

Legal officer
Counsel

Political

13th June 90.

SLP/JT.

Mr. I. Rothera,
Rotheras,
24 Friar Lane,
Nottingham, SG1 6DW.

Dear Ian,

I enclose instruction to Counsel which I have prepared for you to consider and if you approve, to adopt and forward to

I have spoken to him on the phone on a couple of occasions, mainly about the point raised in Part A of the instruction.

I have deliberately avoided putting a lot of detail of the Hillsborough Incident in to the instruction, as in some respects, it is not the detail of the scope of the Inquests that I require at the moment but more the general principle of:-

- a. How large is "how".
- b. What is the overlap of that "how" with the questions of whom to blame and why.

I will be away for some time in July and for practical purposes, I think we can say that I will be unavailable from the 4th to the 22nd of July.

In some respects, it would be helpful if I could hear from Counsel before I go, but if that is not possible then I would like Counsel's opinion/in writing available for my return, or if he wants to have a conference, then for it to be arranged as soon as a convenient date can be established.

Yours sincerely,

S.L. Popper,
H.M. Coroner.

*File Legal Advice
Y.I. Richard Foster*

*Collected
24/11/97*

Counsel is asked to advise Her Majesty's Coroner for South Yorkshire (West) District on the following matters. For convenience these instructions are divided into Part A and Part B.

Part A proceeds on the assumption that the Director of Public Prosecutions will charge someone or more persons with an offence of Manslaughter.

Part B proceeds on the assumption that the Director of Public Prosecutions decides that neither Section (1) (a) or Section 16 (1) (b) of the Coroners' Act 1988 apply.

Part A. 1. Counsel's attention is drawn to Section 16 of the Coroners' Act 1988.

2. For the purposes of this instruction, it is assumed that the charge under Section 16 (1) (a) (i) would be in respect of one or two of the deceased and not in respect of all 95 persons who have died.

3. It had been the view of Her Majesty's Coroner that in that event the Coroner would adjourn the Inquest under Section 16 (1) (a) in respect of those persons of whom a Manslaughter charge had been brought and in respect of the remainder of the deceased, he would adjourn the Inquests under the provisions of Section 16 (1) (b) assuming that the D.P.P. made an appropriate request.

This appears to be a commonsense view of looking at the inter-relationship of the two sub sections in a situation such as the Hillsborough Disaster. This also seems to be the view of the Authors of the Law & Practice on Coroners, Thurston Third Edition, Section 22.20. The attention of Counsel is also drawn to Jervis on Coroners 10th Edition Paragraph 14.27.

4. The Coroner's attention was re-drawn to Section 16 because of the situation arising out of the Marchioness Inquest, where the skipper of the boat has been charged with an offence which does not fall within Section 16 (1) (a). However, it is understood the D.P.P. has requested the Coroner to adjourn the Inquest in respect of all the deceased under the provisions of Section 16 (1) (b).

On an examination of Section 16, what has concerned the Coroner is whether it is open to the D.P.P. to request an adjournment under Section 16 (1) (b) in a case where someone has been charged with Manslaughter of a particular person, and notice is given under Section 16 (1) (a).

PART B.

1. This section deals with the hypothesis that the D.P.P. will not proceed under Section 16 either sub section (a) or sub section (b). In that event, as the Coroner sees it, the Inquests will have to be resumed, and concluded.
2. Counsel is reminded that the Coroner has already sat with a Jury for about 2½ weeks and taken evidence relating to 95 deceased and in particular has dealt with the questions of who, when and where they died, but has not dealt with the question of how.
3. Each individual Inquest was of course different, but they followed a more or less standard form and by way of background information a copy of one of these Inquests is attached to these instructions for information. (D.G. Godwin).
4. Counsel is also reminded that a full public inquiry has already taken place before Lord Justice Taylor.
5. The issue that has to be determined then is how much further work has to be undertaken by the Coroner and his Jury with a view to reaching a verdict?
6. The Coroner is aware of the provisions of Rule 36 and 42 as well as the Rule dealing with self incrimination. Counsel's attention is drawn to the statutory provisions, in particular Section 8 (2) (b), 8 (3) (d), 11 (2), 11 (5), 11(6), and 13 (1) (b) of the Coroners' Act 1988.
7. The issue that has to be resolved in determining the scope of the Inquest is:-

- a. How large a "circle" does the word "how" encompass.
- b. To what extent do the questions of "why did it happen" and "who is to blame" fall within the compass of the word "how".

These questions of course apply to all Inquests but are particularly relevant in Inquests associated with a major disaster and where, as in this particular case, a public inquiry has ^{already} taken place.

In this connection Counsel's attention is drawn to R.B. Sturt H.M. Coroner for East Kent ex parte Peter Alan Spooner etc, where this question to a certain extent was canvassed.

8. One view that could I suppose be taken is to restrict the question of "how" to the establishment simply of the fact that a crush occurred within the terraces, but not to explore the reasons for this, taken together with the medical cause of death, the Jury could be invited to bring in a verdict.

The difficulty with this is that:

- (i) This it is unlikely that such a limited inquiry would satisfy anyone.
 - (ii) Probably the decision would be appealed on the grounds of insufficiency of inquiry.
 - (iii) It would make it impossible for the Jury to consider a verdict of Unlawfully Killed because the evidence presented to them would not enable them to be satisfied beyond a reasonable doubt that the criteria for such a verdict had been fulfilled. (see McCurbin case).
9. If this is correct, one seems to be left with an alternative which is that a full inquiry is needed, notwithstanding the Public Inquiry which had already taken place or the fact that the D.P.P. has considered the papers and has come to a conclusion not to take any action (this if you remember is the hypothesis of this part of the instructions). Furthermore it would seem that to a large extent, the ground covered by the Public Inquiry would have to be re-canvassed. Counsel's attention is again drawn to the case involving the Coroner for Kent.
10. It seems to the Coroner that if the latter view is correct, then by way of example at least the following aspects would have to be explored:
- (i) The fans - time of arrival including possibly the reasons for lateness of arrival.
Behaviour, demeanour and state of intoxication.
 - (ii) The site (including Club; Engineers etc)- turnstiles, signs, access, stewarding and possibly previous incidents in particular an incident which occurred in 1981 when crushing occurred on these terraces.
 - (iii) The police - the police were severely criticised in Lord Justice Taylor's report. Their management of the game, including command and organisation within and without the ground, and management ranging from the Site Commanders to individual officers, particularly those who have been the subject of complaint.
 - (vi) Others, e.g., licensing authorities, rescue organisations etc.
 - (v) Expert evidence from say Health & Safety ^{Executive} Engineers and others regarding configuration. Reasons for breaking of barriers. Explanations as to why the vast majority of the deceased died in Pen 3 as compared with only about 7 in Pen 4 (incidentally, Counsel might be interested to know that more than half of the people who died entered the stadium after 2.30p.m. and about 22 are known to have entered the stadium when Gate C was opened at or after approximately 14.52).

lines is likely to
sat for 31 days and examined about 114
the Zebrugge Inquest over 400 witnesses gave evidence (some by
way of documentary evidence).

*Advice
is fairly*

In this particular case, although the number of deaths
the people who died at Zebrugge, the number of people who were
present at the time of the disaster are of course very much
larger and thousands of statements have been taken by the West
Midlands Police.

ides.

12. Because of the enormous task, not to say the cost, Her Majesty's
Coroner wants to be certain as he reasonably can be that his
assessment of the requirement for the scope of the Inquest as
outlined above is correct. Counsel is therefore asked to advise
on the extent and scope of the Coroner's Inquisition in the case
of the Hillsborough Disaster, and in particular, to advise on
the word "how" together with this overlap of "why" and "whom".

13. Counsel is asked to consider the matter as soon as conveniently
possible. Would Counsel please note that Dr. Popper is not
available between the 4th and 22nd of July and would like the matter
dealt with either before the 4th of July, if that is possible,
or if that is not practical, as soon after the 22nd of July, as
it may be conveniently possible.

If Counsel feels, before giving an opinion, that he would want
to have a conference with Dr. Popper, then this can no doubt be
arranged.

Notice is given