

<p>1 Tuesday, 6 November 2011 2 (10.00 am) 3 MR BARR: Good morning, sir. 4 LORD JUSTICE LEVESON: Yes, Mr Barr. 5 MR BARR: We have four witnesses today. We'll be starting 6 in a moment with Mr Nott, then Ms Harris and then 7 finally this morning we have Mr Leigh and this 8 afternoon, Mr Atkins. 9 LORD JUSTICE LEVESON: Very good. 10 MR BARR: The first witness is Mr Nott. 11 MR STEVEN JOHN NOTT (affirmed) 12 Questions from MR BARR 13 MR BARR: Take a seat, please, Mr Nott. 14 A. Thank you. 15 Q. Could you tell the Inquiry your full name, please? 16 A. My name is Steven John Nott. 17 Q. You've provided a witness statement to the Inquiry on 18 a voluntary basis. Are you familiar with the contents 19 of the statement? 20 A. I am, yes. 21 Q. Are the contents of the statement true and correct to 22 the best of your knowledge and belief? 23 A. They are. 24 Q. We're going to take your statement as read, but there 25 are a few questions that I would like to ask you to</p> <p style="text-align: center;">Page 1</p>	<p>1 back on my phone so I could access my orders so I could 2 ring the customers up, basically, to put the orders in, 3 and I stopped at a service station and I rang up the 4 customer services at Vodafone to ask them how long the 5 network was going to be off for because of this problem 6 I had, and they explained to me that the whole of South 7 Wales area was down at the time, it had been off for 8 a few hours, and I told them the problem that I had. 9 They said it's not a problem and explained to me that 10 I could access my voicemail from any other phone, from 11 a landline, from a mobile and so forth. 12 It was new to me at the time, and I asked them how 13 I would do it, and they described -- they explained to 14 me that I would have to ring my own mobile phone number 15 up, and when I -- when it went into the voicemail, said, 16 "This is a Vodafone recall service for..." whatever 17 number you were ringing -- after you'd hear that message 18 and it said, "Please leave a number after the tone", 19 after you'd hear the tone, you'd press number 9. This 20 is what the customer service lady was telling me at the 21 Vodafone customer services. She then said, "You'd have 22 to enter your security number", and I didn't realise 23 what she meant by that and I thought that was the 24 security number for when I switch my phone on. At the 25 time, it was new to me, and she said, "No, obviously you</p> <p style="text-align: center;">Page 3</p>
<p>1 amplify what is in your statement and to summarise it. 2 You tell us, first of all, that you are a member of 3 the general public, currently employed as a delivery 4 driver? 5 A. I am. 6 Q. Winding back now to 1999, you tell us that there came a 7 point in time when you discovered that it was very easy 8 to access other people's Vodafone voicemail accounts? 9 A. I did. 10 Q. Could you tell us in summary, please, how you came to 11 find that information out? 12 A. I was a salesman for a food company based in south 13 Wales. I used to have a lot of customers -- new 14 customers ringing up my mobile phone and leaving 15 messages with new orders on the phone as I was driving, 16 and you couldn't take the orders and write them down as 17 you were driving so they would be left on my voicemail 18 until I'd stopped, to be able to write the orders down, 19 the new customer's details, and ring the production -- 20 the sales team up to put the production into order, 21 basically, at the company. 22 At the time this happened, the network went 23 completely down and I was expecting a lot of new 24 customers' orders that afternoon and I was in a bit of 25 a panic trying to get -- waiting for the network to come</p> <p style="text-align: center;">Page 2</p>	<p>1 don't know what it is, so yours is still at default, 2 which is 3333." And I had that moment where I thought 3 to myself: "This is insecure", straight away because 4 I then said to the lady at customer services: "If that's 5 the case, I could ring anybody else's phone up using the 6 same method and access their voicemail", and they said, 7 "Yes, you can, but you're not supposed to." 8 That was that call and I sort of got my orders and 9 got the food to the company and went on with my 10 business. 11 Q. I see. You then tell us that you later tried to attempt 12 to get Vodafone to change their system and to improve 13 their security. Were you successful in that endeavour? 14 A. Not at all. I made many attempts at ringing the 15 Vodafone headquarters, which was in Newbury at the time, 16 trying to get them to listen. They weren't taking any 17 notice of me, and they kept saying to me: "It's not 18 a problem. We can't see why there's going to be 19 a problem. Why you are making so much of a fuss?" 20 I kept being fobbed off all the time and it wasn't the 21 sort of service I was expecting from them, but then 22 again, who am I to tell a large company to change their 23 system? 24 Q. Then you tell us that you then decided to contact the 25 press. First of all, you contacted a reporter called</p> <p style="text-align: center;">Page 4</p>

<p>1 Oonagh Blackman, who was at that time working for the 2 Daily Mirror? 3 A. I did. 4 Q. And that she decided to look into it? 5 A. She did. 6 Q. When you spoke to her on another occasion, she said that 7 she'd tried it on a few numbers that she had? 8 A. She did. 9 Q. And that she had some of her colleagues ringing up 10 publicly profiled people in and around London? 11 A. All of her colleagues in the newsroom is what I was 12 told. 13 Q. Did you understand that they were ringing up these 14 publicly profiled people to tell them that their 15 voicemail was insecure? 16 A. Yes. 17 Q. And were you given to understand that there was going to 18 be a story published? 19 A. Yes, most definitely. 20 Q. But in fact, as we now know, the Daily Mirror decided 21 not to publish the story? 22 A. That's right. 23 Q. And you were told by Ms Blackman that she wasn't 24 interested in it any longer; is that right? 25 A. That's correct.</p> <p style="text-align: center;">Page 5</p>	<p>1 A. I have. 2 Q. And he's explained, hasn't he, that he tried to get the 3 story published but that the newspaper decided not to? 4 A. He said it was a good story and he didn't see why it 5 wasn't published. He didn't understand. 6 Q. He's also explained to you, hasn't he, that he wasn't 7 asked to demonstrate -- 8 A. That's correct. 9 Q. -- the way of accessing voicemail to anybody? 10 A. That's correct. 11 Q. Then you informed New Scotland Yard, didn't you? 12 A. I did. 13 Q. And have you had any reply to your communications with 14 New Scotland Yard? 15 A. Recently or then? 16 Q. Then? 17 A. No. 18 Q. Perhaps we can have a look on the screen, please, at the 19 document which starts at unique reference number 24165. 20 This is a document which is entitled "The Truth About 21 Vodafone". We don't need to go to the following pages, 22 but in the following pages you explain what you had 23 discovered. 24 A. Yes. 25 Q. Is this a document that you submitted to New</p> <p style="text-align: center;">Page 7</p>
<p>1 Q. Did she explain to you why it was that they weren't 2 going to publish the story? 3 A. No. 4 Q. You explain in your statement that Ms Blackman 5 threatened you with court action if you told anyone? 6 A. She did. 7 Q. Told anyone what? 8 A. Told anyone that I'd explained or showed them or told 9 her how to intercept voicemail, because I then thought 10 to myself that perhaps I shouldn't have told Oonagh 11 Blackman at the Daily Mirror, so I then accused Oonagh 12 Blackman her over the phone of possibly keeping the 13 information to themselves for that purpose. 14 Q. And you were paid £100 for the information by the 15 Daily Mirror? 16 A. I was, yes. 17 Q. You then tell us that you contacted Mr Paul Crosbie, who 18 was at that time a journalist at the Sun? 19 A. He was a consumer affairs correspondent at the time. 20 Q. And you discussed the matter with him, didn't you? 21 A. I did. 22 Q. Did the Sun publish the story? 23 A. No. 24 Q. You've been subsequently in correspondence by email with 25 Mr Crosbie about this matter, haven't you?</p> <p style="text-align: center;">Page 6</p>	<p>1 Scotland Yard? 2 A. That is -- it's the same document. However, that's -- 3 that's the second document I sent out. 4 Q. I see, so you tried twice? 5 A. Yes. 6 Q. Was there any covering letter to this second document? 7 A. To the second document, yes, but not the first document. 8 Q. I see. Do you have the covering letter to the second 9 document? 10 A. No. 11 Q. Why is that? 12 A. I didn't find it in my attic where all these documents 13 were. 14 Q. It was a long time ago, but can you remember whether or 15 not you asked the police to do anything? 16 A. No, it would have been a basic note to say, "This letter 17 is what I discovered. Please look into it." It 18 wasn't -- there's enough details in that document to 19 explain what I'd discovered. 20 Q. I see. Then you wrote to the Department of Trade and 21 Industry? 22 A. I did. 23 Q. The Home Office? 24 A. I did. 25 Q. And Her Majesty's Customs and Excise?</p> <p style="text-align: center;">Page 8</p>

<p>1 A. I did. 2 Q. Essentially explaining what you had found? 3 A. I sent them the same document. 4 Q. Did you get a reply from any of those departments? 5 A. No. None of them. 6 Q. You go on in paragraph 12 to list the further people 7 that you informed. These included MI5? 8 A. Yes. 9 Q. The National Council for Civil Liberties? 10 A. Yes. 11 Q. The Orange press office? 12 A. Yes. 13 Q. Is that Orange the mobile phone company? 14 A. It is. 15 Q. And what happened there? 16 A. I spoke to a few of the mobile networks at the time and 17 Orange were the ones that were interested at the press 18 office, so I kept in touch with them about what I'd 19 done, basically, what I was trying to do, what I was 20 trying to expose. 21 Q. I see. You then say you contacted ITN? 22 A. Yes. 23 Q. And did they take an interest? 24 A. I spoke to Chris Choi, the consumer affairs 25 correspondent at ITN at the time and he sent a film or</p> <p style="text-align: center;">Page 9</p>	<p>1 A. That's correct. 2 Q. And you've been trying to obtain a recording of that 3 broadcast recently, haven't you? 4 A. I have. 5 Q. And is it right that although Radio 5 Live could no 6 longer find a copy of the broadcast, they did find 7 a copy of the technician's transcript? 8 A. It's part of the transcript. It's only the engineer's 9 transcript, not all of the actual programme. 10 Q. I see. That may well be enough for our purposes. Could 11 we have up on the screen, please, the document which 12 ends 24177. Could we magnify the paragraph that starts 13 "Time now for business", which is almost halfway down 14 the page. Adam Kirtley is a reporter who was conducting 15 the piece, wasn't he? 16 A. He was. 17 Q. And there was a representative from Vodafone involved as 18 well as yourself? 19 A. Yes. 20 Q. And we see in the paragraph that's been magnified the 21 way in which the piece was introduced, don't we? 22 A. Yes. 23 Q. If we turn over to page 24178, we see in summary the way 24 in which it was dealt with from Vodafone's side, albeit 25 we only get a part of the conversation. Is it right</p> <p style="text-align: center;">Page 11</p>
<p>1 news crew or some sort -- film or news crew, 2 whichever -- to my house and filmed me in my back garden 3 telling the story about the Vodafone security flaw, not 4 the story about who I'd been to see. 5 Q. I see. And was that broadcast? 6 A. No. 7 Q. Did they explain why that wasn't broadcast? 8 A. No. But I was told to stop hassling them after I kept 9 asking. 10 Q. You tell us you also contacted One 2 One? 11 A. I did. 12 Q. BT Cellnet? 13 A. I did. 14 Q. And the Watchdog programme? 15 A. I did. 16 Q. Did the Watchdog programme take an interest? 17 A. I had a phone call back from them, but nothing came from 18 it. 19 Q. So now we come to BBC Radio 5 Live and it's right, isn't 20 it, that BBC Radio 5 Live did take an interest? 21 A. They did. 22 Q. And that interest led to a short piece being broadcast, 23 didn't it? 24 A. It did. 25 Q. On 22 October 1999?</p> <p style="text-align: center;">Page 10</p>	<p>1 that Vodafone's answer was essentially to accept what 2 you were saying and to say that customers would be well 3 advised to change their voicemail PINs from the default 4 setting? 5 A. That's right. 6 Q. Thank you. The document can be taken down now. 7 You contacted Mannesmann Dusseldorf, which is 8 a company which was involved in commercial negotiations 9 with Vodafone? 10 A. I did. 11 Q. And also the BBC, you tell us, filmed you in the Blue 12 Peter garden? 13 A. On Percy Thrower's bench. 14 Q. I see. Was that piece ever broadcast? 15 A. No. 16 Q. You then go on to tell us about contact with the South 17 Wales Argus (sic), and the South Wales Argus did print 18 a piece, didn't they? 19 A. It's the South Wales Argus. 20 Q. Could we have up on the screen, please, 24164. This is 21 the article, isn't it? 22 A. It is. 23 Q. Could we magnify, please, in the left-hand column the 24 paragraph which begins "Horrified"? We see that the 25 journalist wrote:</p> <p style="text-align: center;">Page 12</p>

<p>1 "Horrified Vodafone subscriber Steve Nott, 32, found 2 that anyone can access his answerphone service and 3 listen to his private messages ... helped by the giant 4 network's own operators." 5 And the article goes on, doesn't it, to explain your 6 discovery? 7 A. Yes. 8 Q. Could we highlight, please, in the second column the 9 paragraph which begins "He said Vodafone has millions of 10 users". We see the paragraph: 11 "He said Vodafone has millions of users and many of 12 them will be MPs and high-ranking government officials, 13 people with highly sensitive information at their 14 fingertips." 15 Was it a concern of yours that there might be 16 security vulnerabilities for people who held sensitive 17 information? 18 A. Definitely. 19 Q. Was that one of your motivations in trying to 20 disseminate your discovery as far as you could? 21 A. Definitely, yeah. 22 Q. Then if we could magnify, please, the paragraph a little 23 below the one that's presently magnified, which begins 24 "The Argus put Mr Nott's claims to the test". Thank you. 25 We see there that the Argus said that it put your claims</p> <p style="text-align: center;">Page 13</p>	<p>1 say to the chairman in relation to the future regulation 2 of the press. It's an optional question, you don't have 3 to answer it, but if there is anything that you would 4 like to say to Lord Justice Leveson about future 5 regulation, now is your opportunity to do so. 6 A. I would like to say something, if I can, please, if 7 that's okay. Do I need to stand up or sit down? 8 Q. No, no, you can remain seated. 9 A. As an outsider and nothing to do with the industry 10 whatsoever, I feel I don't have the right to have any 11 say about the future of press regulation, but I would 12 like to add something if that's okay. It may or may not 13 be relevant. 14 When I was younger and went to visit my 15 grandparents, I always remember my grandfather sitting 16 at the dining room table picking horses from the 17 Daily Mirror and carefully filling out betting slips 18 with the day's selections. Meanwhile, my grandmother 19 would be sat in her chair with her glasses on the edge 20 of her nose, marking off numbers in the Sun bingo, even 21 using her best bingo board to rest on. 22 I regularly visited my grandparents and once 23 I brought my nan a large pile of Sun bingo cards that 24 I'd been given by a WH Smith manager. It used to take 25 her hours just marking the numbers off, but it kept her</p> <p style="text-align: center;">Page 15</p>
<p>1 to the test and by following your instructions was able 2 to access Vodafone users' personal message service. 3 They're careful to point out that they did it with 4 permission, and they too appear to have consulted 5 Vodafone, who confirmed that your information was 6 correct, didn't they? 7 A. Yes. 8 Q. So is it right in summary to say that although some of 9 your efforts to publicise the story fell on deaf ears, 10 there was at least some publicity in the mass media in 11 1999? 12 A. Yes. 13 Q. You also informed your member of Parliament, didn't you? 14 A. I did. 15 Q. Your statement moves then to 2010, as the phone hacking 16 saga began to break as a major national story. I don't 17 need to go to the details of your statement, but it's 18 right, isn't it, that since then you've been in contact 19 again with very many different bodies? 20 A. I have. 21 Q. And you have provided a witness statement for use in 22 civil legal proceedings brought by others? 23 A. I have. 24 Q. We've been asking every witness who attends the Inquiry, 25 Mr Nott, if there is anything that they would like to</p> <p style="text-align: center;">Page 14</p>	<p>1 happy and us too. 2 My nan used to roll up the Daily Mirror sometimes to 3 swat the cat. My grandparents always had a newspaper 4 each back then. They must have been rich. We always 5 had a copy of the Daily Mail in our house when I was 6 growing up. I rarely saw my father reading it though, 7 merely skipping through the news to the crossword. He 8 never had time to read the news stories; he was just too 9 busy. I never really noticed my mother reading the 10 newspaper either. She always managed to complete the 11 crossword that my father hadn't. You can almost sense 12 the air of victory in the house about finishing the 13 crossword that my dad hadn't or couldn't. 14 I left home at 19 and wasn't really a daily 15 newspaper buyer. I thought newspapers were for 16 crosswords, bingo, horse races and TV listings, but 17 I still carried on buying the Daily Mail on Sunday 18 because of its long-running TV guide and that's what 19 I was brought up with. I never read the news pages, but 20 I always did like the crossword and have a similar issue 21 now with my mother. She seems to manage to complete the 22 crossword after I've attempted and failed. 23 Over the past ten years, we've bought the Sun 24 newspaper for its Sun holidays promotions and regularly 25 went on cheap holidays. I stopped buying that newspaper</p> <p style="text-align: center;">Page 16</p>

<p>1 because my daughter once had a look through it and 2 couldn't believe her eyes when she looked at page 3. 3 She was shocked by it and I'd never encountered the 4 subject of dealing with soft porn with my kids before. 5 I don't have a problem with it but I had a problem with 6 my daughter seeing it at the time. I don't buy the Sun 7 any more for this reason. 8 My next door neighbours always save their papers for 9 me so I can use them to light my coal fire. So how 10 could I give an opinion on freedom of the press and 11 press regulation when I've been brought up by a family 12 who used newspapers for other purposes than to read 13 them? I'm just giving you an insight into our family as 14 newspaper buyers. Thank you. 15 MR BARR: Thank you very much, Mr Nott. I have no further 16 questions for you. 17 LORD JUSTICE LEVESON: Thank you, Mr Nott. It's quite clear 18 this was a problem you identified in the late 1990s and 19 it's now come home for us all to think about. 20 A. I'm very grateful. Thank you. 21 MR BARR: Would you like to return to your seat, please, 22 Mr Nott? 23 A. Thank you. 24 MR BARR: Sir, the next witness is Ms Charlotte Harris. 25 LORD JUSTICE LEVESON: Thank you.</p> <p style="text-align: center;">Page 17</p>	<p>1 Q. And also to assist us with the nature of press treatment 2 of some of your clients? 3 A. Yes. 4 Q. Can we deal, first of all, with the surveillance of you. 5 You've provided to the Inquiry an exhibit which contains 6 documents, some of which were adduced in evidence last 7 week when we heard from Mr Lewis. You have seen 8 surveillance evidence obtained about yourself, haven't 9 you? 10 A. Yes, I have. 11 Q. And that surveillance was of you and of your family? 12 A. It seems that it was of me and my family and my two 13 children and perhaps the people around us as well. 14 Q. The contents of the reports you've seen, were they 15 accurate in their summary of you and your private life? 16 A. They were littered with inaccuracies, but certainly 17 there was a mixture of information, some of which was 18 correct, some of which was speculation and some of which 19 just seemed to be made up. 20 Q. You tell us that you first became aware of this in May 21 of this year? 22 A. Yes. 23 Q. When a contact provided you with some of the documents 24 that you now possess on this subject? 25 A. That's right. The documents that I was provided in May</p> <p style="text-align: center;">Page 19</p>
<p>1 MS CHARLOTTE ROSE HARRIS (sworn) 2 Questions from MR BARR 3 MR BARR: Ms Harris, could you tell the Inquiry your full 4 name, please? 5 A. It's Charlotte Rose Harris. 6 Q. And your professional address? 7 A. I'm an employed barrister at Mishcon de Reya. We're at 8 12 Red Lion Square. 9 Q. You've provided a witness statement voluntarily to the 10 Inquiry. Are you familiar with the contents? 11 A. Yes, I am. 12 Q. Are the contents true and correct to the best of your 13 knowledge and belief? 14 A. Yes, they are. 15 Q. We're going to take the statement as read, and as with 16 the last witness I shall just alight on certain parts of 17 it for clarification. 18 You tell us that you specialise in media law, in 19 particular defamation, privacy and harassment, and that 20 you now represent a substantial number of phone hacking 21 claimants; is that right? 22 A. That's right. 23 Q. You provide the statement to assist the Inquiry in 24 understanding surveillance of you? 25 A. Yes.</p> <p style="text-align: center;">Page 18</p>	<p>1 this year in my view are not documents that were 2 necessarily prepared by News International. That's not 3 clear. They subsequently led on to the discovery of 4 documents that were the surveillance documents that have 5 been spoken about, so it's important to understand that 6 there was more than one type of surveillance going on. 7 Q. So the first document that you were handed, the one 8 which you are not sure of its provenance, you took that 9 to News International, didn't you? 10 A. I did. I was given the documents. I looked at them. 11 There were four reports. From the four reports, there 12 was one report that focused on myself and other lawyers, 13 and certainly looked like it had some surveillance 14 material in it. There were three other reports that 15 talked about News International generally, people 16 connected to News International and also matters that, 17 as far as I'm concerned, were pure speculation. Not 18 about myself, but about many other people, which is why 19 I was keen that those documents remained confidential. 20 There was nothing to back up what was said in them. 21 But when I saw these documents, I thought that it 22 was important to take it to News International directly 23 because I was able to -- I had a meeting set up with 24 them and we obviously are in talks the whole time 25 because we are in the middle of litigation -- and to ask</p> <p style="text-align: center;">Page 20</p>

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<p>1 them what they thought and whether they could assist in 2 finding out what on earth had gone on. 3 Q. You took them to Simon Greenberg, director of corporate 4 affairs at News International? 5 A. At the time, yes. 6 Q. You are careful to tell us that you didn't take them to 7 Tom Crone, who was head of legal at the 8 News of the World at the time. Could you explain to us 9 why you chose to go to the director of corporate affairs 10 and not to Mr Crone? 11 A. At the time I didn't know that Tom Crone had any 12 involvement whatsoever in the surveillance or the 13 commissioning of surveillance or any knowledge of it and 14 I was certainly surprised to find out that there would 15 be any kind of allegation in Tom Crone's direction. 16 Obviously I'd worked opposite Tom in litigation for many 17 years. 18 However, having had a good relationship with Tom, 19 he'd stopped speaking to me for a little while, starting 20 from November the year before, and so that communication 21 had stopped and I thought that as Simon Greenberg had 22 come in and was dealing directly with these matters, and 23 having had a meeting set up with him anyway, I'd go to 24 who I thought was the most appropriate person to deal 25 with it, and that seemed to be Simon Greenberg and not</p> <p style="text-align: center;">Page 21</p>	<p>1 was very sudden, to the extent that I would have been 2 embarrassed, I think, to have phoned him out the blue, 3 having not received -- not received -- not received any 4 telephone calls returned and having stopped all 5 correspondence. I didn't know then that there was 6 anything in connection to me. I've only ever 7 represented my clients in terms of privacy. 8 Q. Am I understanding you correctly that there was no 9 obvious reason why communication suddenly dried up? 10 A. No, but it was sudden. 11 Q. You go on to tell us that you provided the material 12 which you'd been given, which you call surveillance 13 report 1 in your statement, to the police? 14 A. Yes. 15 Q. Then there came a time when you had further contact with 16 Mr Greenberg, and he told you that they had found some 17 more surveillance material relating to you; is that 18 right? 19 A. That's right. The initial reports -- I still don't know 20 their provenance, but that started off an Inquiry by 21 Simon Greenberg as to whether there had been any 22 surveillance, and so at a later date -- I think we get 23 to August by now, so I first gave the documents to him 24 in May, but I'd like to add the documents that I gave to 25 Simon Greenberg, I made sure that the private</p> <p style="text-align: center;">Page 23</p>
<p>1 Tom Crone. But I had no idea that there was any 2 involvement at that stage. 3 Q. Was there anything which prompted this sudden ending of 4 direct communication with Mr Crone? 5 A. I'd been getting on extremely well, I think, as 6 a claimant lawyer with the other side. I think it's 7 very important, when you're fighting battles -- 8 important battles for your clients, not to put yourself 9 in a position that you've fallen out with the other side 10 to such an extent that communication breaks down 11 completely, and that's the basis on which I've tried to 12 run as successful a practice as possible. And so for 13 quite a long time during working on, for instance, the 14 Max Clifford litigation, what had happened was I'd 15 started to speak directly to Tom Crone because he was 16 head of legal, and it meant that I could forego some of 17 the lengthy correspondence and get, you know, straight 18 to it. And we'd got on quite well and it meant that 19 when other issues arose -- not to do with phone hacking 20 but just the day-to-day kind of issues that you have as 21 a media lawyer, somebody might telephone and say that 22 there's an article about to go in -- I would phone Tom 23 directly, and this was, you know, extremely efficient as 24 far as working together. 25 In November last year, it stopped completely and it</p> <p style="text-align: center;">Page 22</p>	<p>1 information about the other lawyers and so on wasn't 2 handed over. There was -- we were -- we were careful 3 about that as well, because obviously you have to be 4 careful not to breach somebody else's privacy when 5 you're investigating a serious matter of an invasion of 6 privacy. 7 Q. Yes. 8 A. One of the points -- 9 LORD JUSTICE LEVESON: It's been one of the problems about 10 all this. 11 A. Absolutely. Absolutely one of the problems, and the 12 same problem occurring in the Privacy and Injunction 13 Select Committee, that in order to investigate, you have 14 to be careful not to expose. 15 In August, I went back for a meeting with 16 Simon Greenberg and he said to me that -- and very 17 nicely -- that he was terribly sorry, but it looked like 18 although the original report didn't look like it had 19 necessarily emanated from News International -- we don't 20 know, it might have been anything -- that the material 21 that he'd now discovered did emanate from Tom Crone and 22 that he was going to look into it and he said he would 23 look into it appropriately and so I allowed that 24 investigation to continue. It culminated in the 25 documents that are confidential to my witness statement</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 being handed to the police and now it will form part of 2 that inquiry. 3 Q. Was it after the documents had been passed from 4 News International to the police that the police showed 5 them to you? 6 A. Yes, it was, but I was expecting it. 7 Q. Because you'd been told the documents existed? 8 A. I'd been told -- yes. 9 Q. Did the police show you redacted copies? 10 A. They were redacted, but in such a minor way. I mean, 11 they would have found it very difficult to redact this 12 information and to keep it meaningful, which of course 13 is another problem associated with keeping things 14 confidential. Sometimes it's very hard to redact things 15 and keep the meaning, and I think the police had that 16 difficulty. They showed me the documents and it was 17 very helpful. 18 Q. Can we now turn to the question of what motivated the 19 surveillance of you and the investigation of you -- 20 LORD JUSTICE LEVESON: Just before you do, it's right to 21 say, I think, that Mr Greenberg's assurances to you and 22 his sincerity you don't question at all? 23 A. No, I don't. 24 LORD JUSTICE LEVESON: So he's been getting on with it? 25 A. As far as I'm concerned, he got on with it. It was</p> <p style="text-align: center;">Page 25</p>	<p>1 RXC attendance note of the meeting ..." 2 Then it says "in Andrew", which doesn't quite make 3 sense. Is that referring to a case? 4 A. It would be Sky Andrew, who I -- 5 Q. "... that if there was a problem they would not act. He 6 cannot see that in light of that, there would be any way 7 to get the Reed/Harris off the case unless there is 8 a significant new development. He does not think there 9 is any mileage in reporting them to their professional 10 bodies either." 11 LORD JUSTICE LEVESON: That's all to do with their concern 12 that you were acting for other people, having acted for 13 some others? 14 A. That's right. They weren't keen on the fact that having 15 done a phone hacking case, that we should continue to do 16 phone hacking cases, all of which are actually quite 17 similar, and so they had written to my law firm at the 18 time, JMW, and said that they thought that -- I remember 19 the word "shameless" in correspondence because it was 20 quite a hard and harsh word to use and I took it very 21 seriously, because you do when that kind of allegation 22 is levelled towards you by, you know, what is a serious 23 law firm. And so I took it to my senior partner and 24 I took it to Mr Reed and we looked into it and the 25 conclusion we came to -- and I think that their leading</p> <p style="text-align: center;">Page 27</p>
<p>1 something that started in May with me voluntarily giving 2 him the documents and then him volunteering to look, so 3 it was a process that actually I think worked quite 4 well. So no, I didn't doubt at all that there would be 5 a problem with that. 6 MR BARR: Thank you. 7 I'd like to look now at the document which is number 8 7 in the exhibit. If we could have that on the screen, 9 please. That's not the right document. If that could 10 be taken down, please. The heading is "Record of 11 attendance", dated 13 May 2010. Thank you very much. 12 This is a document that we looked at for other 13 purposes with Mr Lewis last week. It's the attendance 14 note of a consultation with leading counsel, 15 Mr Treverton-Jones QC on 13 May 2010. 16 If we move down the page a little bit, so that we 17 can see the text, and it's the section under the 18 heading, "Harris/Reed". Is it your understanding that 19 the Harris referred to there is you? 20 A. I think it's me, yes. 21 Q. And we see there what leading counsel said about your 22 case: 23 "Gregory said that the problem with Harris and Reed 24 was the waiver that NGN made in respect of those two. 25 They relied on it. They even said (as recorded in our</p> <p style="text-align: center;">Page 26</p>	<p>1 counsel here agreed -- was that there simply wasn't any 2 case that -- you know, against us in terms of acting, 3 and so we moved on and continued to act. 4 LORD JUSTICE LEVESON: Yes. But that's the issue that's 5 being discussed here? 6 A. That is the issue, yes. 7 MR BARR: If we go to the next paragraph, it reads: 8 "The facts of the statements of case being similar 9 (for example, the particulars of claim drafted by Reed), 10 being a breach of confidentiality obligations, he was 11 not sure was an issue. A barrister has to plead a case. 12 He has done it in a way that is efficient/sensible. He 13 must be entitled to go back and repeat that process." 14 The gentleman being referred to there is Mr Reed, 15 who is the barrister you had instructed? 16 A. And still is a barrister I instruct. 17 LORD LEVESON: Well, there you are. There's a tick. 18 MR BARR: And we see no complaint there of his pleadings. 19 A. No. 20 Q. "JCP said that there is evidence of a transfer of 21 information from one case to another. There has been 22 reliance of information gleaned in the first case and 23 used in the second, as shown in the similarity of the 24 particulars." 25 So this is Lord Justice Leveson's point. There</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 seems to have been a suspicion on the part of Mr Pike, 2 or even a belief, that you'd been sharing information? 3 A. Yes. 4 Q. But let's see in the paragraph below what leading 5 counsel made of that: 6 "Gregory said that there appeared to be no evidence 7 in the pleadings that emanated from the first case. 8 There was no confidential information that they could 9 only have learnt through the Taylor proceedings. It did 10 not seem to him that the similarities were 11 a particularly significant feature." 12 So he's rather pouring cold water over Mr Pike's 13 concern? 14 A. Concerns, yes. 15 Q. Then we see the conclusion: 16 "Gregory said that the case against Harris and Reed 17 was hopeless. Gregory asked what the position was with 18 Gordon Taylor ..." 19 And then we go on to Mr Lewis, who we need not deal 20 with today. 21 There is a second later document that I'd like to 22 draw your attention to. It's at page 19. It's headed 23 "Farrer & Co". If we could have paragraph 5 in the 24 centre of the screen, please. This is a letter that was 25 written on 7 September this year by Farrer & Co to Page 29</p>	<p>1 my part, and certainly -- we've gone through that 2 evidence. 3 The idea that when there is this kind of criminality 4 going on, particularly now that we know a little bit 5 more about the levels of knowledge and when various 6 people knew -- and we know this through the privacy -- 7 through the Media Select Committee as well as through 8 this Inquiry. We've begun to get a better picture of 9 what people knew and when they knew it. So taking that 10 into account, the idea that if I was concerned about an 11 opponent lawyer, or anyone, on the other side, that 12 I would decide that a good way of dealing with that 13 wouldn't be to write to them and say, "We are concerned 14 that there is some kind of leak, breach, confidential 15 information", or write to my senior partner or the Law 16 Society, but to take -- you know, to take out 17 surveillance on me and my kids or family members or to 18 find out which of my siblings I lived with in what year, 19 that kind of information -- I don't see how that could 20 possibly help them. Why not just ask the question? Why 21 not write a letter? Why not just go for the traditional 22 approach, which would be: if you have a concern, raise 23 it with me, raise it with my law firm, raise it with the 24 Law Society. Don't raise it with Derek Webb, the 25 private investigator, and send him on a train to Page 31</p>
<p>1 Linklaters, who were investigating what has happened. 2 Paragraph 5 contains, in a nutshell, Farrers' 3 explanation for the inquiry: 4 "The reason for this inquiry stemmed from the 5 suspicion that Mr Lewis and Ms Harris were exchanging 6 highly confidential information gained from acting for 7 claimants (and Mr Taylor in particular) in cases against 8 News Group News in order to bring further actions 9 against News Group News by other potential claimants." 10 It then goes on to give their explanation. It says: 11 "While in hindsight the relevance of the results of 12 such enquiries may be open to challenge, we are 13 satisfied that there were legitimate concerns: apart 14 from the issue regarding the possible exchange of 15 confidential information, it was known that Mr Taylor 16 was sufficiently concerned about the conduct of his 17 previous law firm and Mr Lewis that he had instructed 18 new solicitors to make a complaint to the SRA." 19 Accepting that there was in fact, on your evidence, 20 no wrongdoing, do you accept Farrers' position that 21 there was enough for them to be suspicious of to justify 22 investigation of you and your private circumstances? 23 A. No. It seems an incredible thing to do. I'm at 24 a separate law firm at this time. There's no wrongdoing 25 or confidential information being passed from my -- on Page 30</p>	<p>1 Manchester. No need. 2 Q. Thank you. Can we return now to your witness statement. 3 I'm looking at paragraph 19. You say that within very 4 recent time, within the last two weeks, Channel 4 have 5 shown you further material they obtained from the 6 private investigator Derek Webb. Is that material 7 you've already referred to today in your evidence or is 8 this something new? 9 A. I amended my statement slightly yesterday and so the 10 date -- just for accuracy, the date changed 11 to December 5. So it's actually inaccurate. It should 12 be probably now four or five weeks ago, just to make 13 that clarification. 14 Yes, there was a list that was published by 15 Channel 4, which named -- I can't remember the numbers. 16 I think it's 118 out of 153, and they did show me that 17 list because I was on it. 18 Q. So that's in addition to the material that you've 19 provided us with on a confidential basis? 20 A. That's in addition. I have written to the 21 Information Commissioner about it. I think it's very 22 important to try and make sure that, again, confidential 23 information is handled properly. So the content of that 24 list, of course, would be sensitive and so I've asked 25 the Information Commissioner for guidance on it. Page 32</p>

<p>1 Q. You go on in paragraph 19 -- I'm now looking at page 7 2 of your witness statement -- to talk about some of the 3 conversations that you had with Mr Crone in the spring 4 of 2010. You say that between March 2010 and May 2010, 5 the intensity of the litigation was increasing. 6 A. Yes. 7 Q. That's a reference, isn't it, to phone hacking 8 litigation? 9 A. Yes. 10 Q. And you say that you had many conversations with 11 Mr Crone. Of particular interest to the Inquiry, you 12 say: 13 "He was absolutely wedded to the defence that there 14 was only one rogue journalist engaging in phone 15 hacking." 16 A. Yes. When we talked on the telephone, I would sometimes 17 say, "Well, what are you going to do about this? What 18 do you think should happen?" And it was always 19 Tom Crone's position that apart from in this case where 20 there had been one rogue reporter, there was no 21 evidence. He did take the position at times that he 22 hadn't seen all the evidence and so if there was 23 something -- but then historically, looking at the 24 Gordon Taylor case and the Max Clifford case and then 25 going on to the Sky Andrew case, it seemed to be that as</p> <p style="text-align: center;">Page 33</p>	<p>1 people who you speak to on a -- maybe three times a week 2 or twice a week on different matters and other cases, 3 had behaved in that way. It's disconcerting and it does 4 give you an insight of how your clients feel, certainly, 5 in terms of not knowing what's going on. 6 One of the difficulties with surveillance -- and 7 I hear this from clients but I also speak for myself -- 8 is you don't really know what happened when. You can 9 only -- you know, did someone watch you as you, you 10 know, left your house, as you left the supermarket, or 11 on what day? And it's the same for my clients, where 12 they've been under either surveillance or their 13 telephone messages have been intercepted. You don't 14 always have the evidence of the particular message that 15 was intercepted or the particular occurrence or place 16 they were when they were under surveillance. It's what 17 you don't know that can cause, I think, stress. And 18 it's -- that in itself might be a new form of harassment 19 to look into. 20 MR BARR: You deal with the impact on yourself of the 21 surveillance that you had come to learn about in 22 paragraph 20. Could you tell the Inquiry, in your own 23 words, please, how you feel about what you have now 24 learned? 25 A. I think I have expanded on it a little bit just now. As</p> <p style="text-align: center;">Page 35</p>
<p>1 soon as there was a door open to that kind of evidence, 2 I don't think it was taken seriously or acknowledged. 3 For instance -- and I think this is where it 4 connects to the surveillance, because this isn't about 5 me. This is supposed to be about my clients, the cases 6 and the big wide issue. But in -- if you've seen, for 7 instance, in your proceedings, the name of a person who 8 is alleged to have been involved in your organisation, 9 a journalist or whatever, to then take tips from them 10 about, for instance, the personal life of a solicitor or 11 a lawyer or a barrister on the other side, and to use 12 that -- instead of asking the journalist: "So what 13 happened? How are you involved in this?" but instead to 14 say, "Well, if you think there's something going on 15 here, we'll send somebody up to survey", does seem the 16 wrong approach. Part of the reason why I was surprised 17 in terms of Tom Crone was because we had had these 18 discussions and I always took what he said to mean what 19 he said. 20 LORD JUSTICE LEVESON: Your relationship was professional 21 and you expected everybody to treat you in the same way? 22 A. I mean, absolutely. It's a little bit disconcerting to 23 be sitting next to apparently eminent lawyers in court 24 and to find out that a year ago they had ordered some 25 surveillance on you rather than write a letter, that the</p> <p style="text-align: center;">Page 34</p>	<p>1 a lawyer, I feel very much that I want to focus on my 2 cases and my clients and I don't want this mischief from 3 the other side, such as surveillance. It gets in the 4 way. Obviously it's inappropriate and 5 News International have said that and they said it 6 pretty quickly and pretty early on. As a mother, you -- 7 it's natural to feel terribly uncomfortable with the 8 idea of anybody looking into your family or your 9 children. But this has been very obstructive. It's 10 obstructive to trying to sort out some very difficult 11 litigation, some very difficult issues, and it's almost 12 like -- I wish it hadn't happened not only because it's 13 not nice, but it throws a spanner in the works in terms 14 of just trying to get down to the groundwork of getting 15 this whole matter sorted. 16 LORD JUSTICE LEVESON: It disrupts orderly resolution of 17 the -- 18 A. Yes, it disrupts orderly resolution. It gets in the way 19 and you shouldn't have to be suspicious of your 20 opponents in that way. I'm sorry that they were 21 suspicious of me and the other lawyers. I just wish 22 they'd said so. 23 MR BARR: I see. Can we move now from the surveillance of 24 you to seek the benefit of your experience as 25 a specialist media lawyer? Have you noticed, in your</p> <p style="text-align: center;">Page 36</p>

1 time in practice, any trend in prior notice? Has it
 2 been given more often or less often?
 3 A. Generally there's notification. I speak generally. You
 4 don't always know. Sometimes if there's a very big
 5 media story going on, so many -- you get a certain
 6 amount of notification and then all the papers cover it.
 7 So you -- you know, you sometimes find yourself in
 8 a position -- something's come out on the Internet or in
 9 an early publication and then everybody else will
 10 publish after that. So it's not always -- you don't
 11 specifically always get it.
 12 Q. I'm thinking here about exclusive stories, when they are
 13 first broken by a newspaper.
 14 A. Generally, generally. Exclusive stories by a newspaper
 15 I've received prior notification or my client has
 16 received prior notification. Sometimes it's not enough
 17 prior notification to get a matter sorted. It's very
 18 difficult on a Saturday. Saturday can be a very busy
 19 day because of the Sunday papers, and so when the phone
 20 rings at 4.30 or 5 o'clock, you have to -- and you can
 21 tell, because normally there will be a few calls and
 22 a journalist on the other end of the phone -- I don't
 23 even want to give an example because I don't think I can
 24 think of an example that isn't real at the moment.
 25 Q. You say generally. Can I ask you about those cases
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1 where you don't get prior notice? Is there any
 2 particular pattern to those? Is there a particular type
 3 of case?
 4 A. They tend to be cases that have got something to do with
 5 criminal law, actually, where there's possibly
 6 a stronger apparent public interest in it. So if, for
 7 instance, they're reporting some kind of allegation of
 8 a crime, you don't -- you tend to hear from the
 9 journalists if it's a sex scandal, if it's some kind of,
 10 you know, maybe if there's some kind of chance that they
 11 might get an interview out of your client, that can
 12 happen.
 13 There's always the standard ploy of: "We're going to
 14 run this. Are you going to co-operate?" And then you
 15 have to decide. Up until May, when there was a lot of
 16 movement and debate and discussion in terms of the
 17 appropriateness of injunctions and privacy
 18 injunctions -- one of the first things you do is you
 19 decide whether or not this is private information. Is
 20 it something that we should consider instructing counsel
 21 on immediately? Is this a story that could be stopped?
 22 Now, things have moved on. There are certainly less
 23 injunctions and you have to decide: are you going to let
 24 this story run or are you going to manage it in some
 25 other way? Are you going to make a comment? I think
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1 that the press have been, during this Inquiry, more
 2 careful. I think that my workload in terms of scandal
 3 has been somewhat reduced.
 4 LORD JUSTICE LEVESON: Is that good or bad?
 5 A. I'm delighted. Absolutely delighted. Thank you.
 6 LORD JUSTICE LEVESON: I'm pleased somebody's pleased.
 7 MR BARR: On the question of injunctions, can I ask you
 8 this: have you had experience of injunctions being
 9 defeated by talk on the Internet or through social
 10 media?
 11 A. When you say "defeated", do you mean lifted? Or --
 12 Q. No, I mean --
 13 A. Breached?
 14 Q. -- the practical purpose is negated.
 15 A. Breached. Certainly in terms of the May injunctions,
 16 there were breaches on the Internet and one of the
 17 things that people say quite a lot is: "Oh, well, what's
 18 the point of having this injunction? There's all this
 19 information out there." But the fact is all the
 20 information isn't out there. If there's an injunction
 21 in places and a small amount of information has leaked
 22 out, sure, that's a breach, but that doesn't mean that
 23 the newspaper can run an exploitative story where they
 24 pay money to an individual who is breaching the
 25 injunction. A lot of the salacious detail doesn't come
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1 out. There's a rule of law. There's an injunction in
 2 place that has been lawfully provided and one of my
 3 problems with it was that it's very easy for -- certain
 4 tabloid newspapers who have been eager to expose
 5 scandals, I think very hypocritically, don't expose
 6 their own scandal. So it's difficult for me to take it
 7 seriously when they say that this is all about public
 8 morality.
 9 Q. I see. Moving to the PCC, have you had much experience
 10 of dealing with the PCC?
 11 A. I deal with the PCC generally in terms of harassment,
 12 generally in terms of photographers. So if, for
 13 instance, there have been occasions where I've had
 14 clients who have had enormous amounts of photographers
 15 outside or they can't exit a building, they've tended to
 16 be very effective in terms of sending a notice around.
 17 Q. Have they been effective with harassment cases as well
 18 as photographer cases?
 19 A. One of the things about the PCC is you sort of have to
 20 make this choice. You can't have civil proceedings
 21 going on at the same time as a complaint with the PCC.
 22 So I have tended to go down the civil route, although
 23 the relationship that I've had with the PCC in terms of
 24 getting something done immediately hasn't been too bad.
 25 Q. Are there any areas in which you think the PCC could be
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<p>1 improved?</p> <p>2 A. Whether it's the PCC, whether it's some other body,</p> <p>3 whether everybody decides that it's time to obey the</p> <p>4 law -- which, you know, seems to be strange that you'd</p> <p>5 even have to say that -- something has to be done so</p> <p>6 that there is resolution to law breaking, and whether</p> <p>7 it's, as I said, a PCC, a new tort, regulation, not</p> <p>8 having regulation and following the law, as long as</p> <p>9 matters become better than they are, I'd be pleased.</p> <p>10 But the PCC have limited powers.</p> <p>11 Q. So you don't want to be specific about any particular</p> <p>12 changes you think might help, you simply want a system</p> <p>13 that will ensure the rule of law; is that right?</p> <p>14 A. The approach that we take at my law firm, at Mishcons,</p> <p>15 is that we are -- we have a lot of internal discussion</p> <p>16 about what should happen, and we are lawyers. So</p> <p>17 therefore, as a first base, you want to respect the rule</p> <p>18 of law and you want -- and I think there are decent laws</p> <p>19 that have been properly applied. When it comes to</p> <p>20 speaking of regulation going forward, obviously there's</p> <p>21 a certain reluctance in terms of regulation, not just</p> <p>22 from the press but in terms of what form would it take?</p> <p>23 And so nobody wants a sort of bureaucratic knee-jerk</p> <p>24 reaction to some of the terrible things that we've</p> <p>25 heard.</p> <p style="text-align: center;">Page 41</p>	<p>1 give you an example, where -- if a journalist is looking</p> <p>2 into a public person in a position of authority who they</p> <p>3 suspect might have committed a criminal offence, if they</p> <p>4 haven't committed that criminal offence, you know, at</p> <p>5 what point do you get to where it's okay to investigate?</p> <p>6 Same goes for areas of privacy law. When does your</p> <p>7 privacy start and stop? When do you first become</p> <p>8 a public person?</p> <p>9 So, for instance, if I was addressing some students,</p> <p>10 like you sometimes do, who might, in ten years' time,</p> <p>11 have a career which takes them into the public domain,</p> <p>12 if they become a public figure, does what they did</p> <p>13 yesterday -- is that still private? Can that be</p> <p>14 revealed? And should we be frightened, even when we're</p> <p>15 not a public person, of what we've done or said now?</p> <p>16 Will that be exposed later? There has to be a certain</p> <p>17 amount of personal autonomy and freedom to be, without</p> <p>18 fear that you're going to be a role model in five years'</p> <p>19 time.</p> <p>20 So I think a lot of the law is very grey in that --</p> <p>21 well, actually, the law isn't grey. I think a lot of</p> <p>22 the areas of interpretation of the law is grey if you're</p> <p>23 looking at it from the point of view of how a journalist</p> <p>24 or a tabloid newspaper might interpret it or how the PCC</p> <p>25 might interpret it and how the person whose private</p> <p style="text-align: center;">Page 43</p>
<p>1 So I can't be specific at the moment about what</p> <p>2 model and what the outcome of this Inquiry should be in</p> <p>3 terms of recommendation. I just know that I want the</p> <p>4 law to be obeyed in some way so that we don't have this</p> <p>5 ridiculous situation that we had over the injunctions,</p> <p>6 where it was okay to breach them, where if there's</p> <p>7 a scandal exposed, that can be printed all over the</p> <p>8 papers but if there's a phone hacking scandal, there can</p> <p>9 be silence for years. That doesn't seem right. There</p> <p>10 has to be proper sanctions as well.</p> <p>11 LORD JUSTICE LEVESON: It's not just a question of the law</p> <p>12 in that sort of rather grand sense. One can talk about</p> <p>13 the criminal law.</p> <p>14 A. Sure.</p> <p>15 LORD JUSTICE LEVESON: But there are always going to be</p> <p>16 areas that are grey, where the criminal law might not be</p> <p>17 engaged but which many might think -- perhaps not all --</p> <p>18 lines have been crossed which should not have been</p> <p>19 crossed.</p> <p>20 A. Absolutely.</p> <p>21 LORD JUSTICE LEVESON: So that's the really difficult issue.</p> <p>22 A. There are issues in terms of what people agree private</p> <p>23 information should be. There's -- and where criminality</p> <p>24 starts and where it stops. These grey lines have come</p> <p>25 up in so many cases, particularly, for instance, just to</p> <p style="text-align: center;">Page 42</p>	<p>1 information it concerns interprets it, and then how the</p> <p>2 public might perceive it. I think it's deeply complex.</p> <p>3 LORD JUSTICE LEVESON: I agree with you that it's deeply</p> <p>4 complex. The trouble, of course, is that if you make</p> <p>5 rules specific -- this is on that signed of the line and</p> <p>6 that is on the other side of the line -- in one sense</p> <p>7 that helps, but in another sense it hinders because it</p> <p>8 removes the elasticity that comes with the exercise of</p> <p>9 sensible discretion.</p> <p>10 A. But the judges do that. Part of the rule of law --</p> <p>11 LORD JUSTICE LEVESON: Oh, judges do that. That's --</p> <p>12 A. That's my point and I absolutely agree with you. Trying</p> <p>13 to express it like that, when you're in court and you</p> <p>14 have applied for an injunction, there are areas that the</p> <p>15 judge will look at and evidence that the judge will look</p> <p>16 at where he will consider precisely those points.</p> <p>17 Here's an area that is private: information about</p> <p>18 somebody's health. Here's an area about somebody's</p> <p>19 employment and correspondence or what they've done and</p> <p>20 where, and where there are these balancing processes</p> <p>21 going on, the judge will look at that, look at the</p> <p>22 evidence then make a decision, and then also make</p> <p>23 a judgment. Very few super-injunctions, injunctions</p> <p>24 that people don't know about; much more public</p> <p>25 judgments, even if parties are anonymised.</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 I think once a judge has made that decision and it's 2 been put into an injunction that's been served, it is 3 not right for other people, particularly those who have 4 got commercial interests, to pre-judge, make a decision 5 and simply say, "Well, we'll just put that out on the 6 Internet because clearly that decision was wrong." 7 LORD JUSTICE LEVESON: That's all about the rule of law. 8 A. Yes. 9 LORD JUSTICE LEVESON: I'm actually concerned about trying 10 to find a mechanism to resolve these issues, and of 11 course as lawyers, we might very well all say, "Well, we 12 have a system that deals with it. You issue 13 proceedings, you go before a judge and you go into this 14 with microscopic detail and then you get a result." But 15 whether that works for people who don't have a lot of 16 money but whose privacy might be just as important, and 17 whether it indeed works for the press, who then have to 18 respond appropriately -- 19 A. The press don't want regulation, though, I think, 20 generally. 21 LORD JUSTICE LEVESON: -- is another matter. 22 A. The idea, which is a little bit of a myth, that you have 23 to have vast sums of money in order to have a lawyer 24 look after your privacy is one of the arguments that was 25 happening in May, where it was: "This is just a rich</p> <p style="text-align: center;">Page 45</p>	<p>1 A. No, not very much as yet. There's Operation Tuleta, who 2 are looking into email hacking. But have I seen the 3 evidence of email hacking in the way that I've seen 4 evidence of phone hacking? No, not yet. 5 MR BARR: Thank you very much, Ms Harris. I've asked every 6 witness at the end if they want to say anything further 7 to Lord Justice Leveson. There's already been some 8 discussion of the regulatory issues, but if there is 9 anything else you would like to add, please do so. 10 A. No, I think that we've had the discussion. 11 LORD JUSTICE LEVESON: Thank you very much indeed. 12 A. Thank you. 13 MR BARR: Sir, would you like a break now before we call the 14 final witness of the morning? 15 LORD JUSTICE LEVESON: We'll need a break some time. If 16 it's more convenient now, Mr Barr, as long as you don't 17 blame it on me, then I'm comfortable to have it now. If 18 you want to carry on, whatever. 19 MR BARR: I wouldn't dream of blaming you, sir. 20 LORD JUSTICE LEVESON: You were, actually. All right. 21 We'll take a couple of minutes. 22 (11.10 am) 23 (A short break) 24 (11.18 am) 25 MR BARR: Sir, the next witness is Mr David Leigh.</p> <p style="text-align: center;">Page 47</p>
<p>1 man's law." You can get a CFA as a claimant and -- on 2 a no win, no fee. Not only that; the fact is that the 3 fodder of tabloid newspapers -- so the front cover, the 4 big sex scandals -- tend to involve not the ordinary 5 person. I'm sure you've heard this argument before. 6 They're far more interested in -- and understandably -- 7 interested, in terms of sales, in who a footballer might 8 or might not be having a relationship with than who, 9 I don't know, my postman might be having a relationship 10 with. And so to an extent it self-corrects, and that's 11 why CFAs are important as well, for both claimants and 12 defendants, and I have worked on both sides of 13 injunctions, for claimants and on behalf of newspapers. 14 MR BARR: For my next questions, there's no need for you to 15 name clients or breach any confidences unless you have 16 instructions which enable you to do so. 17 The Inquiry's had a lot of evidence about phone 18 hacking. What I'd like to ask you is: from your 19 experience of acting for claimants, is email hacking 20 also an issue? 21 A. The first sprouts of evidence starting now -- it's at 22 such an early stage. So there may be -- there may be 23 something. I'd like to take a forensic approach as 24 possible. So I expect we'll hear more about that. 25 Q. I see. So not very much as yet?</p> <p style="text-align: center;">Page 46</p>	<p>1 LORD JUSTICE LEVESON: Thank you. 2 MR DAVID LEIGH (affirmed) 3 Questions from MR BARR 4 MR BARR: Mr Leigh, good morning. 5 A. Good morning. 6 Q. Could you tell the Inquiry your full name, please? 7 A. I'm David Leigh. 8 Q. And you provided the address of your employer, Guardian 9 News and Media Limited. You've also provided a witness 10 statement voluntarily -- sorry, I think actually in 11 response to a notice, I correct myself. Are the 12 contents of your witness statement true and correct to 13 the best of your knowledge and belief? 14 A. Yes, they are. 15 Q. You tell us that you are a journalist. You are 16 presently an assistant editor at the Guardian, with 17 special responsibility for investigations; is that 18 right? 19 A. Yes, it is. 20 Q. You have more than 30 years' experience working on 21 titles, including the Times, the Observer, the 22 Washington Post and the Guardian, as well as for 23 television's This Week and World In Action programmes? 24 A. Yes. 25 Q. In addition to your work as a journalist, you are the</p> <p style="text-align: center;">Page 48</p>

<p>1 professor of reporting at City University, journalism 2 department? 3 A. I am. 4 Q. And you are the author of seven books on journalism and 5 politics? 6 A. This is correct. 7 Q. We're going to take your statement as read and so 8 I shall proceed, as with the other witnesses, simply to 9 ask you to expand on certain parts of your witness 10 statement. 11 Can I deal first of all with paragraph 3 of your 12 witness statement, which is where you set out the role 13 of corporate governance at the Guardian. You tell us 14 that the editor sees every story that is submitted. 15 A. Well, an editor sees every story that is submitted, 16 yeah. 17 Q. An editor, and that's an important distinction, isn't 18 it? 19 A. Well, I don't think the editor personally sees every 20 single story in advance. It would take more than the 21 hours there are in the day to do that. 22 Q. You explain that in your newspaper there are two codes 23 of conduct that you have to have in mind: there's the 24 Guardian News Media's own code of conduct and the PCC 25 code of conduct, and the latter is set out at the end of Page 49</p>	<p>1 stories which were obtained by the interception of 2 communications were then attributed to the friends of, 3 for example, celebrities. Of course, everyone would 4 deprecate the illegal means, but would you also 5 deprecate the false attribution of the story? 6 A. Yes, I think telling lies or misleading statements about 7 your sources is just wrong. It's misleading the reader 8 as to what is really going on. 9 Q. Moving now to the way in which the Guardian News Media's 10 code deals with the issue of subterfuge. It reads: 11 "Journalists should generally identify themselves as 12 GNM employees when working on a story. There may be 13 instances involving stories of exceptional public 14 interest where this does not apply, but this needs the 15 approval of a head of department, see PCC code section 16 10. This applies to anything we publish, including any 17 information obtained by the subterfuge of others." 18 What I'd particularly like to ask you about there is 19 the use of the word "exceptional public interest". It 20 seems to be a further qualification above and beyond 21 that which we'll come to in a moment in the PCC code. 22 Is that a very deliberate raising of the test? 23 A. Well, what I understand by that and what my own practice 24 is, is that normally, as a rule, I don't use subterfuge 25 and I think that would be the case with Guardian Page 51</p>
<p>1 the former, isn't it? 2 A. Yes, it is. 3 Q. I'm just going to read a few extracts from Guardian News 4 Media's code of conduct. It starts off under the 5 heading "Summary", with the quotation: 6 "A newspaper's primary office is the gathering of 7 news. At the peril of its soul, it must see that the 8 supply is not tainted." 9 A. Yes, this is a quotation from our great past editor, 10 CP Scott, who was regarded as a guru in these matters by 11 all of us. 12 Q. So can I take it that that is a principle which you hold 13 dear to your heart? 14 A. Yes, I do. 15 Q. The summary goes on to say that your most important 16 currency is trust? 17 A. I think that's right. 18 Q. The next section deals with professional practice, and 19 amongst other things, it says: 20 "We should be honest about our sources, even if we 21 can't name them." 22 Does that mean that you would deprecate the false 23 attribution of sources in an article? 24 A. What do you mean by "false attribution"? 25 Q. We've heard evidence, for example, which suggests that Page 50</p>	<p>1 journalists. Normally they don't use subterfuge. So 2 the occasions when they do are exceptional by 3 definition, really. 4 Q. We're going to come in due course to some very 5 interesting evidence you can give about your own use, on 6 occasion, of subterfuge, but before we do that, I'd like 7 to take you to clause 10 of the PCC code. It says: 8 "The press must not seek to obtain or publish 9 material acquired by using hidden cameras or clandestine 10 listening devices or by intercepting private or mobile 11 telephone calls, messages or emails, or by the 12 unauthorised removal of documents or photographs or by 13 accessing digitally held private information without 14 consent. 15 "2. Engaging in misrepresentation or subterfuge, 16 including by agent or intermediaries, can generally be 17 justified only in the public interest and then only when 18 the material cannot be obtained by other means." 19 On the face of it, that's a tight test, but what it 20 doesn't do is distinguish between those methods of 21 subterfuge which are legal when one takes into account 22 an express public interest defence, and those techniques 23 which are illegal and have no public interest defence, 24 such as the interception of communications. Do you 25 think that that is a flaw in clause 10 of the PCC code Page 52</p>

13 (Pages 49 to 52)

<p>1 or not?</p> <p>2 A. The wording of the PCC code isn't something that I have</p> <p>3 in front of me when I'm doing stuff, because their</p> <p>4 exceptions about public interest are so broad that</p> <p>5 I think everything in that code is pretty well negated</p> <p>6 by their remarks "except if it's in the public</p> <p>7 interest". It's a problem for me like it's a problem</p> <p>8 for all serious journalists where to draw this line</p> <p>9 about public interest and we do spend a certain amount</p> <p>10 of time thinking about that. That's the area of</p> <p>11 difficulty for this Inquiry, too, I suspect.</p> <p>12 I don't think that journalists should break the law.</p> <p>13 I don't think they should break the criminal law, at any</p> <p>14 rate. Sometimes, as I said in an article you've</p> <p>15 referenced there, we challenge the law and sometimes</p> <p>16 it's difficult to stay on the right side of the civil</p> <p>17 law, certainly, because there are arguments about, you</p> <p>18 know, how far we should actually be bound by, for</p> <p>19 example, the alleged law of confidence. So we</p> <p>20 constantly find ourselves in collision with different</p> <p>21 interpretations of the law.</p> <p>22 The bottom line of all this is that I wouldn't want</p> <p>23 to break the criminal law in what I do, and I don't</p> <p>24 think I have ever deliberately done so.</p> <p>25 Q. We'll come back to interesting questions such as public</p> <p style="text-align: center;">Page 53</p>	<p>1 conceal what I'm doing from my superiors and I don't</p> <p>2 expect my juniors to conceal what they're doing with me.</p> <p>3 I think we try and deal openly with each other.</p> <p>4 Q. So is it your experience that a certain amount of peer</p> <p>5 self-regulation on ethical matters works on your</p> <p>6 newspaper?</p> <p>7 A. It's about the culture. One of the terms of reference</p> <p>8 of the Inquiry appears to be about the culture of the</p> <p>9 press, and the culture of the Guardian and of other</p> <p>10 serious newspapers and media organisations is quite</p> <p>11 different from the sort of culture that you've been</p> <p>12 hearing about in recent days, and I think our culture,</p> <p>13 and a culture that's deliberately tried to be</p> <p>14 encouraged, is one which is -- I don't want to sound</p> <p>15 holier than thou, but it's a culture that's supposed to</p> <p>16 be pretty ethical, pretty candid, pretty serious-minded.</p> <p>17 LORD JUSTICE LEVESON: Could I throw two questions into</p> <p>18 there? First of all, it was a question that I was going</p> <p>19 to ask anyway, but you've just raised the issue: the</p> <p>20 cultures at different newspaper titles may be different,</p> <p>21 but in your experience, perhaps from your academic work</p> <p>22 rather than the august bodies for whom you have been</p> <p>23 employed, is there a difference or should there be</p> <p>24 a difference between the ethical approach of titles that</p> <p>25 are differently orientated to the Guardian, that have</p> <p style="text-align: center;">Page 55</p>
<p>1 interest and what exactly it means in due course, but</p> <p>2 I'm now going to move on to paragraph 4 of your witness</p> <p>3 statement, where you tell us about your role in ensuring</p> <p>4 corporate governance. At paragraph 4, you say:</p> <p>5 "My formal responsibility is to adhere to the rules</p> <p>6 personally and to make sure anyone I am working with</p> <p>7 also does."</p> <p>8 I'm sure everyone readily understands your duty to</p> <p>9 obey your employer's procedures in this regard, but what</p> <p>10 I'm interested in is you see it as your role also to</p> <p>11 ensure that others do as well. Are you talking about</p> <p>12 your peers or only about your subordinates?</p> <p>13 A. Well, the Guardian's a pretty flat sort of organisation,</p> <p>14 and to try and read it in strictly hierarchical or</p> <p>15 military terms, subordinates, can be misleading. What</p> <p>16 I'm talking about really is if I'm working with a group</p> <p>17 of people, some of whom might be junior to me, I would</p> <p>18 want to know how they got material, yes, because I would</p> <p>19 want to work closely and trustingly with the people</p> <p>20 I do.</p> <p>21 Q. To put another example to you, if you were working with</p> <p>22 someone who was equivalent to you or even superior, do</p> <p>23 you regard yourself as still having an ethical oversight</p> <p>24 role?</p> <p>25 A. Well, we're all pretty candid with each other. I don't</p> <p style="text-align: center;">Page 54</p>	<p>1 different readership and therefore different interests</p> <p>2 to those which are at the broadsheet end?</p> <p>3 A. Well, as you tell from my CV, I haven't worked for</p> <p>4 tabloids myself, so my experiences are second-hand</p> <p>5 there. All the media organisations I've worked for have</p> <p>6 been at the serious end of the business, and I think at</p> <p>7 that serious end of the business, people do have</p> <p>8 a strong civic notion about what they're doing. The</p> <p>9 reason why they feel comfortable about what they're</p> <p>10 doing is because they think they're serving some useful</p> <p>11 social purpose, you know, as well as paying the rent.</p> <p>12 The tabloid --</p> <p>13 LORD JUSTICE LEVESON: I think they might think they also</p> <p>14 fulfil a useful social purpose.</p> <p>15 A. The tabloids?</p> <p>16 LORD JUSTICE LEVESON: Yes.</p> <p>17 A. It seems to me there are other factors that are in play</p> <p>18 more strongly, and one of those is commercial. It's</p> <p>19 possible to make a great deal of money out of running</p> <p>20 a particular kind of newspaper, and some of them are,</p> <p>21 you know, more cultural in the sense that there's</p> <p>22 a climate of "anything goes", there's a climate of</p> <p>23 almost delighting in roguery, sometimes, from the way</p> <p>24 colleagues of mine have talked along the tabloids about</p> <p>25 their life, about the stunts they pull, about the</p> <p style="text-align: center;">Page 56</p>

<p>1 stories they invent, and that is culturally different 2 from the atmosphere in the newsroom of, say, the 3 Financial Times. 4 LORD JUSTICE LEVESON: Yes, I understand that, and that's 5 why I was focusing on your academic work, whether you'd 6 actually looked at this sort of issue before, because, 7 as you know, there's a great deal of concern about my 8 getting to grips with what goes on in tabloid or 9 mid-market newspapers. 10 A. Well, I don't think the stance we take towards what's 11 going on ought to alter, depending on whether we're 12 talking about tabloids or whether we're talking about 13 serious journalists. If there's wrongdoing, it's wrong. 14 If there's law breaking, it's wrong. If there's 15 unethical behaviour, it's wrong. I don't think you can 16 mount any kind of justification of tabloid behaviour on 17 the grounds that they're different from the broadsheets 18 so they ought to be allowed to behave differently. 19 What you've been hearing at your Inquiry seems 20 focused on the sometimes appalling impact on ordinary 21 people, people who are victims of rather ruthless, 22 amoral behaviour, and I thought that's the bad thing 23 that you're seeking to address. 24 LORD JUSTICE LEVESON: Yes. 25 MR BARR: Can we move now to paragraph 6 of your witness Page 57</p>	<p>1 practice now. So I think "reiterated" was the right 2 word. 3 Q. You then go on, in answer to question 7, to deal with 4 checking sources and telling us a little about, in your 5 experience, who gets to know what about sources. If 6 I try and condense what you've said, is it right that 7 there are various variables in play, one of which is the 8 sensitivity of the source? 9 A. Mm-hm. 10 Q. And the other is the importance of the story? 11 A. Mm-hm. 12 Q. And who gets to learn the name of the source, whether 13 they get to learn the name of the source, rather depends 14 on the interplay of those variables? 15 A. Yes. 16 Q. So it's right, is it, that there can be stories where 17 the person with editorial responsibility for it does not 18 get to know the name of the source? 19 A. Well, I don't much like the habit of some reporters of 20 cloaking the origins of their stories, the provenance of 21 their stories by talking in mysterious terms about 22 sources. I think -- if I have a story I'm concerned 23 about, I question my colleague or my junior reporter 24 pretty closely about the nature of the source, and 25 I expect my editor -- either my immediate editor or the Page 59</p>
<p>1 statement, where you deal with the question whether 2 practices have changed either recently, as a result of 3 the phone hacking media interest, or prior to that 4 point, and if so, what the reasons for the change were. 5 You say in reply to that question -- and we now have it 6 up on the screen: 7 "Following concerns expressed by the 8 Information Commissioner in two reports published in 9 2006 ..." 10 If I stop there, that's "What price privacy?" and 11 "What price privacy now?" isn't it? 12 A. Yes. 13 Q. "... Alan Rusbridger reiterated that private detectives 14 could only be used to obtain otherwise confidential 15 information where the public interest justified it and 16 in all cases only after reference to him." 17 And this is reference to the editor, not an editor? 18 A. The editor-in-chief, in fact. 19 Q. The word that I'd like to alight upon is your use of the 20 word "reiterated". Just to confirm, is it your evidence 21 that in fact nothing changed, there was just an emphasis 22 on maintaining the status quo, or was there really any 23 change? 24 A. It wasn't the Guardian's practice to use private 25 detectives before these reports, and it isn't their Page 58</p>	<p>1 editor himself -- to question me pretty rigorously about 2 a story that's important and sensitive or contentious. 3 Q. Does that necessarily involve naming the source or is it 4 sufficient, in your view, sometimes only to identify in 5 other ways who the source is? 6 A. I think some of it depends on the level of trust. If my 7 editor said to me: "I really want to know who this 8 source is", and I would say, "Listen I really don't want 9 to give you the name but I will tell you the nature of 10 the source, where they come from, how I came by them, 11 a general indication", I would hope that my editor would 12 trust my integrity enough to accept that. There might 13 be occasions on which he wouldn't and say, "Sorry, I'm 14 not going to run this unless you actually tell me who 15 the source is because it's so sensitive." 16 Q. So I'm getting the impression that in certain 17 circumstances, you think that an editor can responsibly 18 give the go-ahead to a story even without knowing the 19 precise source? 20 A. Even without knowing the precise name of the source. 21 I mean, you would certainly want to know the type of the 22 source. 23 Q. Thank you. I'm going to move now to paragraph 9 of your 24 statement, where you start to talk about the use of 25 different means and you refer to whether the end may Page 60</p>

<p>1 justify the means. We'll come to some specific examples 2 in due course, but if we can deal with it, at this 3 stage, on a theoretical basis. In what circumstances do 4 you think that the end may justify the means? Can 5 I start by asking you: does it always justify the means? 6 A. Well, no, the end doesn't always justify the means. 7 Q. Where do you draw the boundaries? 8 A. It's quite a difficult question to answer because that's 9 the whole issue, isn't it? Where do you draw the 10 boundaries? Where is the frontier? The answer, in my 11 experience, is apart from some rather sort of broad and 12 banal distinctions, it's case by case. It depends 13 absolutely on the particular circumstances of 14 a particular case. The art of what journalists like me 15 do, the judgment we exercise, is whether it's 16 appropriate, it's ethical, it's right to do things in 17 the particular circumstances of a case. 18 Q. If we accept for a moment that it's a judgment that has 19 to be done on a case-by-case basis and is 20 fact-sensitive, what then are the pointers that the 21 journalist can use to answer the question whether the 22 end will justify the means? Is public interest one of 23 the pointers? 24 A. Public interest is the central pointer, yes. I mean, 25 that's the compass, really, I mean, I find. You say:</p> <p style="text-align: center;">Page 61</p>	<p>1 A. Right, I mean, I have broad approaches -- I don't/we 2 don't use private detectives. I don't/we don't harass 3 people normally. I don't/we don't write up -- intrude 4 into people's sex lives unnecessarily. Those are very 5 obvious boundaries. And we don't practise chequebook 6 journalism as a rule. 7 Having said that, I can think of circumstances where 8 I've applied those rules in problematic circumstances. 9 Maybe it would help if it did. For example, I remember 10 a source once came to me and he offered to sell 11 information about the way an arms company had been 12 spying on anti-arms protesters. There's an organisation 13 called Campaign Against the Arms Trade and he said he 14 was in a position to sell me documents showing that this 15 arms company had infiltrated the protesters at quite 16 a high level and he wanted £20,000 for it. And 17 I brooded about this and thought: "Well, there is 18 a public interest about exposing this. On the other 19 hand, I'm not sure it justifies me in paying a large sum 20 of money like that" -- because there are good reasons 21 why we don't pay money, apart from being poor, and one 22 of the good reasons is it encourages people to 23 embellish. It sets up a market in stories which can 24 taint and corrupt the information. 25 So I said, "No, I won't do it, the balance is wrong</p> <p style="text-align: center;">Page 63</p>
<p>1 what is justified in this case in the public interest? 2 First of all, is the inquiry you're making in the public 3 interest? Is it in the public interest to take the 4 steps you're thinking about taking? And in the article 5 I wrote that you may want to come to in 2006 when the 6 News of the World reporter was arrested, I tried to 7 start what I hoped would be an adult debate about where 8 you draw these lines by drawing examples from my own 9 experience of where there had been difficult decisions. 10 Were you on the right side of the line or not? 11 Q. I wanted to ask you whether, in considering the public 12 interest, can you get a public interest which is so 13 acute that it will justify, in your mind, any means? 14 A. Well, I can't imagine a public interest that would be so 15 acute it would justify pushing a High Court judge off 16 Beachy Head or murdering anybody. 17 LORD JUSTICE LEVESON: I'm relieved to hear you say that, 18 Mr Leigh. 19 MR BARR: So there are some outer boundaries? 20 A. Yes, that's what I meant by banal distinctions. That's 21 pretty obvious, isn't it? 22 Q. Perhaps if we move from that interesting vision to try 23 and test out the boundary more realistically. Can you 24 help us as to where in your mind you think the outer 25 boundaries of are what means are out of bounds?</p> <p style="text-align: center;">Page 62</p>	<p>1 for me", and then this person, to my amusement, went off 2 to another newspaper and obviously succeeded in selling 3 it because the same story then appeared in this Sunday 4 paper a few days later. To my chagrin, I realised that 5 actually the documents had shown some rather important 6 things, that some politically connected people had been 7 organising this espionage and in fact it was the person 8 who was at the very top of the Campaign Against the Arms 9 Trade who had been infiltrated in an undercover way, and 10 since then it's been proved that this use of undercover 11 infiltration has been growing as an industry. 12 So I asked myself afterwards: did I make a mistake? 13 Was I too prissy in turning down that? I still don't 14 know the answer, because these things are judgment 15 calls. 16 Q. Perhaps we can explore that a little further in our 17 voyage towards the line. Would you criticise as 18 unethical the newspaper which did pay for that story? 19 A. That's where I'm in a dilemma, because it's like the way 20 the Telegraph newspapers paid a large sum of money for 21 the information about MP's expense. 22 Q. You've stolen my next question. 23 A. Yes. Well, I've often scratched my head about this and 24 thought that it's a good job the person selling that 25 didn't come to me because my first reaction would have</p> <p style="text-align: center;">Page 64</p>

<p>1 been: "I don't want to pay a large sum of money for what 2 is, in a sense, stolen documents." Would I have been 3 right? Would I have been wrong? I don't know, because 4 I was never faced with the choice, fortunately, but 5 I think everybody now agrees that the Telegraph was 6 right to do what they did because the public interest 7 was so overwhelming.</p> <p>8 Q. As a matter of principle, do you think there may be 9 circumstances where a journalist should be permitted to 10 break the law in the public interest to get a story?</p> <p>11 A. In the abstract, I can imagine circumstances, yes. As 12 I say, obviously if you broke the law in a grave way by 13 murdering someone, there's no conceivable public 14 interest that would justify it, but there might be ways 15 in which, theoretically, the interest would justify it. 16 I can imagine it.</p> <p>17 Q. I think here we may come on to what some may describe as 18 a fastball, because I want to ask you now what you teach 19 your students as a professor of journalism. Would you 20 ever consider teaching a student of journalism that it 21 might, in certain circumstances, be permissible to break 22 the law if it was in the public interest?</p> <p>23 A. I try and teach my students of journalism to think. 24 I try and present them with these problematic issues, 25 like the ones that I write about in the paper, or like</p> <p style="text-align: center;">Page 65</p>	<p>1 this was over the line, it wasn't in the public 2 interest. Then it transpired that some public interest 3 issues did come up. Had he, because of his personal 4 relationship, fast-tracked a visa for someone? And 5 I then felt it was in the public interest, and I say to 6 my students: "What do you think? You decide. If you 7 had to make that call, do we write this story or not, 8 what are the factors you would take into account? Would 9 it be justified? Would it be not?" And I say it's not 10 easy. We on the Guardian, some of us thought one way, 11 some of us thought another. Some of us thought one way 12 to start with and then changed our views.</p> <p>13 Q. So if so much comes down to a case-by-case judgment and 14 to the use of an informed conscience, how important is 15 training in upholding ethical standards of the press?</p> <p>16 A. Oh, well, my experience is that people emerge from 17 journalism courses with their heads full of ethics, 18 because they get taught a lot about it, and as soon as 19 they are plunged into the raw atmosphere of the tabloid 20 newsroom, it comes under a lot of pressure. It's about 21 the culture of the place where you work much more than 22 the culture of the place where you trained.</p> <p>23 Q. So if the culture is so important, does that point to 24 a need for strong ethical leadership?</p> <p>25 A. Well, self-evidently it does, but I don't think that can</p> <p style="text-align: center;">Page 67</p>
<p>1 the example I've just given you. I take them through 2 stories that have been published, stories like 3 the Telegraph one, and I ask them to think as deeply as 4 they can about what the issues are. I don't presume to 5 give them the answers, because the whole structure of my 6 teaching is to say: this is about the line, and we'll 7 talk about the frontier and here you find problematic 8 areas and if you think very hard about this, you will 9 work out your own position about what the public 10 interest is. I'm not a teacher like I'm issuing fatwas 11 to people. I see my job as stimulating them to think 12 ethically.</p> <p>13 Q. I get the impression that the result of that is that 14 ultimately a lot is going to depend upon the conscience 15 of the individual journalist; is that right?</p> <p>16 A. Well, the informed conscience. If you like, when I'm 17 teaching students, I try and inform their conscience. I 18 say, "These are the factors you ought to take into 19 account." I mean, the chief one is the public interest. 20 It's what is in the public interest?</p> <p>21 Can I give you another example of where I think 22 I wavered about? I think we discussed already at 23 this Inquiry the David Blunkett case, in which people 24 started to publish information about his private life. 25 I know that we on the Guardian initially took the view</p> <p style="text-align: center;">Page 66</p>	<p>1 happen in a vacuum. Where does leadership come from in 2 a newsroom? It comes from the editor. The pressures 3 that operate on the editor are different in these 4 different places. The pressures that operate on the 5 editor of the Guardian or the Financial Times are quite 6 different, I suspect, from the pressures that operate on 7 the editor of the Daily Mail or the editor of the 8 News of the World.</p> <p>9 Q. But if the editor is to propagate the right tone, if 10 I put it in that way, are there any pointers from your 11 experience, working on a number of titles, that you 12 would like to share with the Inquiry which might be ways 13 of ensuring a proper culture is instilled?</p> <p>14 A. I think to be brutal about it, you have to make people 15 fear the law. This Inquiry has come back again and 16 again to the question of law-breaking, and it seems to 17 me that most of the issues of concern, whether it's 18 harassment or it's telephone interception or it's data 19 theft, they're all crimes, and it seems to me that what 20 we've been circling around is the fact that the law is 21 not enforced, and if I was an editor, I'd fear the law 22 if it was enforced.</p> <p>23 LORD JUSTICE LEVESON: But the law carries with it in some 24 regards, certainly in relation to Section 55, its own 25 public interest defence.</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 A. Yes.</p> <p>2 LORD JUSTICE LEVESON: And if one is to have regard to the</p> <p>3 wider public interest, that's inevitable, isn't it?</p> <p>4 I mean, one doesn't have to go back very long in time to</p> <p>5 see prosecutions which, on the face of it, appear</p> <p>6 unanswerable but which lead to acquittals because the</p> <p>7 jury are not prepared to convict in those circumstances,</p> <p>8 and we can all think of the examples.</p> <p>9 A. Well, that's the law operating in the right way, I'd</p> <p>10 have thought. Things are tested in that way.</p> <p>11 LORD JUSTICE LEVESON: And the other problem about the law,</p> <p>12 if I might just say, is that in one sense you're</p> <p>13 absolutely right, and if there could be a policeman at</p> <p>14 everybody's shoulder, then it would be very easy to say,</p> <p>15 "This isn't our problem, let the police sort it out",</p> <p>16 and indeed now we're in the position that an enormous</p> <p>17 police investigation is being undertaken for reasons</p> <p>18 which everybody understands. But the fact is that there</p> <p>19 isn't a policeman at everybody's shoulder and there</p> <p>20 won't ever be, and therefore we can't just say, "Well,</p> <p>21 it's a failure of the criminal law", and so wash our</p> <p>22 hands of it, can we?</p> <p>23 A. I wasn't suggesting --</p> <p>24 LORD JUSTICE LEVESON: I know you weren't, but I'm testing</p> <p>25 the proposition that it's comparatively straightforward</p> <p style="text-align: center;">Page 69</p>	<p>1 happened, and I think the lobbying by some sections of</p> <p>2 the tabloid press against it shows it would be a good</p> <p>3 sanction. It would probably make private detectives</p> <p>4 very reluctant to, you know, risk jail by doing these</p> <p>5 kind of things unless there was a proper defence.</p> <p>6 So, you know, I would like to see some deterrents in</p> <p>7 place, and I'm sure they would have an effect and I'm</p> <p>8 sure they would have more of an effect than abjurations</p> <p>9 on editors to behave better and be nicer people.</p> <p>10 LORD JUSTICE LEVESON: I understand. I understand the</p> <p>11 point.</p> <p>12 MR BARR: Can we move now to consider a couple of specific</p> <p>13 techniques. You tell us at paragraph 19 of your witness</p> <p>14 statement about an episode in which you stood up, if</p> <p>15 I use the jargon, a story by making a telephone call</p> <p>16 under a false pretence to Mark Thatcher.</p> <p>17 A. Yes.</p> <p>18 Q. Again to use a jargon, I think that was blagging, wasn't</p> <p>19 it?</p> <p>20 A. Sort of blagging. I mean, I was trying, as I said, not</p> <p>21 to be holier than thou, so I was trying to think of</p> <p>22 examples about my own practice that people would regard</p> <p>23 as questionable and, you know, analyse them. And this</p> <p>24 was a minor example of the use of subterfuge. I'm</p> <p>25 trying to prove -- this is many years ago when I was on</p> <p style="text-align: center;">Page 71</p>
<p>1 to say there's a criminal law, harassment, data theft,</p> <p>2 RIPA interceptions. All that stuff bites on the</p> <p>3 individual, but it does have its own complications.</p> <p>4 A. What I was driving at was I don't think you get very far</p> <p>5 by improving training or by appealing to the conscience</p> <p>6 of the editor of a tabloid newspaper that's driven by</p> <p>7 greedy and cynical attitudes. I don't think you'll get</p> <p>8 very far by appealing to people's conscience. You have</p> <p>9 to look at the pressures that are operating upon them.</p> <p>10 LORD JUSTICE LEVESON: I understand, and with respect,</p> <p>11 I think that's absolutely right. But if one just</p> <p>12 presses that a little bit, the more you try to put in</p> <p>13 levers in place to drive what might be thought to be</p> <p>14 a more appropriate approach, the more you run into</p> <p>15 arguments about the freedom of the press and the very</p> <p>16 real importance that everybody has to be able to express</p> <p>17 themselves as Article 10 permits.</p> <p>18 A. I've been campaigning for freedom of the press for as</p> <p>19 long as I've been a journalist, and I couldn't disagree</p> <p>20 with you in any way, but fear of the law does act as</p> <p>21 a deterrent, and one of the things that I've written</p> <p>22 about is I think it's a shame the law is not enforced.</p> <p>23 I think it's a shame, for example, that the proposal to</p> <p>24 bring in custodial sentences for improper breach of the</p> <p>25 Data Protection Act for blagging data, that that hasn't</p> <p style="text-align: center;">Page 70</p>	<p>1 the Observer. I'm trying to prove there's a connection</p> <p>2 between Mark Thatcher, the then Prime Minister's son,</p> <p>3 and an arms company executive because I suspect that</p> <p>4 they have a relationship, that the arms company has</p> <p>5 hired Mark Thatcher for their own purposes.</p> <p>6 The man is called Jamil Amunyi. I ring up</p> <p>7 10 Downing Street and say, "I'd like to be put through</p> <p>8 to Mark Thatcher", the switchboard operator says, "Who's</p> <p>9 calling?" and I say, "Tell him it's Jamil." When he</p> <p>10 comes on the line, what he immediately does is he says,</p> <p>11 "Hi Jamil", and I think: "That's brilliant. I've proved</p> <p>12 that these two men know each other." And we then have a</p> <p>13 conversation -- I have a conversation with Mark Thatcher</p> <p>14 about it and say, you know, "You had a deal with this</p> <p>15 person", and he says, "Oh, it's confidential." So</p> <p>16 I think: "Ah, that's proved again." And we then wrote</p> <p>17 a large story on the back of this, with some confidence,</p> <p>18 saying that Mark Thatcher was employed on the quiet by</p> <p>19 this firm.</p> <p>20 Now, I think that was completely in the public</p> <p>21 interest and I think the minor deception that I used,</p> <p>22 minor and temporary, was completely defensible and</p> <p>23 appropriate, and I can't think of another way in which</p> <p>24 I could have got that information. I was investigating</p> <p>25 impropriety, or perhaps worse, in public figures.</p> <p style="text-align: center;">Page 72</p>

<p>1 So I give that as an example of the use of</p> <p>2 subterfuge that I regard as completely okay, especially</p> <p>3 bearing in mind that journalists on public interest</p> <p>4 investigations have to use a certain amount of guile</p> <p>5 because we don't have powers as journalists. We can't</p> <p>6 arrest people. We can't summon people to an Inquiry</p> <p>7 like this, under pain of contempt of court, and we have</p> <p>8 to find out things often from powerful people who are</p> <p>9 anxious to conceal them.</p> <p>10 Q. Thank you. I've been asked on behalf of another core</p> <p>11 participant to ask you whether you had any role in</p> <p>12 blagging information from Jonathan Aitken.</p> <p>13 A. The short answer is no. The other participant who has</p> <p>14 asked you that seems to have their research a bit</p> <p>15 sloppy. I didn't have anything to do with that.</p> <p>16 I wasn't working at the Guardian at the time. You'd</p> <p>17 have to ask someone else if you want details.</p> <p>18 Q. Thank you. In that case, we can move on to the general</p> <p>19 point which you were just adverting to, which is the</p> <p>20 important point if you're going to blag information is</p> <p>21 whether it's in the public interest. So if we think</p> <p>22 about public interest for a moment. I'll start with</p> <p>23 what might be described as a very underarm ball. We've</p> <p>24 had a journalist who's come to give evidence who</p> <p>25 suggested that the public interest is what the public is</p> <p style="text-align: center;">Page 73</p>	<p>1 suppress. All the rest is advertising. That's</p> <p>2 a starting point. You know, it has to be something that</p> <p>3 somebody wants to suppress. And then the question is:</p> <p>4 do they want to suppress it for a good reason or bad?</p> <p>5 There are many powerful organisations in society who</p> <p>6 want to keep things quiet for their own reasons, and</p> <p>7 that includes newspaper corporations, too, obviously.</p> <p>8 The question I ask myself is: is this something that</p> <p>9 ought to be made known? You know, would people agree</p> <p>10 generally that this is something that society ought to</p> <p>11 know about?</p> <p>12 Q. If I might suggest, in the answer you've just given, it</p> <p>13 was hard to distinguish between -- you mentioned a large</p> <p>14 corporation, but initially it was hard to distinguish</p> <p>15 whether you were talking about large corporation or an</p> <p>16 organ of the state on the one hand or a private</p> <p>17 individual on the other. Perhaps with private</p> <p>18 individuals the question is particularly acute. When is</p> <p>19 a story about a private individual going to be in the</p> <p>20 public interest?</p> <p>21 A. Well, I gave you the example about the Blunkett case,</p> <p>22 where a private relationship of a public individual --</p> <p>23 it was very uncertain where the public interest was, and</p> <p>24 in fact possibly the public interest wasn't there at one</p> <p>25 point and was at another.</p> <p style="text-align: center;">Page 75</p>
<p>1 interested in. Do you agree with that proposition?</p> <p>2 A. No. To my mind, it's an absurd proposition and most</p> <p>3 judges appear to say it's an absurd proposition too.</p> <p>4 I have some experience of the public interest being</p> <p>5 used in a legal context because it's a live phrase in</p> <p>6 the so-called Reynolds defence in libel now. We have</p> <p>7 a defence in libel if we can show that what we're</p> <p>8 investigating, what we're writing about, not only have</p> <p>9 we taken steps to verify it but the original story that</p> <p>10 we were pursuing was in the public interest to make</p> <p>11 known. So I go through this checklist when I'm writing</p> <p>12 stories that are potentially libellous. Is what I'm</p> <p>13 doing in the public interest? Have I taken the relevant</p> <p>14 steps to verify it? Have I behaved as a responsible</p> <p>15 journalist? So actually, that notion has got quite</p> <p>16 familiar to newspaper lawyers and to newspaper</p> <p>17 reporters.</p> <p>18 Q. If the public interest is not what the public is</p> <p>19 interested in, what pointers can the journalist thinking</p> <p>20 through the assessment that you've just spoken about use</p> <p>21 to establish whether a story really is in the public</p> <p>22 interest?</p> <p>23 A. Well, I mean, Lord Northcliffe said all those years</p> <p>24 ago -- and I think my colleague Nick Davies repeated</p> <p>25 it -- that news is something that somebody wants to</p> <p style="text-align: center;">Page 74</p>	<p>1 Generally, private individuals, there's much less</p> <p>2 public interest in writing about their private lives,</p> <p>3 and that's why papers like the Guardian don't write</p> <p>4 about -- we don't publish gossip about celebrities, by</p> <p>5 and large.</p> <p>6 Q. Does there need to be some wrongdoing that is being</p> <p>7 uncovered or not?</p> <p>8 A. Broadly, I'd have said yes. That includes people being</p> <p>9 hypocritical, I suppose. I mean, I don't have very much</p> <p>10 time for these arguments about adulterous footballers or</p> <p>11 role models for small boys, but maybe they are for all</p> <p>12 I know.</p> <p>13 LORD JUSTICE LEVESON: I'm sorry, just so I understand that</p> <p>14 you don't consider that marital infidelities, if that's</p> <p>15 what they are, of footballers justify invasion of</p> <p>16 privacy in publication?</p> <p>17 A. By and large, no. But in my mind, there is not a sort</p> <p>18 of either/or situation.</p> <p>19 LORD JUSTICE LEVESON: No, I can see that.</p> <p>20 A. That something is either allowed to be published or to</p> <p>21 be forbidden to be published. It seems to me that</p> <p>22 there's a category of material which there probably</p> <p>23 isn't any or much public interest in making known, such</p> <p>24 as footballers' marital infidelities, but it doesn't</p> <p>25 automatically follow from that that there's a public</p> <p style="text-align: center;">Page 76</p>

<p>1 interest in censoring it or banning it. Does that 2 distinction make any sense?</p> <p>3 LORD JUSTICE LEVESON: No, no, I understand, I think. Quite 4 how one works that out, though, is not entirely 5 straightforward.</p> <p>6 A. We're all hoping you will.</p> <p>7 LORD JUSTICE LEVESON: Yes. Move on, Mr Barr.</p> <p>8 MR BARR: I'll move on this far, sir.</p> <p>9 In the relationship between public interest and 10 privacy, we've heard a witness who said that in many 11 years working as a journalist and many intrusions into 12 privacy, he'd never come across anyone doing anything 13 good, and he effectively said that privacy was something 14 which people who were doing bad things needed. Is that 15 a proposition with which you would agree?</p> <p>16 A. No. I think it's a proposition few people would agree 17 with. We all have not exactly skeletons in our 18 cupboard, perhaps, but things about our private lives 19 which are embarrassing, perhaps, or shameful perhaps, or 20 just overly intimate or -- I mean, medical things, for 21 example, and the whole question is whether you're 22 entitled to bring these up. People aren't necessarily 23 doing something wrong because, for example, they are now 24 an MP but 25 years ago they had a brief affair with 25 a woman not their wife, or a man not their husband. It</p> <p style="text-align: center;">Page 77</p>	<p>1 country what has not, on occasion, got down in the 2 gutter and used questionable methods."</p> <p>3 Can I ask you, first of all, was that a statement 4 that you believe to be true or was it using a little bit 5 of dramatic licence?</p> <p>6 A. It was put in a blunt and provocative way because I was 7 hoping to stimulate people to read the rest of it and 8 enter into the debate without immediately rejecting what 9 I was about to say on the grounds of: oh, it's just the 10 Guardian being holier than thou. I was trying to be as 11 frank and candid as I could be. I wouldn't say 12 I embellished it but I would say I put it in a more 13 blunt way than I might normally.</p> <p>14 Q. I see. To what extent was this assertion based upon 15 factual knowledge that you possessed at the time?</p> <p>16 A. Well, I was racking my own brains for all the things 17 I've done that people might have questioned over 30 18 years in both newspapers and television.</p> <p>19 Q. I certainly don't want you to name them or indeed the 20 titles they were working for, but were you thinking 21 about the actions of others as well that you might have 22 known about?</p> <p>23 A. Well, I've come across lots of newspaper malpractice 24 over the years, and you know, I mention a few things 25 there.</p> <p style="text-align: center;">Page 79</p>
<p>1 doesn't follow, does it? So this line that privacy is 2 for paedos was a very good News of the World headline, 3 and I thought it was quite insupportable.</p> <p>4 Q. Can we turn now to an article that you wrote on 5 4 December 2006. It's entitled "Scandal on Tap" and 6 there should be a copy for the projector.</p> <p>7 LORD JUSTICE LEVESON: Sorry, what date?</p> <p>8 MR BARR: It's 4 December 2006, sir.</p> <p>9 LORD JUSTICE LEVESON: I don't know that my copies are in 10 chronological order.</p> <p>11 MR BARR: It should be immediately behind the tab 1 divider 12 in your bundle, sir.</p> <p>13 LORD JUSTICE LEVESON: Yes, that makes an assumption.</p> <p>14 MR BARR: In that case, it's immediately after the --</p> <p>15 LORD JUSTICE LEVESON: I have it, "Scandal on Tap".</p> <p>16 MR BARR: That's right, sir, thank you.</p> <p>17 LORD JUSTICE LEVESON: Yes.</p> <p>18 MR BARR: This is an article you wrote after Clive Goodman's 19 guilty plea, isn't it?</p> <p>20 A. Yes.</p> <p>21 Q. And you discuss the ethics of journalism and various 22 respects of it. Can I alight, first of all, please, on 23 the second paragraph, where you say in the second 24 sentence:</p> <p>25 "But there is not a newspaper or TV channel in the</p> <p style="text-align: center;">Page 78</p>	<p>1 Q. What I'm ultimately coming to is to what extent could 2 Lord Justice Leveson use this statement as an evidential 3 basis?</p> <p>4 A. Well, it's not evidence because there's no detail there, 5 is there? It's a sweeping assertion designed to 6 position me in a particular place to start off the 7 argument.</p> <p>8 Q. So really, as you say, something to get the readers' 9 attention?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Let's move two paragraphs down:</p> <p>12 "I've used some of those questionable methods myself 13 over the years. I, too, once listened to the mobile 14 phone messages of a corrupt arms company executive -- 15 the crime similar to that for which Goodman now faces 16 the prospect of jail. The trick was a simple one: the 17 businessman in question had inadvertently left his pin 18 code on a print-out and all that was needed was to dial 19 straight into his voicemail."</p> <p>20 And you go on to say:</p> <p>21 "There is certainly a voyeuristic thrill in hearing 22 another person's private messages. But unlike Goodman, 23 I was not interested in witless tittle-tattle about the 24 royal family; I was looking for evidence of bribery and 25 corruption. And unlike the News of the World, I was not</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 paying a private detective to routinely help me with 2 circulation-boosting snippets." 3 Now, you are careful to point out those distinctions 4 between what you did and what Mr Goodman had been doing. 5 Does it boil down to you thought that what you were 6 doing was in the public interest and therefore it was 7 ethical? 8 A. Well, I don't hack phones normally. I don't hack -- 9 I have never done anything like that since and I'd never 10 done anything like that before. On that particular 11 occasion, this minor incident did seem to me perfectly 12 ethical, yes. 13 Q. As a matter of law, there isn't a public interest 14 defence to intercepting -- 15 LORD JUSTICE LEVESON: Don't tell me I should have cautioned 16 Mr Leigh. 17 MR BARR: There is a code for Crown prosecutors. 18 LORD JUSTICE LEVESON: Yes, right. 19 MR BARR: Which may be your get out of jail free card, and 20 so I think the answer to the chairman's question is no, 21 but do you think there is a discrepancy between the lack 22 of an express public interest defence to interception of 23 communications and the express defence in the DPA? 24 A. Well, I'd prefer it if there was an express public 25 interest defence. I think, in fact, there probably is</p> <p style="text-align: center;">Page 81</p>	<p>1 if there isn't a public interest defence, then this is 2 not a very egregious problem. 3 So there are a number of hoops through which 4 a journalist would jump or not jump, as he might prefer, 5 which could cover the situation. That's not intended to 6 give you comfort for the future. 7 A. I think I would say a journalist ought to be prepared to 8 face up to the consequences of what they've done. 9 I mean, if I do something that I think is okay in the 10 public interest, I have to be prepared to take the 11 consequences, and it's very reassuring to hear you say 12 there are that many backstops. 13 LORD JUSTICE LEVESON: Well, I think there are. I'm just 14 listing them from my experience of the criminal law. 15 A. What I think is not okay is that the law shouldn't move 16 against a journalist just because they're afraid of the 17 power of the press, and that seems to be what's happened 18 with the News of the World cases. I think. 19 MR BARR: You go on in your article to say: 20 "That is my defence when I try to explain newspaper 21 methods to my current university journalism students, 22 some of whom are rather shocked." 23 That's why I asked you earlier on about what you 24 teach in this respect. What are your students shocked 25 by?</p> <p style="text-align: center;">Page 83</p>
<p>1 an implicit public interest defence in cases like that 2 because -- and I listened to the former 3 Director of Public Prosecutions, what he had to say 4 about this, Sir Ken Macdonald. There is always an 5 implicit public interest element about whether to 6 prosecute or not, and I like to think that if the 7 incident I've described there came to the attentions of 8 the DPP and I was asked about it, the DPP would conclude 9 that there was no public interest in seeking to 10 prosecute me or another person for doing something like 11 that, and that's a backstop that the law has, isn't it, 12 to stop it making an ass of itself. 13 LORD JUSTICE LEVESON: There are actually a number of back 14 stops, to be fair. I think that first of all there is 15 the possibility of a specific defence as in section 55. 16 Secondly, even if there isn't, there is the code, and 17 one of the things that I will need to think about is 18 whether to encourage the director to issue a guideline, 19 rather as he has done in relation to assisted suicide, 20 to provide some clothes on the framework of how 21 discretion will be exercised. 22 The next is the jury, as we discussed before the 23 Ponting defence, and finally there is, I hope, at the 24 end of the line, a sensible judge who would take a view 25 that even if it is a strict breach of the law, and even</p> <p style="text-align: center;">Page 82</p>	<p>1 A. Well, I try to shock them. I try to say to them: don't 2 imagine that investigative journalism is just a case of 3 a knight in shining armour riding about on a milk white 4 steed doing easy things. You have to do difficult 5 things. Journalism of this kind requires sometimes 6 guile. It requires sometimes making hard choices. If 7 you're to get results, then you have to sometimes, you 8 know, go up to the edge of what's acceptable. So you 9 need to have a clear ideas in your own minds of what is 10 acceptable and what's not, what is in the public 11 interest and what's not. So I'm trying to wake them up 12 to the hard choices and the difficulty decisions that 13 I get paid to make. 14 Q. If they need any indication of how grubby things might 15 get, you go on in your article to say: 16 "I did not turn up my nose when the notorious Benjy 17 the binman emptied a bag of stinking rubbish onto my 18 carpet. He wanted to show me incriminating statements 19 about Saudi arms deals which a City law firm had been 20 too idle to shred before putting out on the street for 21 collection." 22 LORD JUSTICE LEVESON: This is the example you've already 23 given us, is it? 24 A. No, this is a different example. 25 LORD JUSTICE LEVESON: You gave an example of being asked</p> <p style="text-align: center;">Page 84</p>

<p>1 for a large sum of money. 2 A. Yes, that was -- 3 LORD JUSTICE LEVESON: That was different? All right. 4 A. That was different. Another one. 5 LORD JUSTICE LEVESON: I see. 6 MR BARR: "I read the information with interest. I did, 7 however, refuse to pick up the other gossipy documents 8 about celebrities that Benjy was also peddling and when 9 he wanted large amounts of cash for copies of those 10 documents he had that were rather more in the public 11 interest, I sent him off to the Sunday Times." 12 Can I ask you to be clear about what the objections 13 were on an ethical ground to buying material from Benjy 14 the binman? Was it simply financial or was it more than 15 that? 16 A. No, it was more than that. Benjy, who was a notorious 17 figure in Fleet Street, had presented himself to me 18 unsolicited and was waving these pieces of paper at me. 19 I thought those particular pieces of paper were 20 important and in the public interest and should be made 21 known. I didn't want to pay him for them because 22 I didn't want to encourage him. If he was going to do 23 this stuff of his own volition as a law unto himself and 24 put it in front of me and I was going to take a view on 25 whether it was appropriate to publish it or not, that</p> <p style="text-align: center;">Page 85</p>	<p>1 that was important, I'd know about it. That was my 2 thinking at the time. 3 Q. You used the phrase "continue to have sight of the 4 material". So was this an ongoing relationship? 5 A. Well, it went on for a little while. It went on for 6 a little while, and I said to him, "If you have things 7 you think would be of interest to me, then I'd like to 8 see them", you know, and he said for a while: "Yes, 9 okay, I'll do that." But his primary interest was, of 10 course, in the newspapers who were going to pay him, and 11 indeed mainly what he was doing was tittle-tattle about 12 celebrities in which I was not interested at all. 13 Q. And so what was in it for him, continuing to show you 14 material? Was it that you would put him in touch with 15 somebody who might be interested in paying him for it? 16 A. I think -- he's a rather erratic person and I'd hesitate 17 to look into his mind. At the time, he seemed to feel 18 friendly enough towards me because, you know, I would be 19 nice to him. I would be civilised to him and I would 20 say, "I'd like to help you". I would say all the things 21 you'd say to somebody that you want to keep in play, as 22 it were. I'm sure you do understand that in the world 23 of journalism, just like the world of being a detective 24 in the police force, you have to deal with some rather 25 unsavoury people because they may be in possession of</p> <p style="text-align: center;">Page 87</p>
<p>1 was one thing. I didn't want to be commissioning the 2 man, as it were, to go and root through people's 3 dustbins. 4 Q. I see. There was some evidence given by Mr Davies about 5 this instance. Did you hear that evidence? 6 A. I have seen that evidence, yes. 7 Q. And he suggests that you were very clever in passing on 8 Benjy to the Sunday Times because it resulted in you 9 obtaining the information but somebody else paying for 10 it and the matter coming out into the public domain in 11 any event. Do you agree and accept Mr Davies' evidence 12 or is your evidence different? 13 A. I think what Nick Davies meant -- he meant it as 14 a compliment, he told me. I didn't regard it as clever 15 so much as a solution to a ticklish ethical problem. 16 Here am I. I'm a professional journalist. When 17 information comes my way that's of importance, I want to 18 know about it so that I can make a judgment about what 19 to do about it, but I didn't want -- for the reasons 20 I've given, I didn't want to be paying Benjy and 21 encouraging him in his sordid behaviour. So what was 22 I to do? And I thought it was quite a good compromise, 23 that he could deal with newspapers who were less 24 fastidious than me about paying, but I would continue to 25 have sight of his stuff, so that if anything came along</p> <p style="text-align: center;">Page 86</p>	<p>1 important evidence. 2 Q. Yes, because what I'm building up to, of course, is the 3 ethics of having a continuing relationship, obtaining 4 information from a man who is obtaining it in the way 5 that he was. Did you think that the public interest in 6 what you were receiving justified your conduct? 7 A. Yes. Evidently I did. That was the decision I took, 8 that it was acceptable in the public interest to 9 structure the brief relationship in that way. 10 Q. Even though he was stealing the rubbish? 11 A. Well, my stance was I wasn't encouraging him to steal 12 rubbish. It wasn't -- I didn't give him the idea. He 13 was going to continue to do it whatever I did or said. 14 Q. You go on in your article to deal with stings and then 15 blagging, and you give the example we've already touched 16 upon with Mark Thatcher. You discuss the public 17 interest. 18 I'd now like to settle on a paragraph on the second 19 page of the article. It's the fourth paragraph down. 20 It needs to be read with the end of the third. In the 21 third, you've said that the rule should be that 22 deceptions, lies and stings should only be used as 23 a last resort, as indeed you've told us today. 24 A. Yes. 25 Q. At the end of that paragraph you say:</p> <p style="text-align: center;">Page 88</p>

<p>1 "I have had my share of confidence injunctions, lost 2 libel actions and threats of prosecutions under the 3 Official Secrets Act. These tend to breed disrespect 4 for the law, and a nonchalant attitude to these 5 billionaires and cabinet ministers who wheel in 6 solicitors when it suits them to try to conceal their 7 own crimes and misdemeanours." 8 I'd like to explore with you in what sense you meant 9 "disrespect for the law". 10 A. Well, just as earlier on when I spoke about the 11 voyeuristic thrill of listening to other people's 12 private messages, I was trying to think myself into the 13 frame of mind that takes some journalists, particularly 14 tabloid journalists, so cavalier about what they do and 15 I was trying to think of the pressures that work on 16 them, and one of the pressures that does work on all 17 journalists -- not just tabloid journalists, not just 18 serious journalists -- is that you do collide from time 19 to time with the law or the law as it's being enforced. 20 At its most crude, when you're trying to take on rich 21 people and powerful corporations, they can and often do 22 hire fleets of very expensive lawyers in order to try 23 and intimidate you by threats of libel, for example. 24 This makes you feel rather hostile to the fleets of 25 expensive lawyers who come after you, and it makes you</p> <p style="text-align: center;">Page 89</p>	<p>1 time. Those are the kind of experiences which lie 2 behind me saying that some of these collisions tend to 3 breed disrespect for the law. What I mean is that the 4 law can be abused against journalists trying to do good 5 things. 6 LORD JUSTICE LEVESON: I'm not so sure that is quite how I'd 7 read that sentence but I'd just like to take forward the 8 idea that you've just identified, because what I would 9 like to think about, and I want everybody to think about 10 is how you solve that, because on the one hand what you 11 are criticising is the abusive use of the law to smother 12 appropriate debate or discussion, but it's not a million 13 miles away from having the problem that the journalist 14 is abusing his or her position to interfere with the 15 legitimate activities of whatever. I mean, these are 16 two sides of the same coin. The problem with it that 17 you've just identified is that it's all too expensive, 18 because you have very distinguished Queen's Counsel and 19 solicitors and lawyers and everybody all climbing out of 20 the woodwork, looking at the authorities, trying to 21 analyse the position, engaging judges on a Saturday 22 night, who is the duty judge -- a position which 23 I myself have been in -- who is trying to do the right 24 thing. So all that, but if not that system, what system 25 is there or should there be to resolve that sort of</p> <p style="text-align: center;">Page 91</p>
<p>1 fell that the law is being misused against you. 2 When you've been subject to injunctions and super 3 injunctions wrongly, as I have and other journalists 4 have, things that are not about privacy issues, you very 5 much sympathise with what Ian Hislop, the editor of 6 Private Eye once called "censorship by judicial 7 process". What this means is you're a journalist doing 8 the right things, trying to expose wrongdoing of various 9 kinds. Your opponents then go to court and they get an 10 injunction from, let's say, not particularly 11 well-informed judge, and it then costs you and your 12 newspaper immense amounts of time, which is distracting, 13 and money, which you may not have, to fight your way out 14 of the legal mire into which you've become entangled by 15 your wealthy opponents, and I think that's an abuse and 16 I think "censorship by legal process" is a good phrase 17 to describe it. 18 When you're on something like the Guardian, you have 19 legal resources so long as we still, you know, get some 20 revenue, to fight these things. When you're a small 21 magazine or when you're, say, a scientist saying 22 something at a scientific conference or whatever, you 23 just don't have the resources to fight that and so the 24 lawyers sit on you and you can't fight your way out of 25 the legal mire because you don't have the money or the</p> <p style="text-align: center;">Page 90</p>	<p>1 issue? 2 I don't necessarily ask you to deal with it now, 3 unless you already have a prepared solution in your 4 inside pocket, but it is a very, very important issue, 5 and to my mind one of the crucial questions which I have 6 to address. 7 A. There are a couple of things I'd like to say, if I may. 8 Obviously journalists do things wrong sometimes and the 9 law is there to stop them. Prior restraint is a very 10 bad way forward. I think that's a principle that's been 11 lost sight of. When you hand out injunctions, which is 12 then a big struggle and an expense to struggle out of, 13 you're applying prior restraint. "Prior restraint" is 14 another word for censorship. 15 I know that in privacy cases everybody says, oh, 16 well, you have to have an injunction because otherwise 17 the cat is out of the bag. I don't think that's a good 18 argument. I think what you need is punitive damages. 19 If you had punitive damages, a newspaper will be very 20 much deterred from invading somebody's privacy if they 21 know that the last time that happened, it cost them 22 £1 million, and I think punitive damages is a much 23 better way to go than censorship in advance. 24 LORD JUSTICE LEVESON: I understand that, but then you have 25 to deal with Mr Mosley's argument that his life, which</p> <p style="text-align: center;">Page 92</p>

<p>1 had been lived motor racing and the rest, is now defined 2 by an article that the court ruled was an inappropriate 3 invasion of his privacy. 4 A. Yes, but my argument is that that article would never 5 have been published and that video would never have been 6 put out if the News of the World had known that it was 7 going to be -- it was going to be penalised for millions 8 of pounds as a result of doing so, so they wouldn't have 9 done it. They did it with impunity. So I think if you 10 had a deterrent effect, you wouldn't get these invasions 11 of privacy and I think that would stop the mischief. 12 The other side of this is if newspapers commit 13 libel, which they sometimes do, sometimes because they 14 make mistakes as we all do, there needs to be a simple, 15 quick, cheap method of resolving those disputes with 16 ordinary people that doesn't cost a fortune, that 17 doesn't enrich lawyers with 100 per cent success fees to 18 the point where newspapers just can't afford to fight 19 them even if they have a good case. So you need 20 a tribunal there that is going to resolve these things 21 sensibly without fleets of lawyers. If you could think 22 of a way of doing that, I'd be very grateful. 23 LORD JUSTICE LEVESON: Yes. 24 MR BARR: Looking at another question that arises from the 25 phrase "breed disrespect for the law", is there any</p> <p style="text-align: center;">Page 93</p>	<p>1 "... and honest journalists have nothing to fear. 2 We shall have to see about that. Personally, I am 3 resigned to seeing the tabloid cockroaches doused with 4 a spot of legal insecticide." 5 LORD JUSTICE LEVESON: There's some journalistic-ese for 6 you. 7 A. Sorry. 8 LORD JUSTICE LEVESON: Well, you weren't writing it for me 9 MR BARR: You may wish that word to be your evidence in 10 relation to this part of your article, but in case it 11 isn't, can I ask you: are you intending to communicate 12 a real disdain for the practices of tabloid journalism? 13 A. Yes, it's very upsetting because it does bring our trade 14 into disrepute, and because they fail to clean up their 15 act it makes it more difficult for people like me, 16 people on serious newspapers trying to do worthwhile 17 things. 18 Q. Why did you use the verb "resigned"? Because it 19 suggests a certain reluctance to see the law changed and 20 earlier today you've told us that you're in favour of 21 the imposition of custodial sentences for grave breaches 22 of Section 55. 23 A. Well, resigned because, as this Inquiry is obviously 24 well aware, there are threats to the freedom of the 25 press every time you introduce new regulations and the</p> <p style="text-align: center;">Page 95</p>
<p>1 connection between the disrespect which you've described 2 emerging from the use of the law to thwart your 3 journalistic endeavours and willingness to use 4 borderline or illegal methods to obtain information 5 about institutions who may have all this legal muscle? 6 A. I think you're pushing this a bit far with me, really, 7 because the Guardian and I, we don't do this bad stuff 8 as a rule. These issues don't really -- aren't really 9 problems for us. Move the time, we're extremely well 10 behaved, and as I say, I've tried not to be holier than 11 thou about it and I've tried to think myself into the 12 forces that operate on all journalists in the tabloid 13 world as well, but you need to direct these questions 14 towards the kind of newspapers that are doing the bad 15 things, because they're special in the pressures on 16 them, the people who own them, the way they're 17 constructed. 18 LORD JUSTICE LEVESON: I think we probably shall. 19 MR BARR: Indeed. 20 Just a final question on the article. It's in the 21 paragraph which starts "Thomas says there is a public 22 interest defence available under the Data Protection 23 Act", which is presently right at the bottom of the 24 screen. Could that be raised up, please? You go on to 25 say:</p> <p style="text-align: center;">Page 94</p>	<p>1 words "statutory regulation" make me feel very 2 uncomfortable. It is not an accident that dictatorships 3 lock up journalists as one of the first things they do, 4 and very often, prior to locking them up, they set up 5 systems for licensing them and regulating them. So 6 naturally, I don't look forward to that prospect with 7 any enthusiasm. So as I say, I am resigned -- because 8 of the refusal of the tabloid media to clean up their 9 act, I'm resigned so something being done but I'm not 10 happy about it. 11 Q. That runs into some evidence which Mr Davies gave last 12 week when he said that he'd -- his thinking had evolved 13 to the point where he'd concluded that the press was 14 incapable of self-regulation. Is that a conclusion 15 which you now share? 16 A. I don't like this phrase "the press". The Guardian, for 17 I which work, as far as I'm concerned, is capable of 18 self-regulation and we do regulate ourselves quite well. 19 You know, we have all the code you've talked about. We 20 have a reader's editor who is independent, who people 21 can appeal to. We publish corrections in what we think 22 of as the main leader page of the paper. We do regulate 23 ourselves. So the bit of the press that I'm currently 24 working in, we do self-regulate it. I think the tabloid 25 press is incapable of self-regulation.</p> <p style="text-align: center;">Page 96</p>

<p>1 Q. The one technique that I don't think was mentioned in 2 the article we've just looked at was bribery. It's made 3 very clear in material from the Guardian that the 4 Guardian doesn't do that, but can I ask you this: do you 5 consider that the bribery of public officials to obtain 6 information is one of those matters which is completely 7 ethically off limits? 8 A. Yes, it's a crime. 9 Q. Moving now to the PCC. You've written about the PCC. 10 It may not be necessary to go to the article but could 11 you help us, from your understanding, from your 12 experience, as to, first of all, what are the strengths 13 of the PCC? 14 A. The only strength of the PCC is that it does circulate 15 newspapers with pleas that they should stop harassing 16 people. The other strength of the PCC, in its own eyes, 17 I guess, is that it works as a sort of political fixer, 18 managing to keep the government and the royal family off 19 the backs of the newspapers, especially when they've 20 gone too far. These are not very great strengths, in my 21 view. 22 Q. So we turn inevitably to your opinion about the 23 weaknesses of the PCC. What do you think these are? 24 A. If you think the PCC is a regulator, then you are wrong. 25 One is wrong. Insofar as it holds itself out to be</p> <p style="text-align: center;">Page 97</p>	<p>1 in Britain was published by publishers in hardback form 2 in Australia and in Ireland. So in fact, you know, that 3 idea that information can slip and slide about between 4 jurisdictions isn't new. What is new, of course, in the 5 world of the Internet, is that everything happens 6 instantaneously, so it's much more slippery and any laws 7 do need to take that into account and they need to take 8 reality into account. We've had some situations, which 9 have been very unreal, in which things have been banned 10 that everybody is reading about on the Internet and we 11 have to find a way of being realistic. 12 Q. Just to tease out those potential solutions to those 13 broad problems, one method might be to regulate the 14 Internet content that comes into the jurisdiction, if 15 that were technically possible. Would that be 16 a solution that would find favour with you? 17 A. Well, that's a sort of Chinese solution. 18 Q. It might be described that way. 19 A. I don't think many people would be keen on that. It 20 would cast us not as an open society and it would -- it 21 wouldn't work, either. 22 Q. And if you can't use the Chinese solution, what might 23 you do? 24 A. Well, one thing you can do is take a deep breath and 25 learn to live with it. In criminal cases, judges have</p> <p style="text-align: center;">Page 99</p>
<p>1 a regulator, it's a fraud and a bogus institution. It 2 doesn't regulate, it can't regulate and it doesn't want 3 to regulate. What it wants to do is fix, and keep the 4 government off the back of the popular papers. 5 Q. Can I take it from that that you would be in favour of 6 abolishing the PCC and coming up with some other 7 alternative solution? 8 A. Personally, I would be in favour of abolishing the PCC. 9 I say that because it's not necessarily the policy of my 10 paper corporately, which is a bit more optimistic than 11 I am about the possibility of reform. 12 Q. Finally, the question of the Internet and new media, 13 which are assuming increasing importance in many aspects 14 of our lives, but in particular in the propagation of 15 news and also the circumvention of court injunctions. 16 Is this an issue which, as a professor of journalism, 17 you've given any thought to from a regulatory point of 18 view? 19 A. The Internet makes it much more difficult to control and 20 censor what appears in British newspapers and we no 21 longer live in that world where you can control it. 22 I've watched this over the years. All of us who have 23 been around for a long time remember the Spycatcher 24 affair of 20 or so years ago, where the issue was how 25 slippery was a book, and the book which had been banned</p> <p style="text-align: center;">Page 98</p>	<p>1 now, I think, wearied of berating juries that they 2 should not look things up on the Internet. Instead, 3 they've taken a more realistic view. People will look 4 at things on the Internet and they tell juries how to 5 regard that or how to disregard that. So, you know, 6 I think it's better not to be King Canute in these 7 situations. 8 MR BARR: Thank you very much indeed -- I'm just about to be 9 passed a note. Subject to the note, those are the 10 questions I was going to ask you, save for the last 11 questions we save for all witnesses, which is if there's 12 anything else you would like to say to Lord Justice 13 Leveson about the future regulation of the press, now is 14 your opportunity. 15 A. Well, I think I've sounded off quite enough already. 16 MR BARR: Just a moment. I'm going to need some -- 17 LORD JUSTICE LEVESON: The real issue, while they're 18 resolving that, is to try to find the right place. What 19 you've identified for me is -- you say, "Well, for the 20 Guardian it's easy because we're there, but we don't 21 have the same pressures or the same interests by our 22 readers that other newspapers have", and therefore one 23 has to be careful about seeking to read across what 24 works for the Guardian into other papers because of the 25 different dynamics of the organisation.</p> <p style="text-align: center;">Page 100</p>

<p>1 A. (Nods head)</p> <p>2 LORD JUSTICE LEVESON: The problem is going to be how you</p> <p>3 read what is good about the approach to journalism that</p> <p>4 you have spoken about into the context that other</p> <p>5 journals, perfectly legitimately, operate within.</p> <p>6 A. Yes. I mean, I always used to argue that liberty was</p> <p>7 indivisible, and that if we lived in a country with free</p> <p>8 speech, then we must let everybody do things,</p> <p>9 particularly things we don't like. But as I said, I am</p> <p>10 now resigned to the fact that something has to be done.</p> <p>11 MR BARR: Just a couple more issues to explore. They're</p> <p>12 based on the theme of circulation. The first is this:</p> <p>13 I think you would readily accept that the circulation of</p> <p>14 the tabloids is much greater than the circulation of the</p> <p>15 broadsheets, including the paper that you work for.</p> <p>16 A. Yes.</p> <p>17 Q. Is there something to be said for the argument that</p> <p>18 a newspaper that prints a certain amount of</p> <p>19 tittle-tattle but also some serious stories is a very</p> <p>20 effective way of mass education, mass communication on</p> <p>21 serious issues?</p> <p>22 A. What's the question, exactly?</p> <p>23 Q. The question was: do you see a benefit in a newspaper</p> <p>24 publishing a mixture of tittle-tattle and serious</p> <p>25 stories in order to reach a wider audience with the</p> <p style="text-align: center;">Page 101</p>	<p>1 MR BARR: Mr Leigh, thank you very much.</p> <p>2 LORD JUSTICE LEVESON: Mr Leigh, thank you very much indeed</p> <p>3 MR BARR: Sir, that concludes our evidence for the morning.</p> <p>4 I understand that Mr Atkins is lined up to give evidence</p> <p>5 at 2 o'clock.</p> <p>6 LORD JUSTICE LEVESON: Thank you very much, Mr Barr. Right,</p> <p>7 we'll resume at 2 o'clock.</p> <p>8 (12.40 pm)</p> <p>9 (The luncheon adjournment)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 103</p>
<p>1 serious message?</p> <p>2 A. Well, obviously yes. Nobody objects to people</p> <p>3 publishing tittle-tattle if they want to and people</p> <p>4 reading tittle-tattle if they want to. Why this Inquiry</p> <p>5 has been set up, I guess, is because the tittle-tattle</p> <p>6 is being got illegally, intrusively and sometimes</p> <p>7 cruelly.</p> <p>8 Q. So it's a question of method rather than content?</p> <p>9 A. I think so, yes.</p> <p>10 Q. And the second question is: the market for a purely</p> <p>11 serious newspaper, which doesn't have any tittle-tattle</p> <p>12 in it, is necessarily limited, isn't it?</p> <p>13 A. It would be nice to think that more people would take</p> <p>14 things more seriously than they do, but obviously, yes.</p> <p>15 MR BARR: Thank you.</p> <p>16 LORD JUSTICE LEVESON: The Lord Chief Justice in A v B said</p> <p>17 the courts must not ignore the fact that if newspapers</p> <p>18 do not publish information which the public are</p> <p>19 interested in, there will be fewer newspapers published,</p> <p>20 which will not be in the public interest.</p> <p>21 A. The result of this scandal is we have had one fewer</p> <p>22 newspaper published, and that wasn't because of -- that</p> <p>23 was because of their own behaviour or misbehaviour.</p> <p>24 LORD JUSTICE LEVESON: Yes. That's a salutary moment upon</p> <p>25 which to end.</p> <p style="text-align: center;">Page 102</p>	

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