, the value of the  
14 intelligence that the SDS produced -- and it's clear  
15 they thought it did have high value -- was ample  
16 justification by itself for its continuation.

17 In failing to recognise or consider the intrusive  
18 nature of the undercover work, MPS officers were acting  
19 in alignment with the general undeveloped appreciation  
20 of privacy at the time within the police, the  
21 Home Office, which authorised the SDS's work, the  
22 Security Service, which received and used its  
23 intelligence, and the Cabinet Office, which consumed  
24 intelligence on the groups that the SDS infiltrated.  
25 This would not occur now, applying modern policing

1 standards and under the current legal and policy  
2 framework since RIPA. However, it would be wrong to  
3 judge the MPS and MPSB officers who authorised each of  
4 the SDS's deployments by simply applying modern  
5 standards. They were seeking to fulfil their  
6 responsibilities without the benefit of a legal and  
7 regulatory framework and in an era where privacy rights  
8 were not as highly valued by society and had not yet  
9 been articulated in domestic law.

10 Second, the way in which the SDS operated in this  
11 period was generally to undertake long-term open-ended  
12 undercover deployments into groups. This meant that  
13 a continuous stream of intelligence on public order and  
14 subversion was available. UCOs were then well placed to  
15 gather specific intelligence on plans of public disorder  
16 in advance of it occurring or to confirm that  
17 anticipated disorder may not occur. The MPS  
18 acknowledges that this methodology, which has been  
19 described as "hoovering up information over long periods  
20 of time", led to the creation of many reports which at  
21 an individual level may not have been significant or  
22 valuable. It would not be right to say that  
23 the existence of some reports of lesser relevance  
24 undermines the overall adequacy of the contemporaneous  
25 justification, but the MPS fully accepts that there may

1 be a tipping point where reporting that is made  
2 consistently of low value over time is inappropriate.

3 The type of detailed direct intelligence that the  
4 SDS's UCOs routinely produced couldn't have been  
5 obtained by any other means that were then available to  
6 the MPS, open communications, attendance at public  
7 meetings, the use of informants or indeed interceptions.  
8 Each of the groups planned their activities in private,  
9 or in secret, and many individuals were security  
10 conscious. Such methods simply wouldn't have captured  
11 the quality and quantity of intelligence on the problems  
12 of public disorder and subversion as they were perceived  
13 at the time.

14 Fourth and finally, the MPS would like to address  
15 a phrase or concept that has become something of an  
16 undefined shorthand within the Inquiry. It has been  
17 suggested that there was some form of prohibition on  
18 a UCO taking up a "position of responsibility" in  
19 a target group. That phrase wasn't used  
20 contemporaneously and there was no such prohibition.  
21 The correct position is that a UCO was expected to be  
22 a follower, not a leader, and not to influence  
23 the direction of the group into which they were  
24 deployed. There was value in UCOs assuming positions  
25 such as secretary or treasurer in which they could

1 exploit access to better information about their  
2 targets, so long as they were able to do so without  
3 crossing the line between follower or leader or into  
4 agent provocateur, that value should be acknowledged.

5 Counsel to the Inquiry questioned whether a desire  
6 to maintain a police response characterised by having  
7 sufficient but not excessive police numbers is a valid  
8 one. With respect, it plainly was and is the desire of  
9 those in leadership positions that this should be  
10 achieved, insofar as that is possible. Despite its  
11 efforts, the Inquiry is not in a position to assess  
12 whether during each event within the T1 decade, many of  
13 which can be seen in the chronology at appendix B,  
14 the policing decisions on the ground were positively or  
15 negatively or not at all affected by SDS intelligence.  
16 The Inquiry's investigation simply doesn't allow for  
17 this given the absence of relevant intelligence and  
18 pre-demonstration assessments and the absence of  
19 a comparative analysis of alternative European style  
20 models of policing.

21 With respect, it is simplistic to advance the point  
22 that it's hard to identify a single instance in which  
23 the SDS intelligence averted a public order calamity in  
24 the T1 era. The fact that there were few such  
25 calamities is itself evident that the system to which

1 the SDS contributed was working, demonstrations were  
2 policed effectively. Those involved with gathering  
3 intelligence and policing public order were not going to  
4 record for the benefit of posterity their hypotheses on  
5 what might have happened at each demonstration if it had  
6 been differently policed. The evidence that is  
7 available to the Inquiry in fact provides strong support  
8 for the general conclusion that the SDS's intelligence  
9 mitigate a valuable contribution to public order  
10 policing and this includes the contemporaneous  
11 documentary evidence which I have referred to,  
12 the evidence given by the MPS's officers and managers to  
13 this Inquiry, and the evidence given by A8 officers, for  
14 example Anthony Speed, who said, in his unchallenged  
15 witness statement:

16 "We in A8 could not have done our job without the  
17 Special Branch assessments. Quite frankly, we could not  
18 begin to design an operational plan until we knew where  
19 the demonstration was taking place, how many people  
20 would turn up, the expected violence and whether there  
21 was to be any opposition. Once we knew this, we were  
22 able to talk about the number of uniform officer and the  
23 command structure required."

24 The evidence obtained by the Inquiry also indicates  
25 that the SDS's deployments furthered Special Branch's



1 second function, the provision of intelligence to the  
2 Security Service on groups that the Service judged to be  
3 subversive. SDS reporting was routinely provided to  
4 the service and Special Branch answered a stream of  
5 requests for information throughout the T1 period.

6 Witness Z, on behalf of the Security Service,  
7 accepts the value of this intelligence and their  
8 conclusion has not been challenged by the Inquiry.  
9 The limited number of Cabinet Office documents that  
10 there are in evidence, although not commented upon by  
11 Witness Z, also established that the groups targeted by  
12 the SDS were of genuine concern to the Government  
13 throughout the T1 period and that assessments of their  
14 activities and intentions were considered and relied  
15 upon at the highest level of Government, including  
16 within the Home Office, the Cabinet Office and by  
17 the Prime Minister.

18 Important relevant documents are missing, however,  
19 from the Cabinet Office papers. For example,  
20 the reports of the Interdepartmental Group of Subversion  
21 in Public Life, which senior officers in Special Branch  
22 were entitled to receive, and also missing are the  
23 minutes of the committee of ministers set up in 1972 and  
24 chaired by the then Prime Minister, Sir Edward Heath.  
25 Nevertheless, as CTI observed, the available records

1 clearly demonstrate a consistent appetite, it appears  
2 without reservation, for continuous detailed  
3 intelligence about subversive groups throughout the T1  
4 period complemented by a desire to take active steps to  
5 counter subversion. It's incontrovertible, Sir, that  
6 the SDS's intelligence contributed to this process and  
7 to the Security Service's efforts to closely monitor  
8 each of the groups they identified to be subversive.

9 Sir, I'm going to turn now to the discrete topics of  
10 training, personal reporting and language, criminality  
11 and the use of deceased children's identities.

12 The Inquiry's evidence demonstrates that  
13 SDS officers didn't receive formal, course-based  
14 standardised training for their undercover roles.  
15 The MPS accepts that in the field of modern undercover  
16 policing, as in many other types of policing work,  
17 formal training is an essential tool for fostering  
18 professionalism, honing skills and developing  
19 resilience. However, policing culture was very  
20 different in the 1960s and 1970s, and in particular  
21 there were no formal standards for undercover police  
22 deployments.

23 In respect of the SDS's initial operation, its  
24 officers were not recruited to a pre-existing role and  
25 in some cases the work of these initial recruits went

1 little beyond the type of enquiries plain-clothed MPSB  
2 officers might conduct, save that the  
3 undercover officers would have a back story to rely on  
4 and a false name to give if challenged and then returned  
5 to meetings again and again.

6 Thereafter, as the work of the SDS extended, those  
7 in charge might fairly have concluded that the expertise  
8 in how to carry out an undercover role resided within  
9 the unit rather than in any external course. For this  
10 reason, the method of training developed whereby an  
11 officer due to be deployed would spend a period of time  
12 in the back office of the SDS learning about the type of  
13 reporting being carried out and the type of work being  
14 done by existing undercover officers by processing that  
15 intelligence and visiting the safe house for regular  
16 meetings and debriefings.

17 There can be no doubt that those in charge of  
18 the unit considered this period to be training, ie  
19 on-the-job learning, a pathway analogous to an  
20 apprenticeship. In a similar vein, whilst there was no  
21 formal independent deployment training, officers  
22 expected to receive informal advice and instructions  
23 during SDS meetings throughout their deployment. Those  
24 in charge of the SDS would have appreciated that they  
25 could rely on the fact that in almost all cases the new

1 recruit was an MPSB Special Branch officer. This would  
2 have meant they had undergone a rigorous selection  
3 process and a training programme. By 1979 at least,  
4 Special Branch ran six initial training courses and two  
5 advanced courses annually. The initial course included  
6 sessions on the role of Special Branches and MPSB  
7 structure, the role of the Security Service, police  
8 Security Service liaison and introduction to the threat  
9 from subversion, subversion in industry, Trotskyists,  
10 anarchists and the alternative society, subversion in  
11 the UK coloured community, as it was then called, A8  
12 public order, the ultra left, public order in  
13 the industrial field, Trotskyists and public order and  
14 right wing extremism. The advanced course included  
15 sessions on the role and responsibility of  
16 the Security Service, an introduction to the Service's  
17 study of subversion, the ultra left, international  
18 communism, current problems in the subversive scene and  
19 left wing current priorities together with a session on  
20 A8 Branch and public order.

21 It's also clear that for the purposes of detailed  
22 written guidance, Special Branch had its own  
23 comprehensive standing orders at this time and  
24 SDS officers would also have to a lesser or greater  
25 degree some experience of Special Branch Inquiry work.

1 Routine work required officers to attend the meetings of  
2 activists, as I've said, sometimes discreetly.

3 In addition, selection for the SDS was typically on  
4 the basis of personal recommendation, thus indicating  
5 that the recruits' attributes had impressed an  
6 SDS officer or manager. While there was an expectation  
7 that soundings would have been taken, this approach must  
8 now be recognised to lack transparency. However, such  
9 approaches were far more common across many policing and  
10 non-policing areas in this era, including of course  
11 the legal profession, than would be the case today.

12 However, the MPS accepts, particularly in the light  
13 of the sexual misconduct of SDS officers and the topics  
14 that I will now address, that it's abundantly clear that  
15 considerably better training, guidance and support was  
16 needed than was provided to the SDS officers at  
17 the relevant time.

18 Turning then to personal reporting and language.

19 The aims of the SDS in this period are set out in  
20 its 1969 terms of reference and they included  
21 identifying those who engage in preliminary planning or  
22 who take part in public demonstrations and gathering and  
23 recording information for long-term intelligence  
24 purposes. This was an aspect of work which the SDS did  
25 which also supported the Security Service. There are

1 a number of the examples, as I've said, of the  
2 Security Service seeking specific and general  
3 information about individuals involved in the  
4 organisations concerned, and this was confirmed by  
5 officers who gave evidence to the Inquiry that they  
6 reported on individuals in this way and that that  
7 reporting would be passed to the Security Service.

8 As the Inquiry's evidence demonstrates, the SDS  
9 gathered and recorded personal information, such as  
10 personal descriptions and other information, such as  
11 details about individual's addresses, house moves,  
12 vehicles, finances, associations, domestic arrangements  
13 and employment. This reporting includes some highly  
14 personal details about individuals' private  
15 circumstances, events or activities. In some cases  
16 there is reporting about children. The MPS invites  
17 the Inquiry to take into account five points when  
18 reviewing this type of reporting.

19 First, the whole scale Hoovering carried out by  
20 the SDS would not occur in the context of undercover  
21 operations today. The SDS was operating in an era  
22 before careful, pre-planned and proportionately assessed  
23 targeting of the type required by RIPA and the APP Code  
24 of Practice. These governing instruments recognise the  
25 particularly intrusive nature of undercover policing and

1 through the concepts such as collateral intrusion, seek  
2 to minimise intrusion into the private lives of those  
3 who are not the target of the deployment.

4 Second, even in the environment the SDS worked in,  
5 ie without a clear framework for assessing the risks of  
6 intrusion and minimising collateral intrusion, some of  
7 the language used by the officers in some of the reports  
8 was not acceptable. This includes rudeness and  
9 derogatory and arrogant language, which was  
10 objectionable even at the time. It had no intelligence  
11 value and it's not defended. Put simply, it shouldn't  
12 have occurred, and when seen by managers, it should have  
13 been amended and the issue explained to the reporting  
14 officer.

15 Third, officers shouldn't now be criticised for  
16 the use of language and terminology which is  
17 unacceptable now but wasn't considered problematic at  
18 the time. An example of this is the use of a word such  
19 as "coloured", which would not be used now but which was  
20 commonplace during that period, and examples of this can  
21 be found in many places, including in Parliament.

22 Fourth, the Inquiry should appreciate that many  
23 categories of personal information are capable of being  
24 relevant and valuable for intelligence purposes.  
25 Personal reporting is not improper per se, even highly

1 personal reporting, which may be valuable and justified  
2 in certain circumstances. Examples of this are  
3 considered in detail in the MPS's written statement.

4 Finally, it would not always have been obvious at  
5 the time or be clear in retrospect which intelligence  
6 was valuable and which should have been sought, not have  
7 been sought and kept. Even when giving evidence many  
8 SDS officers did not appreciate what value individual  
9 items of intelligence might be capable of having and in  
10 an operational context this is understandable,  
11 particularly in respect of information where the greater  
12 intelligence value was to the Security Service rather  
13 than the police. The decision whether a piece of  
14 intelligence is relevant or of value was and is for  
15 the analyst of that intelligence, not the  
16 undercover officer reporting it.

17 Further, as the MPS stated at the start of T1,  
18 intelligence can have a latent value that doesn't  
19 manifest until some time after it has been gathered or  
20 has been gathered but ended up being of little value if  
21 the individuals or groups targeted prove to be harmless.  
22 But that is only a judgment that can be made in  
23 retrospect.

24 In summary, Sir, it may be appropriate to report and  
25 to retain highly personal private information in



1 the context of a properly justified deployment.  
2 The Inquiry is therefore urged not to make any finding  
3 at the level of generality about any class of  
4 information being off limits for intelligence purposes,  
5 however it's recognised that no special or directed  
6 guidance was given to SDS officers about the types of  
7 reporting that were plainly sensitive and personal.  
8 The MPS accepts that it should have been clearer -- or  
9 clear to managers from the early days that SDS officers  
10 had access to far more personal and private information  
11 than was available through normal MPSB enquiries. It  
12 would have been beneficial for some form of guidance on  
13 this topic to have been given to undercover officers to  
14 ensure that reporting remained relevant, necessary and  
15 ethical, and was only retained with good reason. It's  
16 clear that this type of consideration simply was not in  
17 evidence in the intelligence community at the time, many  
18 years before RIPA, just as the evaluative exercise which  
19 I've outlined in respect of the overall deployments  
20 wasn't in place, but should nevertheless have been given  
21 some consideration.

## 22 Criminality.

23 The guidance in respect of engagement in criminal  
24 conduct which was in operation from close to  
25 the beginning of the T1 period was the Home Office

1 Circular 97/1969, concerning the use by the police of  
2 informants who take part in crime, the salient parts of  
3 which are quoted in the MPS's written statement.  
4 Although it's not plain on its face that this circular  
5 applied to police officers in addition to civilian  
6 informants, it should have been clear from at least two  
7 1974 criminal cases, McEvilly and Lee, and Mealy and  
8 Sheridan, that it did. Unsurprisingly, few of  
9 the SDS officers who give evidence to the Inquiry  
10 recalled the circular by name or recognised it in its  
11 original format, but its central principles, at least  
12 insofar as not acting as an agent provocateur, were  
13 broadly understood by the majority. Some recalled this  
14 type of guidance being given expressly in the context of  
15 the SDS's work, others did not. Roy Creamer, for  
16 example, suggested in his evidence that the rules were  
17 clear within the SDS from the outset.

18 Many UCOs have informed the Inquiry that  
19 law-breaking was not an issue in their deployments as  
20 the groups into which they were deployed were not  
21 engaged in criminal conduct. However, a number of UCOs  
22 were involved in flyposting, or conduct during  
23 demonstrations which would amount to obstruction, both  
24 of which appear to have been tacitly authorised and  
25 treated at the time as being the type of conduct

1 necessary to show the requisite enthusiasm for their  
2 role and to maintain their cover. However, in the MPS's  
3 written closing statements, it considers four specific  
4 case studies in which SDS officers engaged in  
5 criminality. I will not repeat those now, but it may be  
6 thought that certain themes arise from the examples  
7 given, in particular the fact that there were no clear  
8 policies for managing the involvement of UCOs in  
9 the criminal justice system and for managing officers --  
10 undercover officers' knowledge of legally privileged  
11 information.

12 Second, the fact that the courts were repeatedly  
13 misled by not being informed that  
14 undercover police officers were appearing as defendants.

15 Third, the fact that managers didn't take  
16 appropriate disciplinary action in response to criminal  
17 conducted by an undercover officer, which will no doubt  
18 be a matter that the Inquiry will wish to consider  
19 further in the conduct of the management of SDS  
20 deployments at later tranches.

21 Sir, those are matters where the MPS recognises that  
22 criticisms can and should be made. And finally, as  
23 the closing statement acknowledges, the Inquiry may want  
24 to give further consideration to the referrals to  
25 the Miscarriage of Justice Panel.

1           The use of deceased children's identities.

2           The MPS acknowledges, as it did at the start of  
3 the Tranche 1 hearings, that insufficient consideration  
4 was given by the SDS to the impact that the practice  
5 might have had, if revealed or discovered, on  
6 the families of concern -- of those concerned. That  
7 impact was neither intended nor foreseen, but for  
8 the families it has been significant, and the MPS  
9 apologises again for the shock and distress that they  
10 have suffered.

11           It's not clear precisely when the SDS first started  
12 using deceased children's identities, or what indeed  
13 prompted it to do so. There's some evidence to suggest  
14 that the practice was popularised by  
15 The Day of the Jackal, a novel published in 1971, but  
16 this is far from conclusive. Whatever the correct  
17 position, the practice was already in use by the time  
18 the managers who have provided evidence to the Inquiry  
19 joined the SDS, and they either authorised its continued  
20 use or informally maintained the pre-existing practice.

21           From the mid-1970s, it was standard practice for  
22 UCOs to use children's identities as part of their  
23 legend building. This corresponded with an increase in  
24 the length of the undercover deployments and the move to  
25 infiltration of more security-conscious organisations.

1           These two factors created a significant ongoing risk  
2           that the UCOs' false identities would be uncovered,  
3           thereby terminating their work and, more importantly,  
4           exposing them to a real risk of physical harm. It was  
5           therefore essential for UCOs to create credible  
6           identities that could withstand close proactive  
7           scrutiny, including checks of birth records, which at  
8           the time were publicly available in hard copy at  
9           the General Records Office. It wasn't possible at that  
10          time to falsify entries into these records, so using  
11          the identity of a real person was considered necessary  
12          for safety purposes. It also had the secondary  
13          advantage of giving UCOs access to hard copy birth  
14          certificates, which they needed to obtain driving  
15          licences and passports in their cover identities.  
16          The person in question needed to have been born at about  
17          the same time as the officer to avoid suspicion as to  
18          the disparity between age and appearance, but it could  
19          also not have been a living person, who might have been  
20          known to a member of the group, or discovered by  
21          research or accident, or, by dint of employment, gain a  
22          Special Branch file. For all these reasons, it needed  
23          to be somebody who had died.

24                 The use of a deceased person's identity still itself  
25          carried an inherent risk that the UCOs "death" -- in

1 inverted commas -- would be exposed by reference to  
2 the corresponding public records of deaths. Using  
3 the identity of a child was believed to minimise this  
4 risk by maximising the difficulty of finding of  
5 the associated record. It also meant that other  
6 personal records that could jeopardise the UCO, such as  
7 employment or education records, would either be  
8 non-existent, or difficult to find. A hostile  
9 researcher may not have thought to look for the death of  
10 a child, or may not have wanted to search many years of  
11 historical archives. The manner in which records were  
12 kept, in separate ledgers, made it more difficult to  
13 establish a link between birth and death, particularly  
14 in circumstances where a child had been a little older  
15 when they died, because birth and death certificates  
16 wouldn't have been located close to each other.

17 In summary, Sir, in the T1 period, the use of  
18 deceased children's identities was believed to be  
19 the only effective, practical and safe means of  
20 preserving SDS officers' false identities over  
21 the course of their long deployments. While  
22 the practice wasn't entirely itself without risk, it  
23 remained the securest method available, and this view  
24 prevailed notwithstanding the fact that the link between  
25 birth and death had been established during

1 the deployment of one officer, HN297, and had led him to  
2 be compromised and withdrawn from the field. During  
3 this Inquiry, no one has yet identified an alternative  
4 method which would have been as effective and as safe at  
5 the time, and the Inquiry is asked to accept that this  
6 was a necessary practice in all the circumstances, or  
7 alternatively that it was reasonable for the SDS's  
8 managers to have believed it to offer the best and  
9 safest solution.

10 In its opening statement for T1P3, the MPS formally  
11 requested that the Inquiry investigated whether  
12 the practice of using deceased children's identities  
13 originated -- or where it originated, including whether  
14 it was used by other UK State bodies, such as  
15 the Security Service, prior to its use by the SDS. Sir,  
16 the answer to that question may be felt to be important.  
17 It is directly relevant to the assessment of whether  
18 the use of the practice may have been reasonable at the  
19 time because it represented standard practice within  
20 the intelligence community, and it may also be relevant  
21 because it would objectively confirm that there were no  
22 other practical and safe methods for preserving  
23 the long-term security of UCOs or other Covert Human  
24 Intelligence Sources.

25 Sir, at the start of that hearing, you declined

1 the MPS's request on the grounds that it wouldn't  
2 illuminate the origins of the practice within the SDS.  
3 Following this, the MPS wrote to the Security Service  
4 directly to ask if they would clarify the position,  
5 however they also declined to do so. From the MPS's  
6 perspective, these responses have caused a significant  
7 missed opportunity to assess the use of deceased  
8 children's identities by reference to its proper  
9 historical context.

10 Sir, I've now concluded the main body of my  
11 submissions, almost on time, and I would just like to  
12 make these very short remarks at the end, if I may.

13 First, I would like to echo what I said at the start  
14 of the T1 hearings on behalf of the MPS, and that is  
15 that the Inquiry continues to have the absolute  
16 commitment of the MPS in its work and the MPS will  
17 assist the Inquiry and will continue to assist  
18 the Inquiry in every way it can.

19 Second, I'd like to emphasise again that the MPS  
20 approaches the issues under investigation by the Inquiry  
21 with humanity, and with a willingness to identify and  
22 learn from the mistakes of the past.

23 Sir, that concludes my oral closing statement.

24 THE CHAIRMAN: Thank you very much, Mr Skelton. You've come  
25 well within the time that the Inquiry was willing to



1           allot to you and I'm very grateful to you for doing so.  
2           It will reduce the pressure of time under which we all  
3           operate. Thank you.

4       MR SKELTON: Thank you.

5       THE CHAIRMAN: We will now resume at 2.05 with Mr Sanders  
6           for the DL team. Thank you.

7       (1.05 pm)

8                               (The short adjournment)

9       (2.30 pm)

10                           Closing statement by MR SANDERS

11       THE CHAIRMAN: Mr Sanders.

12       MR SANDERS: Good afternoon, Sir. Can you hear me okay?

13       THE CHAIRMAN: I can indeed.

14       MR SANDERS: Excellent, thank you.

15           I know your team is aware, but you might not be  
16           aware that I'm in fact on leave at the moment and when  
17           these hearings were originally listed for before  
18           Christmas and I had last week and this week booked off,  
19           so I've done my best to read all the other closings  
20           yesterday, but there's only so much I could do. But I'm  
21           really going to stick to my script in any event.

22       THE CHAIRMAN: Can I apologise for interrupting your leave  
23           and express my gratitude to you for coming back in when  
24           really you ought to be putting your feet up.

25       MR SANDERS: Yes, well, not at all. It's no problem. Thank

1           you, Sir.

2           Sir, what I'm going to do is follow broadly  
3           the outline of our written closing, so to deal with  
4           the main body of the closing first and then deal with  
5           the main body of the legal submissions. I am not of  
6           course going to attempt to read through everything;  
7           I will just try and pick up some key themes and  
8           headlines.

9           So starting with the point that I'm going to come  
10          back to, in terms of the legal framework, we've given  
11          you an outline of what we say that you, the Inquiry, can  
12          do in relation to the legal framework, and then at the  
13          end I'll turn to what we say you can't get into.

14          So, in our submission, it is quite right and proper  
15          for the Inquiry to take account of the legal framework  
16          within which the SDS was operating, so far as that's  
17          clear and uncontentious, and the propositions that we  
18          say meet that description are as follows, and they're  
19          really as regards the rights of individuals, the  
20          corresponding duties of the police and also the powers  
21          of the police.

22          So starting with the rights of individuals, there's  
23          of course the right to demonstrate peacefully, and  
24          that's a right of all citizens, whatever their view. So  
25          the right of far-left groups to demonstrate and protest

1 is precisely the same as the right of far-right groups  
2 to do so, unless of course they are proscribed  
3 organisations. Accompanying that, there's the right to  
4 hold and attend election meetings on public premises,  
5 and there's also the right of other citizens who don't  
6 wish to demonstrate or protest to go about their  
7 ordinary business without let or hindrance. So those  
8 are the rights that the police must respect, and the  
9 corollary of those rights are the following duties of  
10 the police.

11 So, first is the duty to maintain public order and  
12 to prevent disorder, and there are of course two limbs  
13 to that, two sides to that coin, but maintaining public  
14 tranquility, the King's Peace, is one part of it, and  
15 ensuring that that is not destroyed and that there isn't  
16 disorder and quelling disorder is another part of it.

17 The second key duty that the police had, and still  
18 have, of course, is to prevent and detect crime, and  
19 there are various public order offences that were in  
20 force at the time and relevant at the time, which of  
21 course it was for the police to enforce.

22 Then the final duty we just mention and pick up on  
23 is the duty of police Special Branches -- in this case  
24 in particular the Metropolitan Police Special Branch --  
25 to assist and support (a) their uniform colleagues in

1           policing public order, and (b) MI5 in dealing with  
2           espionage, subversion and extremism, and national  
3           security matters generally.

4           So those are the duties that the police were under.

5           And then, just in terms of their powers, in  
6           particular we pick up, of course there were the powers  
7           that the police had under the Public Order Act 1936 in  
8           relation to processions. So they had to power to impose  
9           conditions on processions, not on every protest or  
10          demonstration but moving, nonstatic demonstrations and  
11          also to ban them, and those powers were exercisable in  
12          advance, which could obviously require intelligence upon  
13          which to exercise those powers, and they would also be  
14          exercised in relation to unfolding situations on  
15          the ground.

16          Then the other power that the police had -- relevant  
17          power was their permissive common law power to do  
18          anything that wasn't prohibited. So that's what we say  
19          the legal framework was insofar as it's clear and  
20          uncontentious and should be taken into account by  
21          the Inquiry.

22          The key points arising out of all of this, in our  
23          submission, Sir, is that the police were faced with  
24          a very difficult balance to strike. That they had to --  
25          they were obliged to facilitate demonstrations and also

1 simultaneous counter-demonstrations. They were obliged  
2 to treat the far left and the far right and anyone in  
3 between or outside of that in the same way, and they had  
4 to do that while also ensuring that those not interested  
5 in politics or Marxism or fascism were able to use  
6 the highways and the public spaces and to go about their  
7 business as they saw fit. So there's a very difficult  
8 balance for the police to strike there, and that's what  
9 we say comes out, you can see, from the legal framework.

10 In terms of the public order problem, we start our  
11 submissions with this observation, which is -- as I say,  
12 comes from our clients, that they feel that there is  
13 a "heads I win, tails you lose" theme to the Inquiry's  
14 proceedings whereby an absence of violence or an absence  
15 of serious disorder is taken to suggest that there was  
16 no need for public order intelligence, and  
17 the occurrence of violence or serious disorder is taken  
18 to indicate that the intelligence was ineffective and  
19 therefore pointless, and we say that that's -- it  
20 proceeds from a false premise. There was in fact,  
21 during the 1968 to 1982 period, a very serious and  
22 escalating public order problem, particularly in  
23 the Capital, and that subsisted in a very high number of  
24 public order events, particularly political public order  
25 events with a very high potential for disorder. And

1 while it is true that for the most part  
2 the Metropolitan Police was able successfully to avoid  
3 a repeat or recurrence of what happened in  
4 Grosvenor Square on 17 March '68, that was not because  
5 the problem went away or evaporated, it was because of  
6 the steps that the Metropolitan Police took to address  
7 the problem and to maintain itself on top of the problem  
8 on an ongoing basis, and there were really three parts  
9 to those measures.

10 The first was the establishment of A8, so  
11 a specialised Public Order Branch that would coordinate  
12 across the Force, pull officers from different divisions  
13 and deal with public order events.

14 Secondly, the development of specialist training for  
15 officers on public order duties, and then latterly the  
16 development of specialist equipment, particularly the  
17 protective shields.

18 And then thirdly, and importantly from your  
19 perspective, Sir, was the establishment of the SDS as  
20 a resource to significantly improve the intelligence  
21 that Special Branch was able to provide A8 in connection  
22 with its management of public order.

23 We've returned to some of the statistics we set out  
24 in 2020 in our first T1P1 opening, Sir, and I just  
25 remind you of the bare headlines there.

1           Between 1968 and 1982, there were thousands of  
2 significant public order events in London. There were  
3 thousands of arrests at those events. There were  
4 thousands of injuries to police officers at those  
5 events, and there were also hundreds of injuries to  
6 civilians, and this all, in our submission, speaks of,  
7 as we say, a very serious public order problem that  
8 the police needed to maintain -- keep on top of.

9           Also looking at the statistics, Sir, what one sees  
10 is that there was an increase across the T1 period in  
11 events requiring the deployment of more than 100  
12 officers from just over one a week to just over one  
13 a day by the end of the T1 period. But one also sees  
14 alongside that statistic that events requiring the  
15 deployment of more than 50 officers remained relatively  
16 stable, so in the region of 400 to 500 a year throughout  
17 the 70s, and what, in our submission, that tells us is  
18 that you can see there was just an increase in  
19 the number of officers required to keep order. One also  
20 sees that in the statistics for numbers of officers  
21 deployed on public order duties annually, which  
22 increased from around 20,000 deployments per year at  
23 the beginning of the 70s to more than 100,000 by the end  
24 of the T1 period.

25           What in our submission is vitally important is that

1 the Inquiry properly appreciates and reflects the  
2 realities of public order policing and the realities of  
3 disorder. Those realities most immediately were visited  
4 upon police officers, the police officers who were  
5 required to police those events, and then, by virtue of  
6 having to redeploy officers from elsewhere, they had an  
7 impact on the wider police. Notwithstanding the fact  
8 that the police would be wearing by and large helmets,  
9 the vast majority of injuries that occurred during this  
10 period were injuries to police officers. As I say,  
11 thousands to police officers and hundreds to civilians.  
12 So they bore the brunt of public order policing. And  
13 then that of course has a knock-on effect for  
14 individuals and for society.

15 What we have tried to do in our closing, Sir, as  
16 you'll have seen, is to research video footage of some  
17 of these events, insofar as we're able to obtain it, in  
18 order to try and demonstrate and bring home the reality  
19 of what the public order policing situation was. There  
20 is limited footage available, particularly from the late  
21 1960s and early 1970s, and so all we can do is put  
22 forward effectively a snapshot of some clips of some  
23 events, and it's fairly random, fairly ad hoc, there are  
24 some significant events that there is no footage of, and  
25 then there are some more minor events that one can get



1           footage of, but if one views the footage, what it shows  
2           is not only police officers being shouted at and pushed  
3           and shoved, we see them pelted with missiles and  
4           attacked with weapons, so coins, stones, bottles,  
5           bricks, staves, marbles thrown under the hooves of  
6           police horses, flares and fireworks thrown at  
7           the police, flour and paint, ammonia flung in the eyes  
8           of officers, petrol bombs used on more than one  
9           occasion, various things set on fire, windows smashed,  
10          protesters scaling scaffolding, balconies and roofs. So  
11          very significant and difficult -- physically difficult  
12          to deal with situations. There's also of course the  
13          logistical side of policing those types of events.

14                 What we've tried to do is to set out in the written  
15          closing -- and I won't take you through each and every  
16          instant -- is to demonstrate that between March and  
17          October 1968 there continued to be very serious  
18          incidents of violence and disorder that were difficult  
19          to contain and that those continued after October 1968  
20          and there were multiple instances of very serious  
21          disorder in 1969, 1970, 1971 and 1972. We include the  
22          Stop the Seventy Tour as being relevant to consider.  
23          Add the South African Cricket Tour not being cancelled,  
24          there would of course have been very significant  
25          disorder at Test Match grounds as the

1 Stop the Seventy Tour campaigners tried to have the tour  
2 cancelled midway through, and that, in our submission,  
3 was clearly something that it was appropriate to police  
4 and that it required intelligence about in order to do  
5 that, and that's got nothing to do with being for or  
6 against apartheid, it's just a question of dealing with  
7 disorder.

8 We then come in the chronology to what we say is  
9 a key event, which is in 1972, Idi Amin expelling the  
10 Ugandan Asians from Uganda and Edward Heath's Government  
11 deciding to admit 27,000 to this country. That event is  
12 widely seen as the trigger to the increasing popularity  
13 in the 1970s of the National Front. We've given some  
14 references to that. It also appears in some of the  
15 subversion-related papers obtained from the Home Office  
16 and Cabinet Office, that that event and then media  
17 hysteria and public concerns about the implications of  
18 it is widely seen as a key vital event in the upsurge in  
19 National Front popularity.

20 What this did was introduce a new dimension to the  
21 public order scene, and the reason in particular that it  
22 did that was not only because there was moderate  
23 opposition to the National Front from mainstream party  
24 and faith groups and so on, but there was militant  
25 opposition to the National Front, and the particular

1 reason for that was that the rise in membership support  
2 of the National Front engaged Marxist, Trotskyist  
3 doctrine about fascism and racism. So the theory was  
4 that as capitalism collapses and society moves towards  
5 the revolution, fascism and racism can become a way of  
6 dividing the working class and thereby avoiding the  
7 revolution, and so fascists and racists must be, to use  
8 the far-left terminology, smashed. They must be smashed  
9 on the streets, they must be prevented, and that is in  
10 order to ensure that the revolution can then take place.  
11 That's simply the theory, and that, coupled with  
12 Marxist, Trotskyist theory about the police being  
13 representatives of capitalism and of the establishment  
14 and defenders of the system who must also be smashed  
15 generated a perfect storm, from the public order  
16 perspective, of conflagration of actors, and it really  
17 became a symbiotic, self-escalating relationship between  
18 the far left and the far right, each giving each other  
19 a reason to exist, each giving each other something to  
20 get excited about, to fight against, and then  
21 a tit for tat series of events.

22 What one sees is that, throughout the period, the  
23 demonstrations and counter-demonstrations between the  
24 far left and the far right become the key public order  
25 factor and a very serious one at that. That's the

1           problem, and the legal framework tells us that it was  
2           the police's job to manage it.

3           So we then come to the justification for public  
4           order policing and for the obtaining in particular of  
5           intelligence. It's self-evident, Sir, that  
6           demonstrations, large numbers of people gathered  
7           together, particularly large numbers of people with  
8           opposing views particularly wishing to counter each  
9           other have to be resourced or they will end in disorder,  
10          doing this without resort to the use of or the threat of  
11          the use of plastic baton rounds with water cannon, tear  
12          gas is not straightforward and as we set out in our  
13          closing statement, under-policing and over-policing are  
14          both problematic. They both have an impact on morale,  
15          an impact on recruitment and retention, an impact on the  
16          effectiveness of the police, the ability of the police  
17          to do other works and therefore an impact on crime and  
18          disorder elsewhere.

19          I'm not going to read out much of the closing, but  
20          I want to read out paragraph 2.2.5:

21          "If there had been more disorder and violence during  
22          the T1 era, there would have been more damage to  
23          property and to people's businesses and livelihoods,  
24          more injuries and probably more death. Demonstrations  
25          and protests would have been more dangerous for

1 everyone, protesters, police and others. Even if all  
2 public order events had been massively over-policed, the  
3 right to protest would have been curtailed, there would  
4 still have been disorder and violence, damage to  
5 businesses and livelihoods, injuries and possibly deaths  
6 and there would also have been more crime elsewhere and  
7 that means more offences against the person, theft, and  
8 criminal damage, and so either way, individuals in  
9 society as a whole would have suffered."

10 So the problem of public order policing isn't simply  
11 matching the number of officers to the number of  
12 demonstrators or matching the number of officers to  
13 the mood of the demonstrators, it's important that the  
14 balance is struck correctly. Under-policing will tend  
15 to lead to disorder, over-policing has adverse  
16 consequences elsewhere.

17 The proposition that -- one can see that in  
18 the Supreme Court decision of Catt. One knows that  
19 demonstrators who wish to cause disorder and whose  
20 objective is to smash the police are not going to  
21 cooperate with the police and give them the information  
22 they need to stop them. That's self-evident.

23 Intelligence is also important for logistics, and  
24 one sees in the events, particularly the A8 evidence,  
25 and also in the videos that we provided, what those

1 logistics looked like and they were extremely taxing,  
2 not just simply pressing a button and having a certain  
3 number of police officers turning up at a particular  
4 event, there was a need to call up officers, cancel  
5 leave, backfill officers called up so that there were  
6 other officers to cover the duties they would have been  
7 doing, transporting them to the event, they couldn't  
8 just all arrive on the bus or the tube, catering,  
9 providing toilets, accommodating them, dealing with  
10 traffic restrictions, traffic orders, closing roads,  
11 bringing the right amount of temporary crowd control  
12 barriers. So all of those logistical matters needed to  
13 be dealt with, and that required intelligence about what  
14 was going to happen and what was needed.

15 And this was not, in our submission, just on an  
16 event-by-event basis. What was needed and what the  
17 police needed was an understanding of the public order  
18 scene as a whole. So they needed to know who was who,  
19 in terms of individuals and groups, which groups were  
20 related, opposed to each other, allied to each other,  
21 likely to co-operate or join in, unlikely to do so,  
22 which organisations are really fronts for other  
23 organisations, not only what threat would one group pose  
24 but what threat would two or three or four groups pose  
25 in aggregate if in the same place.

1           As recognised in Catt, intelligence-gathering is  
2 inevitably indiscriminate and hit and miss. You can't  
3 only collect valuable intelligence; it has to be  
4 collected and then assessed. So in order to fulfil its  
5 functions, in our submission, the Metropolitan Police  
6 Special Branch needed to maintain a large intelligence  
7 database so it could -- so that the squads in  
8 Special Branch could provide A8 with assessments on  
9 particular events, and this inevitably meant, as has  
10 been referred to, hoovering up a great deal of  
11 information that was never used.

12           And you've seen, Sir, in the Special Branch files,  
13 that there were files on local authorities and charities  
14 and retailers. It wasn't simply about collecting  
15 information on groups or individuals who might be of  
16 concern, it was about compiling a picture that was  
17 cross-referenceable so that detailed assessments could  
18 be prepared depending on what the circumstances were,  
19 and that picture needed to be maintained and kept  
20 updated on an ongoing basis. The public order scene did  
21 fluctuate and have peaks and troughs and cycles, and it  
22 could flare up in relation to particular unexpected  
23 events, for example internment, or Bloody Sunday. And  
24 we said in our first opening at the outset, it's not  
25 possible to wait until events have heated up and become

1 more intense and then try and infiltrate groups in order  
2 to obtain intelligence, one has to be there on  
3 a long-term basis so that when things do occur, the  
4 intelligence can be obtained.

5 That, Sir, is what we say is the justification in  
6 terms of your identification of the justification for  
7 the work of the SDS, that there was a public order  
8 problem, it's well recognised that policing public order  
9 requires intelligence to a certain level of detail, and  
10 that was what the SDS was there to do.

11 In terms of whether it contributed to that, whether  
12 its work assisted that objective, I noticed that Mr Barr  
13 in his closing said it's difficult to identify an  
14 instance where an SDS intelligence averted a public  
15 order calamity. In our submission, there are a number  
16 of problems with this approach. First, the Inquiry  
17 hasn't investigated whether there were instances where  
18 public order calamity was averted.

19 Secondly, it's not possible to retrospectively -- or  
20 it's not easy retrospectively to work out what SDS  
21 intelligence contributed to specifically, because it was  
22 kept secret and hidden at the time, the A8 witnesses  
23 were not even aware of the existence of the SDS. So  
24 there's no contemporaneous trace of its intelligence and  
25 of decisions being taken on the basis of its



1 intelligence.

2 And finally we say it's not a sensible yardstick.  
3 The avoidance of public order calamity is of course of  
4 importance, but the avoidance of all the damage and  
5 injury that's involved in -- that can be involved in  
6 public order is equally important from a public interest  
7 perspective.

8 So turning to those three matters in turn, Sir.  
9 First, the Inquiry has focused on key -- insofar as it's  
10 looked at particular events, it has focused on key  
11 disorderly events. So a look at Red Lion Square,  
12 Grunwick, the so-called Battle of Wood Green, the  
13 so-called Battle of Lewisham and Southall. Those are  
14 the big five that have been picked up, apart from  
15 Grosvenor Square in 1978.

16 What the Inquiry hasn't done, Sir, is investigate  
17 the numerous number of other large and comparable events  
18 which did not result in serious disorder, and we've  
19 referred to some of these in our closing statement,  
20 insofar as we're able to identify them, but there are  
21 numerous events during the T1 period which had an  
22 obvious potential for disorder and where this was  
23 contained and where therefore the event isn't remembered  
24 in the annals of public disorder history.

25 So, following Red Lion Square, there were numerous

1 other confrontations between the far left and the far  
2 right, so far-right demonstrations usually -- not always  
3 -- and far-left counter-demonstrations. And there were  
4 numerous of those confrontations on a large scale  
5 without major violence, major disorder. We've given  
6 details of some of them insofar as we're able to  
7 identify them in our closing.

8 So the first is Islington on 25 March 1975 where  
9 there were 600 National Front demonstrators opposed by  
10 3,000 anti-fascists and where 1,500 officers that we've  
11 been able to find were deployed and serious disorder was  
12 avoided.

13 There's Chelsea Town Hall on 11 October 1975 where  
14 we found some Met Police footage of this significant  
15 3,000 counter-demonstrators opposing the  
16 National Front's AGM in Chelsea Town Hall, and in the  
17 Commissioner's Annual Report, he says that there was  
18 trouble expected and it was avoided through a very large  
19 police operation.

20 Then moving on, between the Battle of Wood Green and  
21 the Battle of Lewisham, one sees this series of events  
22 linking those two major episodes, and one of those is at  
23 New Cross on 2 July 1977 where it's clear that there was  
24 intelligence that the National Front were going to  
25 attack the far left, so the SWP and Lewisham 21 or

1 Lewisham 24 Defence Committee demonstration, and that  
2 was avoided, there were 67 arrests mostly of  
3 National Front supporters and really serious disorder  
4 was avoided. And there's reference there to that being  
5 the result of intelligence and preemptive measures.

6 We have the Ilford By-election on 25 February 1978  
7 where trouble was anticipated and where the  
8 Commissioner decided to ban marches for two months in  
9 the capital. Now, that decision must have been taken on  
10 the basis of intelligence, and significant  
11 disorder/violence was avoided, but part of that was the  
12 deployment of 5,800 police officers, so a significant  
13 proportion of all the officers were deployed to that one  
14 event in Ilford, that one election meeting, to avoid  
15 trouble, and that of course required some intelligence  
16 as to what could be expected.

17 That ban was then maintained, Sir, and was in force  
18 on 15 April 1978 when there was a similar meeting in  
19 Brixton, near Loughborough Junction, at a school where  
20 the National Front held an election meeting. The ban  
21 was kept in force, 2,400 officers were deployed and  
22 although there was disorder in the meeting itself -- and  
23 this is the occasion when HN13 was arrested -- serious  
24 disorder was avoided.

25 Another event, Sir, was at Great Eastern Street on

1           24 September 1978 where the Commissioner in his  
2           Annual Report says he considered a ban, there were very  
3           serious concerns about disorder, a ban was considered,  
4           one wasn't implemented, but 6,400 officers were deployed  
5           and violence and disorder was averted. Now, again, that  
6           consideration that was given to a ban would have  
7           required the consideration of Special Branch  
8           assessments, which would have been based on  
9           intelligence.

10           Then, in Whitehall on 12 November 1978, so  
11           a Remembrance Day event, 3,000 officers deployed to keep  
12           the far left and the far right apart.

13           In Southall, on 23 April 1979 -- this is coming to  
14           the death of Blair Peach -- it's notable that that was  
15           one of a series of National Front election meetings that  
16           had to be policed within a very short space of time, and  
17           the documents show that trouble was expected, or needed  
18           to be avoided, at all of them. So we see Battersea on  
19           Wednesday the 18th, Islington on Friday the 20th, two  
20           demonstrations in Southall, one on the Sunday 22nd and  
21           then one on the Monday 23rd, and then straight after  
22           Southall another event in East Ham on 25 April.

23           All of those required large scale deployments of  
24           officers in order to avoid disorder, and all of that  
25           planning and that work -- and one can see in the video

1 of the East Ham Town Hall demonstration there had to be  
2 -- two days after Southall, there's an enormous camp has  
3 been set up in a local park to house all of  
4 the officers, the police horses. There are crowd  
5 control barriers being delivered. All of that, Sir,  
6 required intelligence, and again, that was an episode  
7 which could have descended into disorder but didn't.

8 The next one mentioned in our closing, 29 June 1979,  
9 there were a number of events that day and almost 8,000  
10 officers deployed on public order duty one single day.

11 Later that year, again Remembrance Sunday,  
12 11 November, 4,500 officers deployed. One sees  
13 Southwark on 2 March 1980, 5,300 officers deployed to  
14 keep the far left and the far right apart.

15 Lewisham on 20 April 1980, 4,200 officers.

16 Then between Marble Arch and Paddington, 23 November  
17 1980, it's not the National Front, this is  
18 a British Movement March where 3,400 officers had to be  
19 deployed.

20 Now, we say these are all examples which could have  
21 led to major disorder or, to use Mr Barr's term, public  
22 order calamity, but they didn't, and in our submission,  
23 the contribution of Special Branch, relying in large  
24 part on SDS intelligence, must have been important to  
25 that and there's been no investigation of those specific

1 events to see what trace there might be in the  
2 assessments or matching up Special Demonstration Squad  
3 intelligence reports with the assessment.

4 THE CHAIRMAN: May I interrupt you there. There has been,  
5 I have done it, and I have been able to identify five  
6 out of your 13 instances in which there was prior SDS  
7 intelligence which has survived. In three of them, it's  
8 one report, and in two of them, it's three reports.  
9 There are many reports after the event of what  
10 the groups who participated in them were talking amongst  
11 each other about, but as regards prior intelligence,  
12 only five of your 13, on my analysis, appear to have  
13 received prior retrieved intelligence from the SDS.

14 MR SANDERS: Well, Sir, obviously I can't comment on that  
15 because I'm unable to see any of the documents and I'm  
16 unable to ask follow-up questions or pursue lines of  
17 inquiry. But, first, it's not always possible to see  
18 which reporting was from the SDS. Secondly, the  
19 Special Branch squads were relying on the background  
20 information they had in the registered files, which were  
21 of course contributed to and topped up by SDS  
22 intelligence. There was undocumented intelligence and  
23 discussions, there were undercover officers on the  
24 ground, and it's at this remove of time to say, "Well,  
25 I have recovered some documents", there are lots of

1 documents not surviving, it doesn't appear that all of  
2 the public order documents would necessarily have gone  
3 to MI5, it's just that I can't comment on what you've  
4 said, but from our perspective, the volume of reporting  
5 on these groups, the groups that were involved in  
6 the violence and disorder, it's unthinkable that this  
7 wouldn't have assisted in the assessments that were  
8 provided to A8.

9 THE CHAIRMAN: I was simply picking up on your assertion  
10 that the analysis had not been done. It has been. And  
11 that's something I think you would have wished to have  
12 been done.

13 If the retort to the result of the analysis is,  
14 "Well, it's not all going to be there", to a limited  
15 extent, I accept that. But it's not, I think, all that  
16 helpful to say this proves that SDS reporting  
17 contributed to the intelligence significantly, more  
18 significantly than the analysis that I've indicated  
19 would suggest.

20 For example, on the right wing, there was no  
21 infiltration of the right wing during this period, apart  
22 from one as a byproduct of left wing infiltration, as we  
23 know, and it's obvious there was intelligence on what  
24 the right wing were doing, hence Chelsea Town Hall,  
25 the trouble would be anticipated, or New Cross, where

1           there was trouble, and that there would have been  
2           intelligence on the right wing then, as there was,  
3           I think you would agree, on all major incidents  
4           involving left wing/right wing clashes that either  
5           occurred or were prevented.

6           MR SANDERS: Yes, sir. I mean, this is all news to me. You  
7           say the analysis has been done, but it hasn't been  
8           disclosed to us, I'm not aware of it, I haven't been  
9           able to take instructions on it or put it to any  
10          officers.

11          THE CHAIRMAN: Forgive me, a lot of your officers were  
12          deployed at that time, DL clients were deployed at that  
13          time, and you've had disclosed to you in full  
14          the reporting that they put in and which has been  
15          retrieved. So although you may not have had the whole  
16          picture, because not all of the undercover officers who  
17          were deployed at that time were DL clients, the CL have  
18          certainly had the whole picture. And I don't think you  
19          can now say, "We haven't had the opportunity of looking  
20          at this". You have had a pretty extensive opportunity  
21          of looking at it.

22          MR SANDERS: It's very difficult to say -- take  
23          Chelsea Town Hall. It's difficult for us as a legal  
24          team to know that was an event where trouble was averted  
25          and to be able to piece together what intelligence there



1           was.

2           THE CHAIRMAN: One of your clients did report on the left  
3           wing side of Chelsea Town Hall. He's one of the three  
4           instances where there's one report.

5           MR SANDERS: Very well, Sir. Well, we don't have all the  
6           reports, we don't have the undocumented intelligence,  
7           and I completely take you saying I don't have in front  
8           of me documents where I can trace SDS intelligence to  
9           the avoidance of disorder, but it doesn't follow that  
10          you can conclude it didn't contribute, and all the other  
11          evidence, in my submission, tells you that it did. And  
12          one sees this in the evidence from A8 about the  
13          importance of Special Branch assessments, the vital  
14          importance of that, the fact that those assessments were  
15          based on files that were produced by the squads based on  
16          what was in the Special Branch registered files and that  
17          those files were contributed to significantly by SDS  
18          intelligence reports.

19          You can also derive it from the fact that the squads  
20          helped set the SDS intelligence requirements. So the  
21          squads that were required to produce the assessments  
22          were telling the SDS what they wanted intelligence on,  
23          and they wouldn't have been telling the SDS they wanted  
24          intelligence on matters if they didn't need it, or if it  
25          wasn't of use to them.

1           But in relation to all of these events, we haven't  
2           seen -- even if you say, well, what can we find if it  
3           wasn't derived from the SDS, we haven't seen the  
4           operational briefings, the operational orders, any other  
5           documents. I know you say you have and an analysis has  
6           been done, but it's just not possible for me to comment  
7           on that and then to take it away and follow it up. But  
8           in circumstances where the Special Branch squads were  
9           providing the assessments and requesting the  
10          intelligence in order to help them do so and saying that  
11          they were finding the work of the SDS valuable, it's  
12          difficult to think that that could be the case if it was  
13          really of no use.

14        THE CHAIRMAN: As it happens, we do have a small number, six  
15          in all, of threat assessments for this period and it's  
16          possible to see to what extent they were contributed to  
17          by SDS officers.

18        MR SANDERS: Well, I have seen very few -- we have seen very  
19          few threat assessments, and I take the point that's not  
20          -- they didn't need to be put to DL officers because  
21          DL officers didn't see them, but, again, it's not  
22          something I can comment on.

23        THE CHAIRMAN: Well, you and I are in the same position in  
24          that we've all seen the documents, and there are six  
25          threat assessments and it is possible to analyse the SDS

1 reporting insofar as it contributed to them. The major  
2 one is the Battle of Lewisham, but there are other ones.  
3 The first anniversary of the death of Blair Peach, there  
4 was a threat assessment there and it is possible to  
5 analyse to what extent SDS reporting contributed to it.

6 All I can do is to look at the evidence that I have  
7 got, and when I've got it, when we've all had it, it is  
8 possible to analyse it and to draw limited conclusions  
9 for it.

10 MR SANDERS: Yes. I haven't seen any threat assessments on  
11 the events I've just mentioned that had the potential  
12 for disorder but didn't lead to disorder.

13 THE CHAIRMAN: No, no, there aren't any there. They've all  
14 -- I assume they did exist, they've gone. That's  
15 because they were held by the police and the police have  
16 not retained them. It just so happens that because the  
17 Home Office took an interest in the first anniversary of  
18 the death of Blair Peach demonstration, we do have the  
19 threat assessments there and it's possible to compare  
20 the SDS input into the outcome and to see what other  
21 sources of intelligence there were. In that instance,  
22 SDS reporting contributed virtually nothing.

23 MR SANDERS: Well, Sir, I mean, I haven't referred to that  
24 as being an event with a high potential for disorder  
25 where disorder was averted, but there is a difference

1           between saying, "I don't have in front of me  
2           contemporaneous documentary evidence of SDS intelligence  
3           feeding into threat assessments" and saying, "Therefore,  
4           it didn't". One has to look at all the surrounding  
5           documents. You say we just don't have these threat  
6           assessments. I don't understand how one can say well,  
7           there's only three or six or whatever occasions where we  
8           can see SDS intelligence contributing when one only has  
9           six threat assessments.

10        THE CHAIRMAN: The other significant one is Southall, the  
11        occasion when Blair Peach sustained his fatal injuries,  
12        and there, there is a very careful threat assessment.  
13        The prior reporting, such as it is, there is some  
14        evidence about that, and it is plain, if one compares  
15        the prior reporting with the threat assessment, that the  
16        threat assessment did not rely to any significant  
17        extent, if at all, on SDS reporting.

18                All I'm doing is pointing out, in the limited  
19        instances, there are one or two of them of some  
20        significance where it is possible to make the analysis.  
21        It doesn't bear out the wider proposition that you're  
22        seeking to advance.

23        MR SANDERS: Well, Sir, there's what you can derive from  
24        fragments of surviving information about a handful of  
25        events. Southall was unusual, because it involved also

1           demonstrators from the local community, and the same at  
2           the Battle of Lewisham, so those are factors that  
3           obviously the SDS didn't report on, the Indian Workers  
4           Association, or the more militant youth group that was  
5           behind it in Southall. So there may be reasons for that  
6           in particular events. But the overall picture is of  
7           thousands of events, and to take six threat assessments  
8           relating to slightly unusual events or events where  
9           there was disorder and extrapolate conclusions in my  
10          submission isn't safe. I see the difficulty you're in,  
11          but one has to consider again, in my submission, the  
12          surrounding evidence, the Special Branch squads  
13          providing threat assessments -- and we have very few of  
14          them left -- requesting intelligence from the SDS in  
15          order to help them do so. They wouldn't, in my  
16          submission, have done so if that intelligence wasn't  
17          helpful to them. And just the way in which SDS  
18          intelligence isn't necessarily -- it doesn't travel with  
19          an SDS stamp on it, unless it's kept by MI5, but you've  
20          seen the evidence from those in A8, they didn't even  
21          know there was an SDS.

22                 So, in my submission, it's one thing to say,  
23                 "I don't have lots of pieces of paper telling me that  
24                 here's an occasion when the SDS averted public order  
25                 calamity", but it's another thing to say, therefore, it

1           didn't, when it was providing a high volume of  
2           information about the groups involved in disorder.

3       THE CHAIRMAN: To ensure that the picture is fairly placed,  
4           there should be put, on your side of the equation, the  
5           reporting before the Battle of Lewisham, which was  
6           extensive and did include a good deal of SDS reporting  
7           which informed both the Commissioner's decision not to  
8           ban the National Front march and the tactical  
9           deployments that took place on the day.

10       MR SANDERS: Sir, yes, and again, the difficulty is, to take  
11           these -- well, it's difficult to say that something went  
12           wrong at Grunwick, but particularly in relation to the  
13           other four, the episodes where there was serious  
14           disorder and violence, and there are fragments of  
15           information left behind, and then to say that was the  
16           totality of the picture, and we know that in relation to  
17           the Battle of Lewisham, there was a lot that the  
18           officers involved -- and in relation to the Battle of  
19           Wood Green -- who were there and who were able to report  
20           on where bricks were being piled up and so on.

21       THE CHAIRMAN: Indeed. I heard their evidence, I believed  
22           it and I do not for one moment doubt that what they fed  
23           into the intelligence picture was of value to those who  
24           were attempting to police these events.

25                 Now, my only point in putting these specific

1           propositions to you was to suggest that SDS reporting  
2           was only part of the picture and that insofar as it is  
3           possible to analyse what has been recovered, not always  
4           significant, sometimes yes, quite often no.

5       MR SANDERS:   And for a huge number of events, just unknown.  
6           But I mean, I take the point that the Special Branch  
7           registered files were not populated entirely by reports  
8           from the SDS, that there were reports from intercepts  
9           and other sources and other research and enquiries in  
10          amongst them.   But what one has in particular with the  
11          far-left groups who wouldn't cooperate with the police  
12          and who were infiltrated by the police is a valuable and  
13          reliable source of intelligence on their intentions,  
14          numbers, mood and so on, and if the SDS intelligence  
15          wasn't helpful, it just doesn't make sense that the  
16          Special Branch squads were still requesting it and  
17          saying it was helpful.

18       THE CHAIRMAN:   Before we cease this exchange, can I put one  
19          further proposition to you, which stems from an analysis  
20          that I've undertaken of Special Branch SDS reporting for  
21          a period -- as it happens, it's 1975 to 1978, the three  
22          financial years which span the Battle of Wood Green,  
23          Battle of Lewisham, and deal with the time when the  
24          future of the SDS was being considered internally.   It  
25          suggests that rather over half of the retrieved reports

1 -- not a lot over half, but a little over half -- are  
2 reports about individuals, their names, addresses,  
3 lives, families, political views and so forth. Of the  
4 remainder, just under half, only about 7% or thereabouts  
5 appear to cover reports about forthcoming events that  
6 might give rise to a public order problem in London and  
7 elsewhere in the country. It doesn't look from the  
8 retrieved reports as if the great percentage had  
9 anything to do with forthcoming public order events.

10 MR SANDERS: Well, again, Sir, I can't comment on that  
11 because I haven't seen your analysis and I haven't seen  
12 what it's based on and I don't know how complete the  
13 retention was.

14 THE CHAIRMAN: No.

15 MR SANDERS: My understanding is that unless it came from  
16 MI5, there was very little left. But the way in which,  
17 inevitably, in pre-computerisation, the Special Branch  
18 intelligence system operated was to have a large  
19 database of files that could be cross-referred and  
20 pulled out so that those on the squad desks knew, could  
21 know what was going on, and they could also get further  
22 information on the phone and meetings and so on, and  
23 what the SDS contributed bolstered, fed into those files  
24 and that knowledge base, and that was all, in our  
25 submission, important, and that's just the nature of



1 intelligence. And there may have been information that  
2 proved irrelevant, that never went anywhere, but it was  
3 maintained so that there was not in the possession of  
4 one individual but organisationally, a corporate brain  
5 which understood the public order scene and was able to  
6 assess what might happen. Of course imperfectly.  
7 They're going to make mistakes, get it wrong, there  
8 might be occasions when it wasn't acted on. But on the  
9 whole it was a system which worked. And what one sees  
10 is, from 1968 onwards, A8's established, the SDS is  
11 established, and by and large, notwithstanding this huge  
12 antipathy between the far left and the far right, public  
13 order is maintained. In our submission, one takes from  
14 what the A8 witnesses say about the value of the  
15 intelligence, what the desks and the squads were saying  
16 about the value of the intelligence, was that it  
17 contributed, and that's -- I appreciate it's difficult,  
18 you have very little to go on, but it's just a common  
19 sense conclusion to draw from the evidence.

20 And I can't -- I would like to see the analysis and  
21 see what it was based on and contribute to it, but it  
22 sounds like you're lifting a curtain on what's going to  
23 be in your interim report and it's all news to me.

24 THE CHAIRMAN: Well, in the period I've canvassed, the three  
25 years, your DL clients represented a majority of the

1 officers who were reporting at that time and you've had  
2 full disclosure of that to you and you can tell from  
3 their own reports whether my own order of magnitude is  
4 roughly right. I'm not claiming precision for these  
5 figures, but simply to try and get at an order of  
6 magnitude, and I'd be surprised if the order of  
7 magnitude that I've arrived at is very seriously out.

8 MR SANDERS: Well, I can't comment, Sir, and I think that to  
9 do the exercise, what one would really need to see is  
10 the threat assessments and the A8 files and to see how  
11 they fit together, and also to know what was passing  
12 backwards and forwards that wasn't put into intelligence  
13 reports, reports that maybe weren't retained and so on.  
14 But I can't -- you say that there's analysis of these  
15 financial years and these are the statistics. I mean,  
16 I just can't comment on that.

17 THE CHAIRMAN: No, but I mean, you could if you had thought  
18 it was worthwhile. And you may say it's not worthwhile,  
19 but you could, if you had thought it was worthwhile, do  
20 it on the basis of the reports produced by the officers  
21 that you represent.

22 MR SANDERS: I really can't, because we are not in any way  
23 comparable to the Inquiry legal team. We're a very  
24 small, not particularly well resourced group  
25 representing individual officers. The Rule 9 witness

1           packs we get are subject to a restriction order, which  
2           means we can only discuss the contents of any one  
3           witness pack with the relevant witness and it's just not  
4           possible for me, or for my team or Ms Castiglione to  
5           undertake analytical work of that kind.

6           We could comment on it if it was disclosed to us, we  
7           could maybe contribute to it, but we can't run a mirror  
8           Inquiry.

9           THE CHAIRMAN: There wouldn't be any point in undertaking  
10          now a further disclosure exercise to you, because all it  
11          would show would be that what you've already had is  
12          roughly representative of the rather larger figures for  
13          those that include undercover officers who are not your  
14          clients, so there wouldn't be much point, it seems to  
15          me, from what you've said, in piling you with further  
16          documents which you wouldn't be able to analyse.

17          MR SANDERS: No, sir, but there would be a point in sharing  
18          the analysis, or allowing to us make representations on  
19          it, or all of the core participants to make  
20          representations on it. And in those financial years  
21          what one sees -- what I'm able to see from the  
22          Commissioner's Annual Reports is a consistent concern  
23          that public order is draining the resources of the Met,  
24          it's deterring recruitment, it's having an adverse  
25          effect on retention, it's a serious problem, and

1 anything that can be done to ameliorate or mitigate  
2 that, any way of obtaining intelligence, and the SDS  
3 was, in the grand scheme of things, as we've set out in  
4 our closing, didn't cost much to run. That could  
5 contribute and could help and could have significant  
6 public order benefits in terms of how public order  
7 events were policed and what happened at them.

8 THE CHAIRMAN: Forgive me, I've interrupted you enough and  
9 please let me get you back to your thread.

10 MR SANDERS: Thank you, Sir.

11 That's what we say is the justification, and we do  
12 say that the idea that because we don't have particular  
13 examples, or that many examples of an SDS intelligence  
14 report averting what Mr Barr calls a public order  
15 calamity does not mean that it didn't make  
16 a contribution and wasn't valuable, and for the reasons  
17 I've said, the surrounding evidence all points in the  
18 direction of it being of value and being of importance.

19 So moving next, Sir, to the adequacy of the public  
20 order justification, and we accept that some deployments  
21 were discontinued or not renewed, that there was always  
22 a risk that there would be a deployment that wouldn't  
23 yield anything because you can't know until you're  
24 obtaining intelligence whether it's of value, but  
25 accepting that caveat, there was a need for

1 intelligence, the Special Branch had available to it  
2 a method of obtaining that intelligence, the  
3 European Convention on Human Rights wasn't incorporated  
4 into domestic law, so there was no obligation to  
5 undertake proportionality assessments, Special Branch,  
6 like MI5, was entitled to take a broad brush  
7 precautionary approach as a matter of policy in terms of  
8 what did it think would help it, or what did the Met  
9 think would help it policing public order and containing  
10 this significant problem. The Commissioner obviously  
11 had the duty to maintain public order. He had a duty of  
12 care to protect his officers and to try and ensure  
13 recruitment and retention and allocate resources  
14 effectively.

15 As we said in our closing, I recognise that general  
16 considerations of resources and effectiveness and of  
17 avoiding consequential knock-on effect on other  
18 community policing and so on, that they're difficult  
19 considerations to place in the balance against  
20 the impact of undercover deployments on the real lives  
21 of specific individuals. And I accept also that you  
22 must look at that impact, the impact of the deployments  
23 and of intelligence-gathering on individuals who were  
24 involved in public order events. But the -- it wasn't  
25 simply a question of individual rights versus

1 generalised public interest considerations.

2 On that side of the equation, we say -- and one can  
3 see it in the video footage that we've tried to obtain  
4 -- one sees police officers on the ground, police  
5 officers with blood streaming down their faces, police  
6 officers in hospital beds the night after being --  
7 the day after being attacked at a demonstration or  
8 a protest, one sees the statistics of one in ten of  
9 the officers deployed at Lewisham sustaining injuries.  
10 These incidents, whether it's being spat at, or shoved,  
11 or pushed, or having a brick smashed in your face, are  
12 not part and parcel of being a police officer. They are  
13 not something that police officers must simply endure.  
14 The police are citizens in uniform. They are entitled  
15 -- they have the same human rights as everyone else.

16 You, Sir, and your team, do not travel into the  
17 Inquiry's offices wondering if you might be spat at, or  
18 punched, or kicked, or hit with a brick, or have ammonia  
19 thrown in your eyes, or attacked with a petrol bomb.  
20 No one should have to travel into work wondering if  
21 that's going to happen. But that was the reality for  
22 officers attending public order duties. I'm not talking  
23 about TUC or CND or pro-choice large scale moderate  
24 marches, but attending public order duties in the 1970s  
25 where there were demonstrations and

1 counter-demonstrations with one side determined to  
2 silence the other. And it wasn't, of course, just  
3 police officers who were affected, it was their  
4 families, and one can well imagine how it would feel for  
5 the child of a police officer to be told, "Well, Daddy's  
6 not coming home tonight because he's in hospital because  
7 at work he's been hit with a brick", or, "Beaten to  
8 the ground". That has an impact on the private lives of  
9 those families.

10 Whether or not these are to be characterised as  
11 public order calamities, their avoidance is important.  
12 It was right that the Commissioner did everything within  
13 his powers, as he was at the time, to try and minimise  
14 the number of injuries to officers, and also the number  
15 of injuries to members of the public, and then keeping  
16 the peace generally. These are all important  
17 considerations that need to be placed in the other side  
18 of the balance. So one does have the impact on  
19 activists who were reported on, but one also has the  
20 greater impact on those who might have been physically  
21 or psychologically injured had public order policing  
22 been less effective.

23 So in terms of the adequacy of the justification,  
24 it's a policing judgment for the Commissioner and for  
25 the Force as it was at the time to come to a view on,

1 but in our submission, that is an adequate justification  
2 bearing in mind what the legal framework was and bearing  
3 in mind the consequences, the very real consequences for  
4 those who might be hurt by demonstrations if they  
5 weren't better policed and if there weren't better  
6 intelligence on them. And it is of concern to my  
7 clients that this doesn't -- this factor doesn't seem to  
8 sound or resonate in any documents we see coming from  
9 the Inquiry. There's rightfully a focus on those who  
10 were impacted by deployments, but what's on the other  
11 side of the balance, which is not just resources and  
12 public interest considerations, it's real impact on real  
13 power who are simply trying to serve the community and  
14 trying to ensure that those who aren't interested in  
15 Marxism and fascism are allowed to live their lives in  
16 peace.

17 So we get that having an undercover officer in your  
18 home or at a meeting or a social event and not knowing  
19 who they are, that's an impact and that's an intrusion,  
20 but so is being spat at and punched and kicked and  
21 injured and all of the impact that that had on police  
22 officers' families as well, and for those reasons we say  
23 that there was a justification and it was adequate, it  
24 was in the range of reasonable responses for the  
25 Commissioner to and for Special Branch as a whole to



1 take the approach that it did.

2 That's on the public order side of the equation,  
3 Sir.

4 Turning to the secondary justification, in terms of  
5 your terms of reference, Sir, identifying what the  
6 justification was and then assessing its adequacy. The  
7 secondary justification was the counter-subversion  
8 justification.

9 So, in this area, MI5 had primacy as a matter of  
10 competence and expertise and responsibility.  
11 The approach to subversion was set by MI5, and that was  
12 a National Security Assessment. The task of  
13 Special Branch was to assist, and in our submission it's  
14 unrealistic, it's unreal to suggest that Special Branch  
15 or the SDS could or should have gainsaid or disputed  
16 MI5's assessment. It simply wasn't its place. As  
17 I say, it didn't have the competence or the expertise to  
18 do that. All the officers who were asked, "What's the  
19 definition of 'subversion'", the bottom line was that  
20 the definition of subversion was what MI5 said it was.  
21 The groups MI5 treated as subversive were to be treated  
22 as subversive. And one has all these -- one has this  
23 kaleidoscope of definitions moving around in front of  
24 our eyes when it comes to this. So there's  
25 the Maxwell-Fyfe definition, the Denning definition,

1           there's the Harris definition, there's a document  
2           referring to the "rough and ready" definition. In our  
3           submission, what's important is to see that there was --  
4           there were these nebulous definitions, there was this  
5           grey area, and not to grab hold of and cling on to one  
6           definition and use that as a basis for testing  
7           everything that happened, it's to appreciate that it was  
8           for MI5 to set and it took the approach that it did.

9           The Inquiry hasn't investigated, apart from the  
10          statement of Witness Z, what the justification was, what  
11          the concerns were. You and your team have rightly  
12          identified various threads that may or may not have been  
13          in play, the extent to which State sponsorship was or  
14          wasn't important, but whatever the Harris definition may  
15          have said and whatever the appropriate meaning of that  
16          and its sort of two limbs is, Special Branches were told  
17          by the Government and by MI5 to look at potential and  
18          future threats and to treat those as subversive. And  
19          one sees that in the classified confidential covering  
20          letter that went with the new Special Branch terms of  
21          reference.

22          It's important, in our submission, that the Harris  
23          definition was not a statute and was never seen  
24          internally as prescribing what could or would or should  
25          be done, and the approach of Mr Barr and his team is to

1 focus on whether the practice fitted the definition, and  
2 if it didn't, to say the practice should have been  
3 stopped, but that could equally be turned on its head  
4 and to say whether the definition should have fitted the  
5 practice and whether the definition should have been  
6 changed. There's in fact three possibilities.

7 One, if you don't think that what happened really  
8 fell within the four corners of the Harris definition,  
9 one possibility is you change the practice and you  
10 investigate fewer groups, but it's inconceivable that  
11 MI5 would have supported that at the time, or that the  
12 Home Office would have done.

13 The second possibility is you change the definition.

14 And the third possibility is you either -- you don't  
15 have a public definition or you just proceed on the  
16 basis that it doesn't matter whether the theory and the  
17 practice are entirely aligned.

18 And it's important contextually to bear in mind that  
19 at this point in time national security matters were  
20 seen very differently to how they are seen today. This  
21 is before there was a Security Service Act, an  
22 Intelligence Services Act, national security matters  
23 were seen as non-justiciable, they were never considered  
24 by courts, there would be ministerial conclusive  
25 certificates if they ever became relevant to anything,

1 and they were seen as secret. And what we say about  
2 this, it's nothing to do with questioning proceedings in  
3 Parliament, it's nothing to do with what Lord Harris  
4 knew or said or did in the chamber of the House of  
5 Lords. This definition was published more widely than  
6 just in Parliament.

7 The important point is that the Home Office and MI5  
8 told the Special Branch what to do -- all the  
9 Special Branches what to do and they did it. And as we  
10 have set out, 28% of MI5's work in the 1970s was on  
11 subversion, as it saw subversion, as it assessed it, and  
12 both MI5 and Special Branch were involved in a huge  
13 number of vetting enquiries.

14 So that was the justification from the perspective  
15 particularly of the SDS and of the police.

16 In terms of the adequacy of the counter-subversion  
17 justification, in our submission, Sir, it's facile to  
18 say that those treated as subversive, or potentially  
19 subversive, did not present an existential threat to the  
20 State and were incapable of toppling multi-party  
21 democracy. That isn't the test. It's not simply just:  
22 could this group bring down Parliament? First, that's  
23 hindsight and was something that couldn't be verified  
24 without investigation of the groups themselves and  
25 a knowledge of what their capabilities were or weren't.

1           Secondly, it was something that would never be a one-off  
2           assessment, it was something that MI5 would always need  
3           to -- it was a dynamic and evolving assessment,  
4           something that MI5 needed to keep on top of it. A group  
5           might be incapable of really producing any significant  
6           effects one year, it might not be receiving State  
7           sponsorship or what have you, but it might change  
8           the following year, and MI5's responsible for national  
9           security and is entitled to take a precautionary  
10          approach and to keep on top of that.

11           It's important to bear in mind also the Cold War,  
12          which was clearly a factor. It hasn't -- we haven't  
13          been able to explore with MI5 why or to what extent the  
14          Cold War was a factor, but one can see that when the  
15          Cold War came to an end, the approach to subversion  
16          changed radically and was scaled back --

17           And crucially, the National Security Assessment of  
18          MI5 isn't something that the Inquiry has been able to  
19          investigate, and so therefore, from the police  
20          perspective, it was an adequate justification, they were  
21          doing their job. Whether, underlying that, the National  
22          Security Assessment was right or wrong isn't something  
23          that any of us can confirm or deny.

24           That's all we say about subversion, Sir.

25           I've dealt -- or we've dealt at the end with

1 a number of specific issues and I'm just going to deal  
2 with three very briefly and then just touch on the  
3 remainder in just a sentence.

4 So the first is the extent of the personal  
5 information recorded in and the language used in  
6 intelligence reports. As I've already mentioned, the  
7 way in which a paper-based intelligence database needs  
8 to work is that there is a hoovering up of a large  
9 amount of information, and that's simply inevitable.  
10 That information was not shared widely, it was used  
11 internally by Special Branch and it was shared with MI5.  
12 So in terms of the proportionality of its collection, in  
13 my submission that's something that can't now be  
14 criticised.

15 Mr Barr says in his closing that the reports contain  
16 racism and sexism. I don't know specifically what he's  
17 referring to. We see in the reports contemporary  
18 attitudes and contemporary language, but nothing, in my  
19 submission, out of keeping with the time, with society  
20 in the 1970s.

21 As for the point made about tone, tone is of course  
22 something that's easier to hear than to read. In our  
23 submission, a sense of humour is not unprofessional. It  
24 is of course the case that attempts at wry remarks or  
25 jokes can fall apart and particularly when read after

1 the event, but that doesn't mean that the person writing  
2 it down is acting unprofessionally. Mr Barr of course  
3 is an avid reader of Private Eye, Sir, his subscription  
4 fully in force, and there's the long-running joke in  
5 Private Eye about judges making jokes, "Good one  
6 m 'lud". People make jokes, they use sarcasm from time  
7 to time, but that doesn't mean that it is  
8 unprofessional. It can look a bit off, but that is  
9 just, in our submission, life. And we do say that it's  
10 quite difficult to square Counsel to the Inquiry  
11 repeatedly referring to the SDS's targets as a "bad  
12 joke" and seemingly enjoying that label, to square that  
13 with the claim that occasional sarcasm about those  
14 targets was unprofessional. It's just part of normal  
15 life.

16 THE CHAIRMAN: Forgive me again for interrupting you.

17 The "bad joke" is Sir Robert Mark's words and that's why  
18 it features.

19 MR SANDERS: I know, yes, of course it's cut from his memoir  
20 and that's, as I understand, about his time as Chief  
21 Constable of Greater Manchester, or maybe it's  
22 Liverpool. But the label has been adopted in Mr Barr's  
23 closing and I think in his Module 2B to C opening as  
24 well as applicable to the groups. So it's been used as  
25 a basis for saying -- for trivialising or belittling

1           what the SDS were doing, it seems to me. And it's  
2           simply -- it's not flattering. Not everything in the  
3           intelligence reports was flattering. Not everything  
4           that some of the groups that were reported on by the SDS  
5           did was deserving of flattery.

6           And one sees in some reports there are reports  
7           saying that such and such a speaker was boring or  
8           difficult to understand. That may have been useful  
9           intelligence. And there are equally bits of reports  
10          which say someone was a very effective or powerful  
11          speaker, a good orator, and that's helpful to know  
12          because one can see whether or not they're likely to  
13          rise and go further or not.

14          So, it's really, in my submission, scraping the  
15          barrel, in terms of trying to find criticisms to make  
16          against those involved, who were public servants doing  
17          their best, to say, well, they were sarcastic and so  
18          they were unprofessional. There's no language in the  
19          reports, in my submission, that one doesn't find in  
20          judgments at the time and that wouldn't have been  
21          commonplace in all other walks of life in the 1970s.  
22          And words like "racism" and "sexism" are such slur words  
23          in our society now that bandying them around in order to  
24          denigrate people who simply were living in a different  
25          time and subject to different expectations, in a very



1 different society with a different demographic profile,  
2 to smear them with those words, in my submission, is  
3 highly unfair. I mean, just as someone who did pupillage  
4 in the mid-90s, I heard a lot worse, and that was at  
5 the Bar, and that wasn't right. But in terms of what's  
6 in these intelligence reports, it was simply in keeping  
7 with the times.

8 The second point I just want to touch on is in  
9 relation to children. There seems, in my submission, to  
10 be a certain amount of confected outrage at the fact  
11 that intelligence reports included information about  
12 children. The Government funded the education system.  
13 It did so in order that children could be educated. It  
14 paid the teachers and children went to the school to  
15 learn and develop, not to be recruited to extremist  
16 ideologies. And it is a fact that both the SWP and the  
17 National Front actively sought to recruit other people's  
18 children to their causes. That's a proper subject for  
19 the State to be concerned about. It's paying for this  
20 system. Is it being used, is it being abused by  
21 outsiders? I simply do not see why that's thought to be  
22 objectionable to mention someone who's under 18 in an  
23 intelligence report, and to turn a complete blind eye  
24 and not investigate it would have been, in my  
25 submission, an abdication of responsibility. There was

1 no reason to allow the State education system to become  
2 a recruiting ground for extremists and that's not what  
3 most parents would have wanted. So in our submission,  
4 that's a proper subject for reporting and there was no  
5 rule that you should not report on someone under 18 and  
6 there was no reason to have such a rule. The school  
7 leaving age was even younger than 18 at the time.

8 So the third and final matter just to address you on  
9 under this heading in a little more detail is just in  
10 relation to -- I'll take political neutrality and  
11 justice campaigns together. As you've mentioned, the  
12 SDS did not report on the far right in the T1 era  
13 initially because it didn't pose a threat to public  
14 order, and then, after the National Front's increasing  
15 popularity, because it was covered by other sources. It  
16 would, in our submission, have been unlawful and wrong  
17 to Special Branch or the SDS to try and judge or  
18 identify righteous causes and to treat them differently,  
19 to allow anti-apartheid campaigners more leeway than  
20 others. It's a politically neutral process matter,  
21 maintaining public order. It doesn't matter to the  
22 police who's arguing for what, it's just a question of  
23 them ensuring public tranquility.

24 In terms of specific justice campaigns and  
25 anti-police campaigns, again, there's no rule against

1 reporting on them or collecting intelligence on them.  
2 It must of course depend on whether they might present  
3 a risk to public order. But the police can't treat them  
4 differently. I mentioned in our submissions the  
5 Mark Duggan case. That was an anti-police incident that  
6 escalated into serious disorder. It couldn't possibly  
7 have been right for the Met to say, "We're not going to  
8 police this, we're not going to try and gather  
9 intelligence on this", because it was the action of  
10 a police officer that might have sparked it off.

11 One sees that in the 1970s, with the Lewisham 21 or  
12 Lewisham 24 Defence Committee, which was heavily  
13 targeted and used by the SWP and became wrapped up in  
14 the build-up to Lewisham, the period of time between  
15 Wood Green and Lewisham, it's inevitable that public  
16 order intelligence needs to on occasion cover groups of  
17 that kind.

18 So far as concerned East London  
19 Workers Against Racism, that simply wasn't a justice  
20 campaign, it was a largely white Revolutionary Communist  
21 Party front organisation looking to recruit minority  
22 support, for the reasons going back to Marxist  
23 Trotskyist theory, that racism will be used to divide  
24 the working classes and to prevent the revolution, and  
25 we say it's not remotely comparable to the

1 Stephen Lawrence Campaign, and it was MI5 were  
2 interested in it and it was legitimate to report on it  
3 at the time.

4 The only point I want to make about the Friends of  
5 Blair Peach or the Blair Peach demonstrations is that  
6 they were major public order events. They had heavy  
7 SWP/ANL involvement and it was inevitable that they  
8 would be covered. In relation to the funeral in  
9 particular, some of the questions put to officers seemed  
10 to imply that they had attended a small private family  
11 funeral in a church. The funeral itself -- and we've  
12 produced some footage of it -- was attended by 1,278  
13 police officers in uniform and 5,000 to 10,000 mourners.  
14 So it was a major event, roads had to be closed. I'm  
15 not saying it did, or even that it might have resulted  
16 in disorder, but it was something that the  
17 Metropolitan Police needed to be aware of and to  
18 consider.

19 I'm not going to address you in detail, Sir, on what  
20 I've said on other topics. This is at the end of our  
21 closing.

22 Elected representatives, that's simply tangential  
23 unobjectionable reporting. In our submission, positions  
24 of responsibility within groups is just a question of  
25 the need to differentiate substance and form and to

1 apply Conrad Dixon's firm line between leader and  
2 follower. There were secretarial treasury-type  
3 "positions of responsibility", but they didn't cross  
4 the line -- leave aside the Rick Clark case -- between  
5 leader and follower.

6 You've got our submissions on participation in crime  
7 and agent provocateur and the circular. We've already  
8 addressed you on the minimal resources that were  
9 expended on the SDS in the grand scheme of both  
10 Special Branch and Met Police expenditure. I have  
11 nothing to add on cover identities really from what  
12 we've said in previous openings.

13 I've set out some points on sexual relationships.  
14 We do say that there's a difference between casual sex,  
15 one-night stands and relationships going further than  
16 that. That doesn't mean the former is excusable.  
17 The three clients of mine who disclosed that they'd had  
18 one-night stands accepted it was wrong. We've given you  
19 some points of detail on HN106, HN126 and HN155.

20 Then the only point just to raise in this regard,  
21 Sir, is just Mr Barr's statement that sexual contact  
22 between undercover officers in their undercover  
23 identities and members of the public was not uncommon.  
24 We say that's an exaggeration. On the evidence, there  
25 was none at all during the T1P1 period, and if one

1 compares the overall number of officers with the number  
2 of incidents, it's an exaggeration to say it was not  
3 uncommon. That may change once one gets to the T2 and  
4 T3 eras, but in fairness to the SDS as it was run in the  
5 1970s, that "not uncommon" would give an impression that  
6 isn't really borne out by the facts. That's not to say  
7 that the incidents that did happen weren't wrong or  
8 regrettable, it's just a question of quantification or  
9 how to describe it.

10 Then finally there's just the linguistic point about  
11 the meaning of "embarrassment".

12 Sir, those are my substantive submissions in closing  
13 on particularly public order and subversion. I just  
14 have the legal framework to deal with. I'm just going  
15 to glance at my watch to see how we're getting on.

16 THE CHAIRMAN: If you want to pause, you have plenty of time  
17 still, by all means do, but if you can complete  
18 comfortably, please do that as an alternative.

19 MR SANDERS: I'll press on, because I don't think it's a --  
20 I've set out the submissions in some detail, Sir. I'm  
21 not going to attempt to address you as if this were  
22 a judicial review. There's no bundle of authorities.  
23 I'm not going to take you through the dicta of  
24 Lord Justice Whoever.

25 Just focusing briefly, Sir, on trespass to land and

1 breach of confidence. These seem to be the two main  
2 areas that have been suggested as matters for the  
3 Inquiry to address, and in our submission it would be  
4 unlawful for the Inquiry to do that. There's three  
5 reasons, and I think I'm fairly well aligned with  
6 Mr Skelton on this. Three reasons, in our submission.

7 One, your terms of reference do not allow you to  
8 make findings as to lawfulness, civil liability; two,  
9 your powers under the Inquiries Act also do not allow  
10 you to do that; and three, the arguments themselves are  
11 misconceived and wrong.

12 In relation to the terms of reference, you must,  
13 you're obliged, Sir -- the Inquiry is obliged by  
14 section 5.5 of the Inquiries Act to act within the terms  
15 of reference and they do not include lawfulness. And in  
16 our submission, the way in which justification is  
17 included doesn't allow for determination of lawfulness  
18 as a facet of that. So what the terms of reference  
19 provide is that the Inquiry should identify the  
20 justification, so what was the police's justification at  
21 the time, and assess its adequacy, was that  
22 justification adequate, did those involved at the time  
23 take the justification they had and act reasonably?

24 That was the approach that Sir Christopher signalled  
25 at the outset, that was the approach that's reflected in

1 the issues lists. None of the Rule 9 requests that our  
2 clients received were directed to considerations of  
3 lawfulness, anything to do with trespass to land or  
4 breach of confidence. None of the Module 1 witnesses  
5 were asked about lawfulness when they were questioned  
6 orally. And when it came to the issues lists, the  
7 Inquiry went out of its way to make the point that  
8 deception -- the effect of deception on consent in  
9 the context of trespass to the person and sexual  
10 relationships was something that would not be determined  
11 by the Inquiry. As far as we can tell, no one had in  
12 fact urged the Inquiry to include that as an issue, but  
13 nevertheless it went out of its way to say that it  
14 wouldn't be appropriate. In our submission, there's no  
15 rational basis for treating trespass to the person and  
16 trespass to land differently, or for treating trespass  
17 to the person in breach of confidence differently.  
18 These are all issues of civil liability and they fall  
19 outside the scope of your terms of reference.

20 I understand the logic of the position that says had  
21 it been the case that there was no power to do what was  
22 done, then that couldn't have been justified. But that  
23 doesn't then entitle you to go on and determine whether  
24 or not there was a lawful power to do it. That's -- you  
25 could say if there was no power then it wouldn't be



1 justified and I think anyone can understand that, but  
2 that does not then allow you to go outside the scope of  
3 the terms of reference to determining issues of civil  
4 liability of the officers or of the police itself.

5 Sir, just on section 2, there are in fact no  
6 authorities on the meaning of section 2 of the  
7 Inquiries Act. There's the one Northern Ireland  
8 permission decision. And in our submission, there's no  
9 authority for the view that section 2 allows  
10 the exploration or determination of contentious and  
11 untested legal arguments. Public inquiries into  
12 fatalities are slightly different, particularly when  
13 they're held in lieu of an inquest. Inquests are even  
14 further removed from section 2 of the Inquiries Act.

15 Reference made to the Pounder decision does not  
16 support the argument that public inquiries can determine  
17 issues of civil liability in this way. In fact, Pounder  
18 is completely irrelevant. Rule 42 of the Coroners Rules  
19 1984 played no part in the decision-making of the  
20 Coroner that was subject to judicial review in that  
21 case, and it played no part in the decision of  
22 Mr Justice Blake in terms of the outcome.

23 The possibility of an unlawful killing verdict in that  
24 case wasn't raised, it was simply a question of the  
25 Coroner agreed that the appropriateness of the force

1           used should be left to the jury, but he thought that  
2           that should be done without guidance as to the law, and  
3           Mr Justice Blake said the jury should have been given  
4           that guidance because it was crystal clear that  
5           the officers concerned didn't have a power to restrain  
6           Adam Rickwood. Rule 49 is only mentioned obiter in  
7           connection with a side argument about whether or not  
8           questions about legality might have raised the need to  
9           give self-incrimination warnings that might have  
10          inhibited people's evidence. So Pounder takes the  
11          matter no further, and in our submission, section 2  
12          means what it says.

13                 Coming, thirdly, to whether or not the arguments are  
14          sound, the arguments about trespass to land and breach  
15          of confidence. We say they're not. In relation to  
16          trespass to land, there are two questions: what was the  
17          physical act, where did the person go, what did they do,  
18          not what was their identity or their motivations and  
19          what were their objectives, and was that physical act  
20          permitted? In this context, in all of the authorities,  
21          purpose, in terms of the purpose of going on the land or  
22          doing something on the land, is only ever used in  
23          connection with what was physically done, it's not  
24          purpose in a subjective sense of ulterior purpose.  
25          There's no authority for the proposition that fraud or

1           deception is capable of invalidating, negating,  
2           nullifying or vitiating a licence to enter. The Inquiry  
3           is always and only as to the scope of any express or  
4           implied licence and whether this was exceeded by the  
5           visitor. One can see most of the case law postdates the  
6           Tranche 1 period, but it says the exact opposite.  
7           Whitaker and Clarence both make clear that fraud and  
8           deception, as a matter of law or fact, don't vitiate  
9           consent.

10           Archbold doesn't say anything different. The fake  
11           gas men cases do not turn on the fact that there was  
12           some deception or pretence, they turn on the fact that  
13           the relevant people were there to steal, not to read the  
14           meter.

15           As for Smith and Hogan, it's wrong in saying that  
16           there's a difference between the Australian High Court  
17           decision in Barker and the Court of Appeal decision in  
18           Byrne. In Barker, the majority expressly refer to and  
19           rely upon and say that they're following Barker --  
20           they're following Byrne, sorry, and so the editors of  
21           Smith and Hogan have just got that wrong. And one can  
22           see how that's happened because their focus is in  
23           relation to mens rea and what the defendant's mens rea  
24           may have been in terms of determining whether or not the  
25           person letting them on land had made a mistake.

1           The law on trespass to land is and is intended to be  
2 straightforward and to involve a factual inquiry about  
3 scope of licence and whether that's exceeded, and there  
4 are a number of reasons for that. First, it's a tort  
5 that's actionable per se, so it needs to be clear  
6 whether or not the tort's been committed. And it  
7 affects the duty of care, so the occupier's liability  
8 acts operate differently depending on whether you're  
9 a trespasser or a visitor.

10           Furthermore, any case of trespass to land has to be  
11 decided on a case-by-case basis on the facts, so one has  
12 to consider first what was the licence, what the terms  
13 and limitations, if any, of the licence, how general  
14 was it, and then what did the individual on the land do,  
15 where did they go, what did they do. So it's not  
16 something that can be dealt with as a matter of general  
17 theory.

18           Then finally, this has never been tested in  
19 the context of undercover officers or Covert Human  
20 Intelligence Sources, and so there are public interest  
21 justifications, leaving aside whether or not a licence  
22 has been exceeded, that have just never been ventilated  
23 by the courts and it's not possible for this Inquiry to  
24 predict or anticipate what the result of adjudication on  
25 those matters might be.

1 All of this, Sir, has implications for not just  
2 undercover officers but other people who are not telling  
3 the truth about who they are or what they're doing,  
4 anyone with an ulterior purpose, undercover journalists,  
5 undercover activists. It has implications in numerous  
6 other areas, and all of that has never been tested.  
7 I say no more about the law on trespass to the person.  
8 In my submission, what one gets from the case of  
9 *Monica v DPP* is an obvious conclusion, but in any event,  
10 the law treats land and bodies differently.

11 Just in relation to breach of confidence, Sir, in my  
12 submission, *Malone v Metropolitan Police Commissioner*,  
13 the decision of the Vice-Chancellor gives a good  
14 indication of what the courts would have made of  
15 the claims of breach of confidence if they had come  
16 before it in the 70s. But even post *Spycatcher* and post  
17 *Imerman* there's no basis for saying that confidential  
18 collection of intelligence by the police is  
19 unconscionable or necessarily constitutes a form of  
20 misuse or is in any way *ultra vires*. Police and  
21 journalists and others are free to obtain information  
22 and decide what they do with it and there may be  
23 implications that arise, but it all depends on  
24 a case-by-case analysis of what's the information,  
25 what's the nature and extent of the actual or

1 apprehended use, what's the public interest  
2 justification, how does this bear on the conscience of  
3 the proposed or actual defendant? There's a wealth of  
4 case law establishing that the police can obtain and use  
5 confidential information in order to discharge their  
6 functions. So we see Hellewell, Ex Parte AB, Woolgar  
7 and Catt and consistent with this is the line of  
8 authorities providing that non-police confidantes are  
9 generally permitted to disclose confidential information  
10 to the police or follow up and that it's not a breach of  
11 confidence for them to do that.

12 That's all I say about breach of confidence.

13 The final matter I just want to address you on very  
14 briefly, Sir, is just a fallback argument that seems to  
15 have been emerged in CTI's -- in Mr Barr's recent  
16 submissions which is to complain that there's no  
17 evidence that those involved at the time considered  
18 the legality, considered whether or not there was a --  
19 to land or breach of confidence. In our submission,  
20 it's not fair to raise that now without having  
21 investigated it, without having some last minute  
22 questions to T1P3 managers, consideration given to  
23 legality is not something that the Inquiry has looked at  
24 and it's not fair to complain now that there's no  
25 evidence. I don't know whether or not thought was given

1 to it. But what we can say is that in the 1800s  
2 the Popay Report confirmed that undercover policing was  
3 valid and that at this time in the 1960s and 1970s,  
4 police officers generally knew what their powers were  
5 and sought to act in accordance with them. One sees  
6 that, in relation to the Mulvena case, Matt Roger  
7 addressing the court. Police officers were fairly  
8 familiar with legal matters at the time.

9 And in terms of no evidence of the SDS or  
10 Special Branch considering questions of legality, it  
11 didn't occur to anyone involved in the Inquiry for seven  
12 years that entering private premises with the ostensible  
13 permission of the occupier might be a trespass to land  
14 or that obtaining intelligence might be a breach of  
15 confidence, and if it didn't occur to Mr Barr and  
16 Ms Kaufmann, in my submission it's unfair to say that it  
17 should have occurred to those running the SDS. And  
18 there was a very reason -- a very good reason why it  
19 didn't occur to them. There's simply no basis for  
20 the claims, it's just flying a kite to suggest that  
21 going into private premises without saying who you  
22 really are or why you're there might be a trespass to  
23 a land, or a police officer collecting confidential  
24 information might be a breach, an actionable breach of  
25 confidence.

1           In that regard, it's important to remember that  
2           the 1960s and the 1970s were much less litigious times  
3           and very different to now, in terms of public  
4           authorities consulting lawyers or taking legal advice.  
5           I don't know if you'll remember, Sir, but it's not in  
6           Wade & Forsyth now, but earlier editions of Wade on  
7           Administrative Law made the point that there were very  
8           few lawyers in Government, apart from technicians  
9           dealing with drafting, and it's after the Tranche 1  
10          period that one sees the reform of judicial review and  
11          the explosion of judicial review, the introduction of  
12          "The Judge over your Shoulder" book to the civil  
13          service. The culture, in terms of running things by  
14          lawyers, was very different. It's well after 1982, well  
15          after the Tranche 1 period. It was still the case that  
16          MI5 and MI6 shared one lawyer, and there was a person at  
17          GCHQ who had apparently done A-level law. They were  
18          very, very different times, Sir, and to say now that  
19          Conrad Dixon didn't go down to see counsel to take  
20          advice ... it wouldn't have occurred to him. It just  
21          simply wouldn't have been part of the culture. It may  
22          well be different now, but again it's an instant of,  
23          with hindsight, criticising people for doing things that  
24          are done now, with very good reason, but in very  
25          different times.



1           And then one last point, just in relation to  
2 Article 8, is just to flag that in our submission  
3 there's no point -- it serves no purpose for the Inquiry  
4 to point out that the regulation of -- or the statutory  
5 regulation of undercover policing was lacking and didn't  
6 meet the "in accordance with the law" test, because one  
7 knows that now; it's clear from the Strasbourg  
8 authorities and from the legislation that was passed in  
9 consequence of those authorities. In the 1970s, there  
10 had been -- as we've set out in our closing, there had  
11 been very few decisions from Strasbourg in cases  
12 involving the United Kingdom. The jurisprudence was  
13 very early on in its development. The Government, in  
14 Malone, which came later, still argued that interception  
15 was in accordance with the law. Klass only came out at  
16 the end of the 70s. So, all of that is not really  
17 something that the Inquiry needs to comment on, but it's  
18 worth bearing in mind that when it comes to  
19 proportionality, the Esbester decision of The Commission  
20 upholds the proportionality of MI5 and Special Branch  
21 maintaining intelligence on potential extremists and  
22 subversives in the interests of national security and  
23 that's for vetting purposes.

24           And it's important, when it comes to vetting -- and  
25 this goes back to the subversion point -- that, well,

1           these individuals didn't have power to threaten our  
2           institutions or to threaten the State.  If you give  
3           someone with no power highly classified information, you  
4           give them the power to cause damage and that's  
5           the reason for having vetting.  So there are some people  
6           unable to do anything to subvert or undermine  
7           Parliamentary democracy but who would be able to cause  
8           it real damage if given highly classified information  
9           about defence or intelligence, and that's something that  
10          the vetting system was and still is in place to catch  
11          and to avoid happening.  And lots of people will be in  
12          vetting files who were never vetted, and lots of people  
13          will be in vetting files who passed their vetting, but  
14          that doesn't mean that that intelligence shouldn't be  
15          collected.

16                 So I will leave there, well in advance of 5.20, and  
17                 I'm grateful for your time.  I shall look forward to  
18                 seeing the interim report.

19          THE CHAIRMAN:  Thank you very much, and especially for  
20                 finishing within the two hours that you were allotted  
21                 and indeed with a bit of overrun if you'd wanted it.  
22                 I'm grateful to you.

23          MR SANDERS:  Thank you, Sir.

24          THE CHAIRMAN:  Please get back to your break.

25          MR SANDERS:  I will do.

1 THE CHAIRMAN: Thank you.

2 That concludes proceedings for today. We're going  
3 to start, I think, at 10 o'clock tomorrow morning, and  
4 we will have quite a lengthy cast of what will be  
5 shorter submissions.

6 (4.26 pm)

7 (The hearing adjourned until 10.00 am on Tuesday,  
8 21 February 2023)

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