Tuesday, 1 July 2014

(2.30 pm)

Approved Ruling

LORD JUSTICE GOLDRING:

1. Introduction

I can set out the issues no more clearly than did Mr Hough QC in his submissions as Counsel to the Inquests, albeit I shall add some initial observations of my own.

The representatives of the police match commanders, Messrs Duckenfield, Greenwood and Marshall, have produced a video compilation, MF/8, which contains seven pieces of footage, each relating to an incident of violence and disorder at a football match in the 1980s. They have asked for this video to be played to the jury.

Those representing some of the other police parties who are Interested Persons have submitted that one or more of three police training videos from the late 1980s should be played to the jury, as well as or in place of, video MF/8 or parts of it.

Those representing the bereaved families have addressed the application in relation to MF/8. They argue that none of that video should be played in the hearing.

Those representing 22 of the families also submit that I should now impose limitations on the questioning of witnesses about incidents of hooliganism having regard to the way in which such questions have been asked to date. They do not, however, criticise my handling of questioning to date.

In their responsive submissions, the match commanders maintain that video MF/8 should be played, as well as the training videos. In somewhat intemperate, and, to a degree, personal submissions, which in my view set out less than a complete or

balanced picture of events, they have also raised concerns about the fairness of the proceedings.

2. The legal principles.

I can set out the legal principles shortly. I have referred to them in previous rulings. They are not in dispute.

It is for me to decide what evidence to call for the purpose of discharging my statutory duty of inquiry. Inquests are not governed by the rules of civil or criminal evidence. Save where the statutory rules specifically address a matter of evidence or procedure, it is for me to rule upon my own procedure, having due regard to public law principles of fairness and the procedural standards in the article 2 jurisprudence. The overriding consideration in deciding what evidence to adduce is whether the evidence is potentially relevant to the inquiry into the causes and circumstances of the deaths. I am not required to call all witnesses who have relevant evidence, provided the inquiry I conduct is sufficient and fair. Such considerations of expediency may also justify taking steps to avoid repetitious or unduly lengthy evidence being given. The inquiry I conduct must be full and fair. Where it arises as an issue, I must balance the probative value of evidence as against its prejudicial effect. I am entitled, too, to control the questioning of witnesses. I am obliged to disallow questions which are irrelevant.

In the result, as that summary makes clear, I have a wide discretion as to the evidence which I permit to be called.

3. Video MF/8 and the training videos.

The background.

Again, I rely upon Mr. Hough's summary.

Video MF/8 is a compilation of segments of footage of incidents of football-related violence. It was prepared by Michael Field, a retired police officer who now practices as a consultant and investigator. The seven segments of footage contain the following events:

(a) Celtic Football Club versus Glasgow Rangers match on 10 May 1980 at Hampden Park Stadium, Glasgow;

(b) Chelsea Football Club versus Sunderland Football Club, a match on 4 March 1985 at Stamford Bridge Stadium, London;

(c) Luton Town Football Club versus Millwall Football Club, a match on 13 March 1985 at Kenilworth Road Stadium, Luton;

(d) Birmingham City Football Club versus Leeds United Football Club on 11 May 1985 at St Andrew's Stadium, Birmingham: that is to say, one of the incidents which led to the Popplewell Inquiry, about which we have heard in these inquests, being established;

(e) Juventus Football Club v Liverpool Football Club, a match on 29 May 1985 at Heysel Stadium in Brussels: that is to say, the Heysel disaster which was considered in the Popplewell Inquiry and, again, about which we have heard something in these inquests;

(f) Chelsea Football Club v Middlesbrough Football Club, a match on 8 May 1988 at Stamford Bridge Stadium, London and

(g) Crystal Palace Football Club v Birmingham City Football Club, a match on 13 May 1989 at Selhurst Park Stadium, London.

With the exception of (d) and (e) above, the footage was taken from YouTube. Those other two segments were taken from the disclosure given to Interested

Persons in these proceedings. Overall, the footage varies in quality. In general, it does not contain much by way of commentary or explanation. It depicts considerable violence and disorder by football fans. Much of the footage from Heysel shows the aftermath of the violence and injuries. It depicts dead and dying people.

The training videos are:

(a) "Briefing for Success", a short video giving guidance about police briefings before football matches, apparently produced in 1988 by Greater Manchester Police; (b) "Stewards", a short video giving guidance about the role of stewards at football matches and police interactions with such staff, apparently produced in 1987 by Greater Manchester Police and (c), "Plan for Disaster", a video concerned with various risks arising at football matches and planning for such risks, apparently produced by the Metropolitan Police.

These videos contain, as I have said, seven pieces of footage, each relating to an incident of violence and disorder at a football match in the 1980s. They depict soccer violence and fans' hooliganism; their content is broadly similar to MF/8; the violence at Heysel is depicted.

It is not clear which, if any, of the police officers and/or club staff who played a significant part in the events at Hillsborough would have seen these videos. There is some evidence to the following effect. First, in one of his statements, Graham Mackrell, secretary of Sheffield Wednesday Football Club, refers to club staff being shown a video prepared by one of the country's police forces. It is not clear whether this was one of the videos referred to above.

Second, minutes of a mid-season South Yorkshire Police football conference dated

17 June 1987 and attended by Messrs Jackson, Mole, Nesbit, Duckenfield and Beal, among others, refer to Superintendent Stuart showing a short video of outbreaks of disorder at football matches. Again, it is not clear which video this was.

Third, minutes of a mid-season football conference dated 19 January 1989 and attended by Messrs Jackson, Mole, Nesbit, Addis, Wain and Purdy, among others, refer to Superintendent Stuart saying there were three training videos available of which members could make use. The three videos referred to above are mentioned. It is not clear whether these videos were shown at the conference or the extent to which they were used thereafter, if at all.

Fourth, Operation Resolve have ascertained that Inspector Sewell wrote a note to the effect that "Plan for Disaster" was to be played to gate men for their training. Mr. Sewell told the Taylor Inquiry that it was played to staff.

Superintendent Stuart, who has given evidence to these inquests, and whose memory of the events a long time ago was not good, said when interviewed by Resolve that he could not recall training videos. Perhaps not surprisingly, he was not asked about that.

4. The argument

I can, without doing any disservice, summarise the arguments advanced in favour of admitting this evidence. Mr Beggs QC on behalf of the match commanders submits that it is not enough simply to say, as he submits do the submissions on behalf of the families, that there was a problem of hooliganism. The jury need to see the contemporary evidence which formed the background to stadium design, planning, preparation for the match, and, importantly, the policing on the day itself.

What is depicted on the videos, he submits, is the best evidence there can be of the nature of hooliganism. Unless the jury sees the real extent of the sort of violence which the police often had to confront in football matches, they will not have a proper understanding of the factors which influenced every aspect of the match commanders' approach both before and at the match. That is particularly so, he submits, given these events occurred a long time ago and a jury sitting in 2014 will not know what hooliganism was like in the 1980s.

I should make it plain that, as I understand it, it is not Mr Beggs' case that what happened at Hillsborough itself was anything to do with hooliganism.

Mr Greaney QC, in sensible and balanced submissions on behalf of many of the more junior officers on the ground on 15 April, while having no evidence at present that any of them saw any of the training videos, emphasised that his clients will seek to justify their response to events on the day by reference to hooliganism. If I understand him correctly, he did not rule out that such evidence might be forthcoming when officers give evidence. He submits that if officers were shown one or more of the training videos as part of their training for preparation and planning and/or policing on the day, that would amount to a cogent argument for the jury to see that evidence.

Mr Greaney also submits that the jury ought to see MF/8.

The arguments on behalf of the families can shortly be summarised in this way: this disaster was not about hooliganism. The evidence is not relevant. What the videos depict is unlike what could be seen at Hillsborough. There is, in any event, sufficient evidence of hooliganism already before the jury without showing them emotive and potentially prejudicial material.

Mr Weatherby QC on behalf of some of the families submitted that what is depicted, while of peripheral relevance, would be substantially prejudicial and would deflect the jury and should not therefore be admitted.

It is also submitted that, on any view, important evidential groundwork has not been laid. No officer has said whether or in what way he was influenced by such events as are depicted in the videos. There is no evidence at present that any videos were used in training relevant people.

5. My view.

The Hillsborough disaster was not caused by football hooliganism. That is very important. There is no evidence of supporters concertedly directing violence against each other, the police and/or bystanders. What the videos depict cannot, therefore, throw light on the behaviour of the fans on 15 April 1989. The most that can conceivably be said is that there may be some evidence of some drinking by some fans, some limited misbehaviour outside the ground and some pushing by some fans who were seeking to get into the ground as the time for kick-off approached. There is, too, some evidence of strong reactions, at least after the crush.

The evidence so far adduced (a significant proportion, but far from all, as a result of questions from Mr. Beggs) has demonstrated that football hooliganism involving serious violence was a very significant problem for British football in the 1980s. It was known as the English disease. Fans and others were killed as a result. Liverpool was banned from competing in Europe for some time because of the violence of its fans at Heysel. Some Liverpool fans were convicted of manslaughter. Football grounds had to be designed or modified so that fans from

opposing teams were segregated. They could not be trusted to sit immediately adjacent one to the other. Perimeter fences, described by some in these inquests as cages, were erected on many grounds, including Hillsborough, to prevent pitch invasions. The police had intimately to be involved in the arrangements for matches and policing the match on the day. As the safety certificate for Hillsborough in terms stated, the club had to agree with the chief constable how home and visiting fans were to be segregated (see schedule 2, paragraph 6(1)).

In short, as is clear from the evidence we have heard and which I have referred to, potential serious public disorder formed a significant part of the backdrop to the arrangements for football matches in the 1980s.

Preparation and planning for the match is within the scope of the inquests. So, too, is the policing of the match on the day of the disaster. I anticipate that police officers will say that in planning for and policing on the day they were heavily influenced by a proper intention to avoid the risk of fans clashing or the pitch being invaded. In part, at least, I foreshadowed as much when I said this to the jury in opening the case:

> "On the day, it appears that fans were able to reach the ground on the various traffic routes. As you can see, the police in their planning were concerned with keeping the fans apart. This was in response to concerns about disorder and hooliganism. It may be said by some that that was a reasonable concern, given the extent of serious soccer hooliganism at the time. It may be said by others that police planning was too focused on problems of disorder and insufficiently focused on issues of crowd safety."

There is another important aspect to the question of hooliganism. Police officers'

perception of events on the day, their reaction to them, is a live issue in the inquests. As Mr Simblet accepted on behalf of some of the families, they will be critical of the reaction of the police and possibly others to what was happening in pens 3 and 4. I anticipate, as both Mr Beggs and Mr Greaney submit, that many officers, and, again, possibly other witnesses, may say that their initial reactions were conditioned or affected by their fears of hooliganism. For instance, some officers, and others, may well say that they initially believed that attempts to escape from the pens and/or the emergence of fans from the pens onto the pitch had nothing to do with fans being crushed but was an attempt by fans to invade the pitch. Such was their reaction because they were attuned to the risks of such invasions, may be their evidence.

In my view, Mr Beggs makes a good point when he submits, particularly as it seems to me in the context of police officers' and possibly others' reactions to what they saw from their different vantage points, to what was happening in the pens, that descriptions of hooliganism 25 years on may not capture the fear and concern which it engendered in 1989. It seems to me only fair to those officers that the jury should have a proper understanding of why they acted as they did. In short, it seems to me that at least some of the events depicted on the footage, while not directly relevant to the disaster itself, are likely to have real relevance in one of two ways.

First, if officers who played a significant role in the events of 15 April 1989 give evidence indicating that their relevant perceptions, decisions and reactions were influenced either

by general concerns about football hooliganism or specific events or phenomena,

there are strong grounds for the jury seeing the footage depicting the events or features which affected the officers' thinking.

Second, if officers who played a significant role in the events of 15 April 1989 saw a particular video before that date as part of his or her training for policing football matches and if, as would seem probable, the content may have influenced his or her perceptions and decisions, it seems to me there are also strong grounds for the relevant video to be shown to the jury. Indeed, it would be difficult to see how, in fairness to the officer in question, it could not be.

While we may speculate, we do not know what evidence officers or, for that matter, other witnesses will give about particular events or features which influenced their material perceptions or decisions. We do not at present know whether there may be evidence that a training video was seen by a witness or witnesses. It seems to me essential, as a prerequisite to deciding what could appropriately be shown to the jury, to await the evidence. For it is necessary to have an evidential foundation and context for any footage to be shown. I have little doubt, for example, that once officers have been questioned on behalf of the families a significantly more informed decision regarding this evidence can be taken. I do not think, however, that it is enough simply to assert that the mind-set of officers generally must have been affected by concerns about hooliganism and then to reason from that assertion to the conclusion that a selection of particularly notorious incidents of hooliganism should be played.

Waiting for the evidence will also have other advantages. First, it will allow a coherent approach to be taken with regard to both the training videos and video MF/8. For instance, if the evidence justifies playing the training videos and

they depict the features of hooliganism which are relevant in the sense considered above, then it may not be necessary or appropriate to play any of MF/8 or it may be appropriate only to play a limited amount of it.

Second, it will help inform any decision regarding the probative as against the prejudicial effect when taking final decisions, as to what should be played to the jury. For, as Mr. Hough submits, there is a risk of prejudice in showing vivid imagery of hooliganism in inquests about events which did not actually feature hooliganism. My present provisional view, for example, is that the prejudicial value of showing dead or injured bodies at Heysel, as distinct from the clashes which led to the deaths or injuries, outweighs any probative value that may have.

In short, therefore, I have concluded that, provided the evidential base is properly laid, one or more of the videos may be played, at least to some extent.

I should add this: before playing any video, or part of any video, my present intention is to spell out to the jury precisely why it is being played; in particular, to remind them that no-one suggests that this disaster was caused by hooliganism.

I have no doubt at all that this most attentive jury will readily understand such a warning. I have no doubt, too, that they will, if so directed, not be deflected from their task, as Mr. Weatherby fears.

In the result, therefore, we should await the evidence pending the final resolution of this matter.

6. Control of questioning about hooliganism

In response to the submissions of the 22 families regarding questioning of witnesses about football hooliganism, it seems to me:

(a) It is entirely legitimate for witnesses to be asked questions to elicit whether and

how their relevant decisions, actions and reactions were motivated by concerns about football hooliganism. Such questioning may, at least arguably, assist the jury in understanding why witnesses acted as they did. For instance, it may help to explain the degree of importance attached to securing segregation of supporters; the approach taken to the opening of pitch perimeter gates; and the initial view that police were dealing with a pitch invasion.

(b) Such questioning may, in appropriate circumstances, extend to exploring the witness's experience of hooliganism, the training he or she received on the subject and even what the witness saw on television or heard from others about hooliganism. In all cases, the touchstones of relevance, expediency and fairness must be applied.

(c) Advocates should not be permitted to use a witness purely as a sounding board or conduit for introducing accounts about particularly egregious instances of hooliganism. For instance, I may properly disallow a question which involved the advocate recounting the events of another match under the pretext of "reminding" the witness about something which may have influenced him. It would, of course, be equally inappropriate to introduce accounts of police misconduct on other unrelated occasions by the equivalent forensic tactics.

I should add this: it is not appropriate to raise these matters with witnesses in a florid or emotive way.

7. The match commanders' submissions on fairness of the proceedings

It does not seem to me necessary or appropriate to deal with each of the matters raised by Mr. Beggs. I shall only say this: not only do I find the tone of the submissions surprising, but they, in my view, fail to paint a complete or

balanced picture of events. In my view, the submissions on the fairness of the proceedings are wholly without substance. In his response, Mr. Hough meets each point raised by Mr. Beggs. Subject to what I am about to say, I shall merely annex to this ruling paragraphs (a) to (l) of Mr. Hough's response.

One matter which Mr. Beggs raises is the reaction in the public gallery when he, or I presume his junior, asked questions. Since my last warning, I have not discerned such a reaction. It seems to me that those in the public gallery understand how important it is not to show any reaction. As they will now plainly appreciate, any reaction could be used to attack the outcome of these inquests.

I should add this too: Mr. Beggs has spoken of verbal attacks on him and on, in particular, Mr. Duckenfield on social networking sites. Such attacks are indefensible. They almost certainly amount to a contempt of court and/or a breach of the Attorney-General's direction in this case. I hope Mr. Beggs reports, or continues to report, such matters and that they are properly pursued.

I shall not at the moment deal with the question that Mr. Weatherby raised regarding, as he submitted, an apology from Mr.Beggs.

(a) As to paragraph 34 of their submissions, it is not accepted that there was unfairness in the inquests team not having specifically asked Operation Resolve to compile footage of football hooliganism in the 1970s and 1980s. We are not aware of this having been done for previous proceedings or investigations. To our knowledge, no interested person had suggested this course in these proceedings.[1] The inquests have

[1] For example, it was not suggested in the lengthy letter of 11 October 2013 from the solicitors for the match commanders in which they put forward actions for Operation Resolve. It was not suggested in submissions for any of the six pre-inquest review hearings.

not yet heard evidence of officers to provide the foundation for introducing such evidence.

(b) As to paragraph 35, we as counsel to the inquests have elicited evidence about hooliganism as the backdrop or inspiration for relevant decisions and events. As with all our examination of witnesses, questions have been asked from an independent perspective. In asking our questions of witnesses in the section of the inquests concerned with stadium safety, we have taken into account that the relevance of hooliganism to this topic lies in its influence on design and planning. The key importance of segregation, and its rationale, has been repeatedly emphasised. For instance, in the examination of Mr Cutlack at the start of the "stadium safety" topic, repeated reference was made to concerns about hooliganism influencing the guidance on stadium design and match arrangements. When eliciting the evidence about the events which led to the Popplewell inquiry, we led evidence of missile-throwing, pitch invasions and the death of a young boy at the Birmingham City match of 11 May 1985. See: Day 19 (27.5.14) at p7:22 to p8:6, p28:18 to p29:16, p56:13-22, p130:10-22, p131:3-5, p134:1-15; Day 20 (28.5.14) at p6:12-25, p7:2 to p8:8, p9:3 to p12:13.

(c) As to the general assertion made in paragraph 36 that counsel for the match commanders have been shut out from lines of questioning about hooliganism, we would point out that in fact they have repeatedly been permitted to ask extensive questions on this subject. See, for example: Day 20 (28.5.14) at p195:5 to 198:22; Day 22 (30.5.14) at p162:6 to p163:18; Day 26 (5.6.14) at p22:14 to p27:20; Day 28 (10.6.14) at p100:5-18, p105:21 to p108:6, p109:8 to 113:10.

(d) As to the particular instance given in paragraph 36, the Coroner intervened in the examination of Mr Malkin not because he was excluding evidence about hooliganism on principle but because Mr Malkin had been called to perform a very specific role.[2] He was giving evidence of uncontentious background facts in accordance with the

[2] As the Coroner said of questions asked by Mr Beggs QC of Mr Malkin about segregation: "I don't say that isn't a relevant matter, and I understand completely why it is a topic that you want to raise. I understand that completely. But I really don't think it is helpful, at this stage, to raise it with the officer. Again, I will indicate, as I did to Mr Mansfield, the time will come when you can put questions to him or to somebody who is in a position to answer them on that sort of topic. But not now."

content of a report which had been circulated. The Coroner properly took the view that the line of questioning was likely to take Mr Malkin into acutely contentious territory. He similarly intervened in questioning of Mr Malkin by other interested persons on other subjects, for the same reason.[3] It should also be noted that the legal representatives of the match commanders (like other interested persons) had been given the opportunity to suggest additional uncontentious material for Mr Malkin to cover and they had not taken that opportunity.

(e) As to the two instances given in paragraph 37:

(i) The first instance (at the end of Day 20 (28.5.14)) concerns a discussion of the best witnesses to whom questions eliciting evidence about hooliganism could be put. Again, the premise of the discussion was that it was a subject which could properly be addressed. The discussion apparently ended with a reasonable consensus. One of the points made in the discussion was that the questions might be better answered by Mr Hopkins, a retired senior police match commander whom the inquests team instructed as expert on policing matters.

(ii) The second instance (on Day 31 (16.6.14)) involved the Coroner asking counsel to defer a line of questioning, which primarily concerned match planning (allocation of tickets and the catalyst for a ticket allocation system), to a time when the witness returned specifically to give evidence about planning and preparation. The Coroner did not rule on the appropriateness of the line of questioning in principle.

(f) As regards the broader point made in paragraphs 37 to 39, the jury has heard considerable evidence to the effect that a range of specific concerns about public order and segregation played a part in stadium design. See, for example, the passages cited at (b) above. There has been no failure to adduce relevant evidence. However, proper care has been exercised to avoid causing unfair prejudice by concentrating excessively on a phenomenon which did not directly feature in the disaster.

[3] See in particular the discussion with Mr Mansfield QC in the absence of the jury during Mr Malkin's evidence: Day 16 (21.5.14) at p136:10 to 143:13.

(g) As to paragraph 40, while the inquests team is not responsible for interviews conducted by the independent investigators of Operation Resolve, we should point out that the passage cited needs to be put in context. The interviewee (Mr Strange) had asked what the impetus was for the fresh investigation and inquests. The reference to "family pressure" was in answer to this and probably refers to the determined and successful campaign of the families to secure a fresh inquiry into the disaster. Equally, the reference to powerful support for the inquiry is perhaps explicable in a case where some politicians have supported a rigorous investigation. The inquests team is committed to ensuring that the inquests will be both thorough and scrupulously fair.

(h) As to paragraph 41, we would point out that the application by the families to exclude evidence of local residents was opposed by ourselves as counsel to the inquests. The application was rejected by the Coroner without the match commanders' counsel even having had to go to the trouble of preparing a skeleton or presenting argument.

(i) Paragraphs 42 to 46 cite a series of passages from the Coroner's opening and rulings in which he has declared his commitment to fairness to all interested persons. The observations in these passages are reflected in the Coroner's conduct of the proceedings.

(j) As to paragraph 48, we repeat that relevant evidence of the influence of football violence on stadium design has been appropriately elicited in the "stadium safety" section of the inquests. It is not accepted that fairness required the inquests team at an early stage to adduce extensive further evidence about particular incidents of violence at matches over the 1970s and 1980s.

(k) As to paragraph 49, we acknowledge that there have been several occasions on which individuals in the public gallery have reacted audibly to questioning of witnesses. Their reaction, while obviously undesirable, has not disrupted the proceedings and has not apparently deterred advocates from their lines of questioning. The Coroner has issued appropriately firm and clear warnings to the public, and in general these

have proved entirely effective. See, for instance: Day 16 (21.5.14) at 61:14-23; Day 20 (28.5.14) at p199:23 to 200:3.

(l) As to paragraphs 50 to 53, we recognise that the match commanders have important interests at stake. So do other interested persons. A fair and properly balanced inquiry is being conducted and will continue to be conducted. As regards the specific points made in these paragraphs –

(i) The DPP expressly sought and obtained interested person status for the sole purpose of gaining access to documents in the inquests database. This was sought in order to ensure that any charging decisions could be made relatively quickly after the end of the inquests. In the application letter of 30 January 2014, the DPP made the following points: "we have no need to examine witnesses or appear at the inquests"; "[w]e certainly do not wish to influence or even appear to influence the conduct of the inquests in any way"; "[o]ur interest is limited to having access to and use of the evidence in order to carry out our role as prosecutors and we are not requesting, under rule 19, to be allowed to question any witness": "the reason we seek access [to documentation] is in order to assist us in exercising our statutory functions in relation to advising on criminal investigations and in order to decide whether criminal proceedings should or should not be instituted against any individual or entity."

(ii) The question asked by the IPCC advocate on Day 28 was apparently asked to address a misunderstanding which may have arisen. The witness had previously (at p121:9-17) been asked why Chief Supt. Mole had not mentioned the closure of the tunnel to the West Terrace in his evidence at any previous judicial proceeding. This may have left the impression that there was no record of Mr Mole having ever known the tunnel to be closed. The IPCC's counsel asked a few questions about a document which might be read as suggesting otherwise.[4]

(iii) The inquests team is aware of some entirely inappropriate and offensive comment which has been issued on internet blogs and on social media websites concerning those involved in these inquests. The jury have repeatedly been given appropriate

[4] We should stress that we do not take any position on Mr Mole's understanding of any (alleged) practices of closing the tunnel in the months and years prior to the disaster. That will be a matter for evidence.

warnings to avoid such blogs and sites. The inquests team have drawn some published comments to the attention of the Attorney-General, and are aware that interested persons have also taken that course. We strongly deplore statements of the kind referenced in paragraph 53.