

<p>1 2 (2.05 pm) 3 LORD JUSTICE LEVESON: Yes, Mr Sherborne. 4 MR SHERBORNE: Sir, I arrived before the short adjournment 5 at the subject of kiss and tell stories and chequebook 6 journalism, the trademark feature of tabloid press, one 7 might say. 8 A number of the core participant victims will give 9 evidence about their experiences. Mr Flitcroft is one 10 such person, Garry Flitcroft. A name most of those 11 listening to this speech, even football supporters, 12 might have to scratch their heads about for a moment. 13 Indeed, I'm sure he won't mind me saying that he's 14 probably better known for his appearances in legal 15 textbooks than he is on his appearances on the football 16 pitch, that is to all but die-hard Blackburn Rovers 17 fans. He was the person, you recall, who put the A into 18 A v B plc. Probably the first kiss and tell injunction 19 to be decided by the English court following the 20 introduction of the Human Rights Act. 21 In one sense, his story is quite simple. That is 22 how no doubt the points would like to present it. He 23 obtained an injunction from a first instance judge in 24 2001 to prevent the publication of details of an affair, 25 an injunction which was later overturned by the Court of</p> <p style="text-align: center;">Page 1</p>	<p>1 decisions of Europe. 2 There is perhaps no surprise about this. It's been 3 a ruling not just of the Court of Appeal but the 4 House of Lords as well, since this was the inevitable 5 and indisputable consequence of introducing the European 6 Convention of Human Rights into United Kingdom law, and 7 before the anti-Europe brigade start to sound off, the 8 press cannot have it both ways. The freedom of speech 9 which they rely on is given to them by virtue of 10 Article 10 of the very same Convention as Article 8. 11 The fact that the Court of Appeal would almost 12 certainly have decided this case in favour of 13 Mr Flitcroft now is little consolation, I suspect. 14 Similarly, the fact that Mr Mosley won his case in front 15 of the High Court, but only after the material was 16 already published. But behind Mr Flitcroft's legal 17 case, there is a real story about a real person and the 18 impact which this kind of journalism can have, something 19 which as lawyers we rarely think about, but this Inquiry 20 needs to consider. 21 Mr Flitcroft will explain that whether the law was 22 right or wrong, the impact on him, as on others caught 23 up in such stories, was enormous. Following the very 24 public humiliation of him and the feeding frenzy in the 25 media when his name was finally revealed, with his</p> <p style="text-align: center;">Page 3</p>
<p>1 Appeal in early 2002, with Lord Woolf delivering the 2 leading judgment, a judgment which has certainly been 3 much vaunted by the press over the years since it 4 blurred the distinction I mentioned between what is 5 truly in the public interest with what the public are 6 interested in, the Court of Appeal in 2002 deciding that 7 there was some legitimate interest in the general public 8 knowing the details of A's sex life since, as 9 a professional footballer, he was supposedly a role 10 model. 11 Far be it for me to criticise Lord Woolf, but it is 12 a judgment which is now widely accepted would be decided 13 differently today, even, I suspect, with the first 14 instance decision in the Rio Ferdinand case which, as 15 you've heard, is on its way to appeal. 16 For those who are interested in such things, you 17 should read the judgment of the later Court of Appeal in 18 the case of Loreena McKennitt v Niema Ash, probably one 19 of the leading statements of domestic law on privacy in 20 which the English court finally resolved the tension 21 between the decision in A v B on the one hand and the 22 Strasbourg definition of Articles 8 and 10 of the 23 European Convention on Human Rights, which are now 24 incorporated into United Kingdom law, on the other hand. 25 Resolved of course, as we know, in favour of the</p> <p style="text-align: center;">Page 2</p>	<p>1 anonymity as just "A" being lifted amongst further 2 newspaper speculation as to his identity, his family was 3 ripped apart. 4 You may feel very sorry for him personally about 5 that, or you may not. His main concern, however, is his 6 family. He told his wife about the affair before the 7 injunction was lifted. You might say he was forced to. 8 But any chance they had of dealing with the problems 9 which this caused was shattered, however, by the 10 humiliation which they had to endure so publicly, both 11 of them. Journalists were camped outside his door, news 12 helicopters were flying over his house, tracking down 13 his family wherever they went. In the full glare of the 14 media spotlight, it is no wonder that they had 15 absolutely no chance of dealing with a situation which 16 those not in the public domain have the chance to sort 17 out in private, as such things should be. 18 He will tell you about the teasing, the gossip which 19 his children had to suffer at school. He will tell you 20 about the barrage of relentless and hounding publicity, 21 publicity which caused his father-in-law, who was 22 suffering from Parkinson's disease, enormous distress. 23 The publicity was so bad that his own father, who had 24 come to watch him play football from the age of 7, had 25 to stop going to see him because of the abuse that he</p> <p style="text-align: center;">Page 4</p>

<p>1 received. How his depression had worsened and he later 2 committed suicide. Uncomfortable perhaps for the press 3 to listen to? Well then, good, because these are the 4 stories behind the headlines, headlines which come and 5 go like yesterday's chip paper, but the damage which 6 they can do to real people, whatever their profession, 7 goes on and on.</p> <p>8 LORD JUSTICE LEVESON: That's not necessarily so any more</p> <p>9 MR SHERBORNE: Indeed, and that's something the Inquiry 10 needs to consider, given that these stories permanently 11 reside on the Internet. Mr Mosley will give evidence to 12 you about how difficult it is to try and deal with that, 13 even where the English court has ruled that the 14 publication should never have taken place.</p> <p>15 And what about the woman, sir, with whom he had this 16 affair and who was exercising her freedom of speech? 17 Her attempts to demand money from Mr Flitcroft through 18 sending a package to his parents' house asking for cash 19 in return for her not disclosing their relationship were 20 refused. She therefore exercised her threat because 21 Mr Flitcroft did not want to give in to such blackmail. 22 No doubt she got her money from the newspaper and 23 a sizeable cheque, I'm sure, and no doubt her motivation 24 was her belief that his wife ought to know about their 25 affair.</p> <p style="text-align: center;">Page 5</p>	<p>1 under the headline, "Church: three in a bed cocaine 2 shock". You might be forgiven for thinking when you saw 3 that headline that it was some revelation about the 4 singer herself. It wasn't, although I suspect that was 5 the intention.</p> <p>6 Instead, it was a story about her father having an 7 affair with someone who worked for him, and in several 8 pages lurid and sensational details of this private 9 relationship were plastered across the newspaper. The 10 effect on her parents, and particularly her mother, 11 someone the press would call the innocent party, was 12 absolutely devastating and Ms Church will tell you about 13 this. The newspaper was aware of that effect even at 14 the time. How do I say that? Because it subsequently 15 transpired that the Church family has discovered that 16 the story was the product of their voicemail messages 17 being illegally accessed by Mr Mulcaire.</p> <p>18 Part of the information which they would have found 19 out was the fact that shortly prior to the story being 20 published Charlotte's mother was admitted to hospital 21 following an attempted suicide. The newspaper knew it.</p> <p>22 In an act of great sensitivity, as Ms Church will 23 explain, following the article published, the newspaper 24 approached her mother directly and persuaded her to give 25 them an exclusive, despite her fragile condition, as</p> <p style="text-align: center;">Page 7</p>
<p>1 What of the newspaper? One wonders whether it was 2 all worth it after all. Was Mr Flitcroft's right to 3 privacy and the effect which invading this caused really 4 outweighed by some specious public interest which has at 5 its heart the commercial motive that without such 6 stories the tabloid press fears it will not exist? Is 7 the need to satisfy an insatiable public appetite for 8 salacious gossip more important? Perhaps we will never 9 know. I will come back to this, though, because it's 10 important, sir, in the context of prior notification.</p> <p>11 What consolation, as I have said, for Mr Flitcroft 12 that the law might be considered wrong now, or not. 13 It's irrelevant. It's not going to give him back what 14 he's lost, and that's the very real problem with 15 invading people's privacy because once it's breached and 16 private things are made public, particularly in 17 a national newspaper and particularly with the Internet, 18 then that privacy is lost forever.</p> <p>19 We do need to ask what price we place now on privacy 20 in our society. One we would like to think of, as 21 I said, as a mature and tolerant one.</p> <p>22 If further examples are needed, Charlotte Church's 23 evidence will provide another one. Part of her 24 statement concerns a story which was published on the 25 front page of the News of the World in December 2005</p> <p style="text-align: center;">Page 6</p>	<p>1 part of a Faustian pact that in return they would not 2 run another lurid follow-up story about her husband's 3 affair.</p> <p>4 So when people talk of public interest in exposing 5 the private lives of well-known people or those close to 6 them, this is the real, brutally real impact which this 7 kind of journalism has.</p> <p>8 There are, of course, less extreme examples, but 9 they still demonstrate how, in my submission, 10 unjustifiable such stories are, contributing nothing as 11 they do to what is truly in the public interest.</p> <p>12 Steve Coogan, for example, will give evidence to 13 this Inquiry. Another individual whom the popular press 14 love to vilify. But look behind the silly tabloid 15 stereotypes for a moment. He is, I would say, perhaps 16 he would not say it himself, a talented writer, comedian 17 and actor, but most importantly, he has not sought 18 publicity for himself. He doesn't turn up to do 19 openings, he doesn't preach morality to anyone or set 20 himself up as a role model. Nevertheless, he has been 21 on the receiving end of numerous kiss and tell stories.</p> <p>22 His evidence, whilst less dramatic than that of 23 Charlotte Church, is equally important to demonstrate 24 how this almost unique English journalistic culture of 25 kiss and tell stories can, over time, have an insidious</p> <p style="text-align: center;">Page 8</p>

<p>1 effect even on the most sanguine and impervious of 2 individuals. He will describe how not just him but his 3 family and friends have been affected by this, how he's 4 been doorstepped by journalists and so have partners, 5 members of his family, parents, grandparents, all in 6 an attempt to dig up stories about his private life. 7 He's had journalists camped outside his house, rooting 8 through his bins, bothering neighbours, following him in 9 cars and so on and so forth.</p> <p>10 Yes, the obsession with well-known people and the 11 belief that details of their private lives, exclusive 12 details, sells newspapers, has led to yet another 13 excess, the hounding of celebrities. Not just from 14 intrusive stories, but also because of the market this 15 creates for the paparazzi, an aggressive breed of 16 unregulated males equipped with a camera, often used as 17 more of a weapon than a means of recording someone's 18 image. Their methods of stalking vary from driving 19 recklessly in the hot pursuit of their prey through the 20 streets of London with all the dangers this causes, 21 through crashing into cars to stop someone getting away 22 from them, to force a confrontation for which read 23 perfect photo opportunity, to camping outside someone's 24 home and refusing to leave, to chasing and jostling 25 their victim down the road, shouting out abuse in the</p> <p style="text-align: center;">Page 9</p>	<p>1 being what one might call an ordinary person to what one 2 might call famous, but how despite this she and her 3 husband have gone to enormous lengths, lengths which 4 many would regard as not being necessary, to protect -- 5 or should not be necessary -- to protect the privacy of 6 her family and to let the press know, that section of 7 the press so desperate to indulge their curiosity about 8 her private life, that that is the attitude they take.</p> <p>9 The fact that Ms Rowling has tried to carve out and 10 protect some form, semblance of normal life for her 11 children but has failed to do so despite her best 12 efforts, just highlights the excesses of the press. It 13 should not need saying, and indeed it is part of the PCC 14 code, whatever good that has done her in the past, as 15 she will tell you, that just because children have 16 famous parents doesn't mean that they are public 17 property as well. Adults can make choices. Children, 18 of course, can't.</p> <p>19 Whilst the most well-known of Ms Rowling's repeated 20 disputes with a certain section of the press, desperate 21 to overstep the boundaries between her private and 22 professional career, is the case that she brought 23 against Big Pictures, a photographic agency over 24 a photograph they took published in the Express of her 25 walking on a family outing sharing some special moments</p> <p style="text-align: center;">Page 11</p>
<p>1 hope that a reaction can be provoked and a caption 2 generated for which a certain section of the press will 3 pay handsomely.</p> <p>4 It goes without saying that without this kind of 5 willing market, there is no livelihood for this species 6 of journalistic activity.</p> <p>7 A number of witnesses speak about this, at least in 8 general terms. However, in case anyone thinks that this 9 is just a problem for the rich and famous, I can safely 10 say that having been involved in obtaining every one of 11 the six injunctions which have been granted to stop this 12 kind of harassment to well-known people, it is a miracle 13 that no member of the public has got seriously hurt, 14 although many have been caused considerable nuisance, so 15 indescribably dangerous and oblivious is the behaviour 16 of these individuals, not to mention plain old 17 intimidating.</p> <p>18 This hounding, this obsession with reporting on 19 every aspect of a well-known person's private life may 20 seem relatively innocuous, perhaps, unless of course you 21 are the person having to deal with it, and it doesn't 22 matter, it appears, whether you try to be intensely 23 private or not. JK Rowling is a good example of this. 24 She will explain to the Inquiry how, because of the 25 enormous success of her writing talent, she went from</p> <p style="text-align: center;">Page 10</p>	<p>1 with her husband and young children, this is by no means 2 the only example she will give of such intrusion.</p> <p>3 There have still been photographers and press camped 4 outside her house. Her young children have had notes 5 placed in their school bag. Pictures of them have been 6 snatched whilst they've been enjoying quality time on 7 holiday.</p> <p>8 So what, you may say. Just think for a moment. 9 What if you knew that whenever you take your family out 10 of the house, just to go to the park or to the shops, 11 things that you or I, as so-called ordinary people, do 12 without thinking, what if every time you did this you 13 had no idea whether a photographer was going to jump out 14 of the bushes and photograph your children? How would 15 you feel? Scared? Little bit like a prisoner? 16 Perhaps. But more importantly, why should you have to 17 tolerate this kind of hounding, this level of intrusion 18 into your private life? Especially if you are 19 well-known for guarding your privacy as fiercely as 20 Ms Rowling does.</p> <p>21 She will explain the very real corrosive effect that 22 this has had on her children.</p> <p>23 Finally, one other point she will deal with, which 24 may seem a small one, is the obsession with publishing 25 the address of people in the public eye, or sufficient</p> <p style="text-align: center;">Page 12</p>

<p>1 details of their homes so that they can be identified. 2 This is a complaint which she has in common with 3 a number of well-known people, although I think she is 4 the only person giving evidence to this Inquiry who 5 refers to it expressly. It's a problem she's had with 6 a number of publications over the years. It may, as 7 I've said, seem at first blush like a small point, but 8 it is one which is of importance to her, since she 9 deliberately chose to live in a remote part of rural 10 Scotland in order to keep her family's privacy.</p> <p>11 In the past, one tabloid newspaper has even printed 12 the street name and photos of her house, photos which 13 apparently showed the CCTV cameras and other security 14 measures which she has had to employ to protect herself 15 and her children from those, for example, who are well 16 aware of her commercial success. And simply because her 17 address is not a secret in the sense you could probably 18 find it somewhere on the Land Registry if you carried 19 out the necessary searches, does not mean that it is not 20 private, and it doesn't mean that it justifies the 21 publishing of details in a national newspaper with all 22 the security risks that this creates.</p> <p>23 Then there are the other core participant victims 24 who will give evidence of the way that they have 25 constantly had to fight against a steady stream of lies</p> <p style="text-align: center;">Page 13</p>	<p>1 obviously consider when looking at how the press are 2 regulated in the wider sense. However, while she won 3 all of her libel actions, the best remedy for her would 4 have been for these lies not to have been published in 5 the first place.</p> <p>6 As she will tell you, this decision to use legal 7 means has at times been risky. It nearly cost her her 8 family home, as she had to place it on the market to 9 fund her legal action to clear her name. Thankfully, 10 she won just before the house was sold, but her attempts 11 to try to set the record straight, if not for her, then 12 for her children, who have to read about these lies, is 13 one which has not been easy.</p> <p>14 Charlotte Church is another core participant with 15 a similar complaint, albeit with her own unique set of 16 circumstances. Having started her professional life 17 when she was just 11 years old as a child prodigy, she 18 has had to enduring intense media scrutiny and in 19 particular what appears to be a concerted attempt to 20 disparage or denigrate her. Given that a lot of this 21 has happened as she was struggling, like most girls of 22 her age, with the pressures of becoming a teenager, some 23 of the reporting was deeply irresponsible, not to 24 mention plain wrong.</p> <p>25 She also chose, like many, to take the course of</p> <p style="text-align: center;">Page 15</p>
<p>1 or distortions published about them because it suits the 2 press to portray them in a certain way.</p> <p>3 Sheryl Gascoigne is one of them, for example. She 4 will explain how the minute she married Paul Gascoigne, 5 she became a villain in certain sections of the press, 6 especially after their divorce, but even before, despite 7 being the well-documented victim of domestic abuse.</p> <p>8 Regardless of the true position, she has been 9 persistently portrayed as the callous, money-grabbing 10 wife, blamed for her ex-husband's well-documented 11 problems in story after story, so many times indeed that 12 fiction has turned into accepted fact. Or at least was 13 until she decided in the end to bring a series of libel 14 actions, as she will tell you.</p> <p>15 She is an example of someone who initially dealt 16 with the fame which she received when she started 17 a relationship with a national hero by deciding that the 18 best course was not to take on the press but rather to 19 maintain a dignified silence. It is a view which after 20 many years and countless press cuttings she was forced 21 to change, primarily because her children were angry at 22 what they read about their mother.</p> <p>23 She will tell you how the decision to fight back, as 24 it were, in 2009 and to use her legal rights was an 25 effective one. It is something the Inquiry will</p> <p style="text-align: center;">Page 14</p>	<p>1 least resistance. The press, or at least various 2 newspapers, are going to publish what they publish; why 3 fight it? That is, until her children started to reach 4 an age where they could read the lies and distortions 5 published about her for themselves, published by those 6 intent on perpetuating the stereotypical image of her as 7 the voice of an angel who eventually fell from grace.</p> <p>8 She will dismiss the myth of the so-called whingeing 9 celebrity, as well as the line trotted out in 10 self-defence by more tabloid journalists than I can 11 count that celebrities somehow need this publicity and 12 only complain when it's negative. I will let her deal 13 with that.</p> <p>14 More importantly, she emphasises the particular 15 protection which young people need, especially those 16 who, because of a certain talent, enter the public eye 17 without any real idea of the consequences.</p> <p>18 Just to show you how topical her evidence is, she 19 will recount how a week or so ago a story hit the 20 newspapers about how she is meant to have made an 21 exhibition of herself drunkenly proposing to her partner 22 in a bar while singing karaoke. It was a good story, 23 with all the favourite tabloid stereotypes about her: 24 a drunk Charlotte Church, karaoke singing in a Welsh 25 bar, a drunken proposal. Everything. The problem is it</p> <p style="text-align: center;">Page 16</p>

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<p>1 was a complete fabrication. Not least because she 2 wasn't even there on the night in question. Did anyone 3 check with her? No. Did anyone think about whether 4 this was intrusive let alone true? Apparently not. To 5 use the Kelvin MacKenzie line, it sounds right so it 6 probably is right, so let's lob it in, bugger sources or 7 respect for people's private lives.</p> <p>8 For the journalists, perhaps they decided not to let 9 the facts get in the way of a good story. These no 10 doubt are the same type of tabloid journalists 11 Trevor Kavanagh, the political editor of the Sun, was 12 referring to in the seminars when he described them as 13 the "finest creative professionals in the business", 14 although he was speaking without a hint of irony.</p> <p>15 Ms Church will also describe the massive effect 16 which this kind of journalism has had not only on her 17 life but the lives of her family and friends, collateral 18 damage, one might call it, and the worst excesses of the 19 press came when she was between the ages of 16 and 20, 20 reporters cutting holes in the shrubbery and installing 21 secret cameras, being chased in a car, photographers 22 trying to open a car door while she was inside, trying 23 to take photographs up her skirt. On one occasion she 24 begged the News of the World not to reveal where she 25 lived as there was a threat to kidnap her at the time,</p> <p style="text-align: center;">Page 17</p>	<p>1 interest qualification:</p> <p>2 "In cases involving personal grief or shock, 3 enquiries and approaches must be made with sympathy and 4 discretion and publication handled sensitively."</p> <p>5 Mr McCann's evidence will be a perfect example of 6 how hopelessly inadequate this self-regulatory code is 7 as a means of curbing the excesses of the press. He 8 will refer to the blatant intrusion which he and his 9 family suffered throughout, particularly when they were 10 back in the United Kingdom, from the press camping 11 outside their door to how his children were terrified as 12 they were driven around by their parents. He will 13 explain how sensitively the media dealt with this.</p> <p>14 Moreover, he will explain how in the months 15 following the abduction of Madeleine, the behaviour of 16 the press changed from an attitude of support to one of 17 hostility, a change which he suspects, and we say 18 rightly, was based on the commercial imperative to bring 19 home exclusive stories for editors greedily waiting back 20 in the United Kingdom watching the expenses bills of 21 their journalists mounting up. Apparently journalists 22 were being told, he will say, that they had to get 23 a front page story, or their job was on the line.</p> <p>24 What happened in those days in late 2007 and into 25 2008, when stories about the missing toddler became thin</p> <p style="text-align: center;">Page 19</p>
<p>1 but they refused. Or the time the press revealed she 2 was pregnant when she hadn't even told her parents, so 3 desperate were the newspapers to get an exclusive scoop 4 on her private life.</p> <p>5 Before I leave the topic of the damage which the 6 press can do in terms of false portrayals, let me give 7 you two further examples. Examples which seem to fit 8 the description Mr Peppiatt gave when he said that 9 tabloid newsrooms are often bullying and aggressive 10 environments in which dissent is often not tolerated, in 11 particular when it comes to big stories.</p> <p>12 One doesn't need to explain that to Gerry and 13 Kate McCann. The disappearance of their daughter on 14 3 May 2007 was on any view a big story, and one which 15 had the press falling over themselves to cover, taking 16 up almost permanent residence in the beginning in Praia 17 da Luz.</p> <p>18 When he gives evidence, Mr McCann will explain how 19 it felt for him and his wife to be thrust from what one 20 might call anonymity into the public limelight in the 21 worst possible circumstances, one with which any parent 22 would sympathise. It may be appropriate for me at this 23 moment to read out what clause 5 of the Press Complaints 24 Commission's code says, entitled "Intrusion into grief". 25 Clause 5 states in terms which appear to have no public</p> <p style="text-align: center;">Page 18</p>	<p>1 on the ground and the pack of journalists were sitting 2 idly in the bars, must be some of the darkest days for 3 this section of the press. Some of the headlines that 4 were published, either based on some nonsense supposedly 5 gleaned from the Portuguese police, often on nothing at 6 all, were a national scam, and I list some of those 7 headlines:</p> <p>8 "DNA puts parents in frame. British experts insist 9 their tests are valid". "Parents' car hid a corpse. It 10 was under carpet in boot, say police". "It was her 11 blood in parents' hire car, new DNA tests report". 12 "Kate and Gerry's sabotage plot". "Maddy's grave, 13 McCanns buried her on beach". "Waiter can prove that 14 parents lied, says Maddy police. What Kate called out". 15 And finally "Maddy sold by hard-up McCanns".</p> <p>16 And all this despite the fact that the couple had 17 tried through the police to circulate letters to the 18 editors begging them for restraint, especially given the 19 ongoing search for their little girl, but all to no 20 avail.</p> <p>21 Of course, one thing did eventually work, you'll be 22 pleased to hear. I say you'll be pleased to hear, sir. 23 That depends on whether you are a believer in the Press 24 Complaints Commission or self-regulation. It was 25 a libel complaint that worked, worked at least in the</p> <p style="text-align: center;">Page 20</p>

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<p>1 sense that the campaign to vilify this poor couple with 2 the sort of nonsense stories that I've read out stopped. 3 A massive payout, to use the tabloid phrase, was made by 4 the Express, the worst but by no means the only 5 offender, and this proved to the world that these 6 accusations were untrue. But there are still some 7 people out there who will no doubt believe that there is 8 no smoke without fire, perhaps, the ones who still ring 9 the McCanns' house or try and send them messages.</p> <p>10 Money doesn't cure all the ills, as the Dowlers will 11 testify to, but unlike a privacy claim, it does prove to 12 the world, at least to the ordinary reasonable person, 13 that these outrageous lies are just that and at least 14 Express Newspapers published a front page apology.</p> <p>15 If this was a one-off, an isolated case of the press 16 going too far, it might be forgivable. A lapse in 17 judgment, albeit that it was only the Express Group, but 18 it wasn't. The McCanns' experience is not an isolated 19 or unique experience, and it has nothing to do with too 20 much sun and sangria clouding the brain of a pack of 21 journalists, as my second example demonstrates.</p> <p>22 He is someone called Christopher Jefferies. A year 23 ago, you would never have heard of him or seen him, 24 unless you were lucky enough to have been taught by him 25 during the 34 years he worked as an English teacher.</p> <p style="text-align: center;">Page 21</p>	<p>1 only fully understood the breadth of the articles which 2 sought to vilify him some time later. Perhaps that is 3 all one can deal with in a situation like that. 4 Thankfully, I don't know.</p> <p>5 But one reason why Mr Jefferies is an example to us 6 all is that this could happen to any one of us, 7 celebrity or not.</p> <p>8 LORD JUSTICE LEVESON: This, again, is an example of 9 something that contravened the Contempt of Court Act, 10 since proceedings were then active against him.</p> <p>11 MR SHERBORNE: Sir, it does, but as I will show you with 12 some of the newspaper headlines, not all of them of 13 course were convicted of contempt of court, but we say 14 some of the headlines went far too far in any event, 15 whether or not they breached the Contempt of Court Act. 16 This had nothing to do with hacking mobile telephones, 17 bribing the police, blagging personal information or 18 blackmailing girls into giving kiss and tell stories. 19 Let me share some of the highlights of this appalling 20 coverage.</p> <p>21 The Sun's headline: 22 "Verdict: weird, posh, lewd, creepy, loner with blue 23 rinse hair." 24 The Daily Mail: 25 "Was Jo's body hidden next to her flat? Murder</p> <p style="text-align: center;">Page 23</p>
<p>1 Yes, for 34 years he dedicated his life to teaching and 2 building up a reputation as an exemplary professional.</p> <p>3 It took the tabloid newspapers only a matter of 4 moments to destroy that reputation in the last days 5 of December of last year.</p> <p>6 Worse still, he was catapulted, like the McCanns, 7 from anonymity into the public spotlight in the most 8 terrifying way possible, as the man responsible, they 9 claimed, for the murder of Joanna Yeates, the Bristol 10 girl who rented one of the flats of which he was 11 a landlord and who disappeared on the weekend of 12 17 December and whose body was discovered on 13 Christmas Day 2010.</p> <p>14 We all now know that Mr Jefferies was entirely 15 innocent and the murderer, Vincent Tabak, has now been 16 convicted. But it created a media feeding frenzy of 17 almost unparalleled proportions, a frenzy which, sir, 18 as you know led to two newspapers being found guilty of 19 contempt of court.</p> <p>20 On one view, as he sat in a police station answering 21 questions, Mr Jefferies was thankfully unaware of the 22 clamour to convict him which occurred in the press as 23 they appointed themselves his judge, jury and 24 executioner. Once again, it is lucky that when he was 25 released on bail, he was cosseted by friends. Indeed he</p> <p style="text-align: center;">Page 22</p>	<p>1 police quiz nutty professor, the teacher they called 2 Mr Strange."</p> <p>3 And then the Mirror: 4 "Jo suspect is Peeping Tom. Arrest landlord spied 5 on flat couple, friend in jail for paedophile crimes." 6 So on and so forth. All in all, it represented 7 a frenzied campaign to blacken his character and 8 persuade the public that he was guilty, a frightening 9 combination of smear, innuendo and complete fiction 10 involving gratuitous dirt digging to the most shameless 11 extent possible. He was monstered in almost every sense 12 imaginable, wrongly accused of being a sexually 13 perverted voyeur, attacked for having had a malign 14 influence over his pupils, suggested he was involved in 15 a previous murder and linked to a convicted paedophile, 16 who I think was the man who owned the flat before the 17 man who owned this flat sold it to the man from whom 18 Mr Jefferies bought. Well, you get the picture. 19 Obviously he must have been guilty, then, of murdering 20 Jo Yeates. All of it was nonsense, and all of this 21 despite warnings from the Attorney General, warnings 22 that were largely ignored. Of course they were. It was 23 too tempting not to publish.</p> <p>24 It was a devastating destruction of all aspects of 25 Mr Jefferies' life, from the professional to the most</p> <p style="text-align: center;">Page 24</p>

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<p>1 deeply personal. For example, his relationship with his 2 late mother, the properties he owned, his conduct as 3 a landlord, his entire teaching career. Like clumsy 4 thieves, drunk on the frenzy of an intoxicatingly good 5 story, the press broke into his life and trashed 6 everything, everything that was precious to him, in 7 particular ransacking 34 years of dedication to his 8 profession in a desperate bid to find what they were 9 looking for, a way of establishing he was guilty.</p> <p>10 It is perhaps no wonder Mr Jefferies described it 11 later in this way:</p> <p>12 "My identity had been violated, my privacy had been 13 intruded upon, my whole life. I don't think it would be 14 too strong a word to say that it was a kind of rape that 15 had taken place."</p> <p>16 Mr Jefferies is no celebrity, he is not 17 a politician. A year ago today, I don't imagine that 18 even in his worst nightmares Mr Jefferies would have 19 ever dreamt this could have happened to him. No one 20 ever thinks it will happen to them.</p> <p>21 And the attitude of the press? One editor later 22 described it when interviewed on radio after the case as 23 a mistake. Really? Just a mistake? How reassuring. 24 I suppose the hacking into Milly Dowler's phone was just 25 an error.</p> <p style="text-align: center;">Page 25</p>	<p>1 arrested, he described the finger pointing and character 2 assassination by the news media of an as-yet innocent 3 man, Mr Jefferies, as "shameful". "It has made me lose 4 a lot of faith", he said, "in the morality of the 5 British press".</p> <p>6 I don't suppose Mr Jefferies has a lot of faith in 7 their morality either, and neither might you, sir.</p> <p>8 Before we leave this type of journalism, I should 9 briefly return to the McCanns, because they were to 10 suffer one final swipe.</p> <p>11 Without any warning, in September 2008, the 12 News of the World published Kate's private diary that 13 she had written to her missing daughter Madeleine. It 14 was a diary in which she recorded her innermost 15 thoughts, things she had written to her daughter, 16 a document so private that even her own husband had not 17 seen it, but which was taken by the police in the course 18 of the investigation.</p> <p>19 How did the News of the World get this from the 20 police? Did they buy the information? Obtain it 21 through some form of deception? We may never know now, 22 especially as the newspaper is defunct.</p> <p>23 And on what basis did they think they could justify 24 such a staggering intrusion into the McCanns' privacy? 25 The publication of this material, under the headline</p> <p style="text-align: center;">Page 27</p>
<p>1 But what does that say about the ethics of the 2 press, or at least a certain section of it? Is this the 3 kind of behaviour, I ask, which is the reason why we 4 have this Inquiry? Or do people still believe, as some 5 newspaper groups maintain, that there is no problem and 6 that we are only here because of political revenge 7 wreaked by the members of Parliament who have been 8 caught out fiddling their expenses?</p> <p>9 Yes, Mr Jefferies brought libel proceedings and yes, 10 he was paid a significant sum, but does that really make 11 up for what happened to him? Does anyone here really 12 think that having to dip into their profits will make 13 these newspapers think twice?</p> <p>14 It's an interesting feature of this story and one 15 I will leave you with, sir, that some of the journalists 16 who monstered Mr Jefferies were the very same 17 journalists responsible for the stories about the 18 McCanns. I'd love to name names, but I promised not to, 19 and tempting though it is to employ the same jigsaw 20 identification tactics which the press use to undermine 21 the orders courts grant to protect individuals from 22 unlawful publications, I am no John Hemming.</p> <p>23 Perhaps it's fitting though to let Jo Yeates' 24 partner have the last word. In a public statement back 25 in January of this year, long before Mr Tabak was</p> <p style="text-align: center;">Page 26</p>	<p>1 "Kate's diary in her own words", with a picture on the 2 front page suggesting she had provided this herself, 3 left her feeling "mentally raped", her husband says, and 4 is it any wonder? At if the McCanns didn't have enough 5 to deal with.</p> <p>6 Does this suggest something is fundamentally wrong 7 with the culture, the ethics and practices of the press 8 or all three? Sometimes, it is hard to differentiate 9 between them. On any count, I would say, this was 10 wrong, wrong and wrong.</p> <p>11 It should be quite clear now to the Inquiry that 12 a number of people are coming here of their own accord 13 to recount some highly personal and distressing 14 experiences, to put into the public domain very private 15 matters about themselves and to do so not because they 16 have anything to gain, which they don't, but because 17 they want to see something done to stop this type of 18 behaviour so that other people don't have to endure the 19 same suffering, whether great or not so great 20 comparatively.</p> <p>21 However, they all have a fear, a very real fear, 22 sir, that you've recognised, that in doing so, not only 23 will they have to go through painful experiences again, 24 but that they will run the gauntlet of a certain section 25 of the press who will seek to vilify them for standing</p> <p style="text-align: center;">Page 28</p>

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<p>1 up for their rights and for speaking out against such 2 types of behaviour.</p> <p>3 I have already explained how it is routine fare for 4 newspapers to rubbish privacy claimants or so-called 5 whingeing celebrities, how they even go after the 6 judiciary as well, or certainly particular ones who make 7 decisions against them. It appears that the press do 8 not like it when people exercise the freedom of speech 9 which they constantly refer to against the press 10 themselves. For a media that is so quick to shame those 11 in positions of responsibility or power when they claim 12 that these responsibilities or powers have been 13 violated, it appears that this does not work in reverse, 14 despite the enormous power and responsibility that the 15 press holds.</p> <p>16 What happens then to those who stand up to the 17 double standards of certain sections of the press? 18 Already, some of those who are giving evidence before 19 you have started to receive the red carpet treatment. 20 In one of the curtain raisers for this Inquiry, for 21 example, the Daily Mail wrote as follows: 22 "The Leveson Inquiry into phone hacking will ask 23 core participants to give evidence. The line-up looks 24 set to include the get your clothes off model 25 Abi Titmuss, S&M spanker Max Mosley, prostitute procurer</p> <p style="text-align: center;">Page 29</p>	<p>1 involve the mother of his recently born daughter, 2 a woman with whom, despite what the popular press love 3 to write, he has a good relationship, but he can deal 4 himself with the nonsense which has been published about 5 this relationship by the self-appointed moral guardians 6 of Fleet Street, the Daily Mail columnists.</p> <p>7 Last Friday I had to make an emergency application 8 for an injunction to restrain a campaign of appalling 9 harassment which this lady was having to endure, simply 10 because she was his former girlfriend and just had his 11 child.</p> <p>12 That's not strictly true. The real reason for the 13 harassment is probably far more sinister, and it is 14 revealed in the evidence which she gave, namely that she 15 has received threats because of the fact that the father 16 of her child has spoken out against the press. She 17 recalls how, whilst Mr Grant was appearing on 18 Question Time, discussing the closure of the 19 News of the World, Rupert Murdoch and press standards 20 generally, she received a barrage of telephone calls 21 from a withheld number from someone who managed to get 22 it from somewhere, and when she finally answered she was 23 threatened in the most menacing terms, terms which 24 should reverberate around this Inquiry: 25 "Tell Hugh Grant he must shut the fuck up."</p> <p style="text-align: center;">Page 31</p>
<p>1 Hugh Grant, gold digger Cheryl Gascoigne, John 'pants 2 down' Prescott and the rent boy loving former MP 3 Mark Oaten. Gerry and Kate McCann are also expected to 4 appear along with the parents of murdered Milly Dowler. 5 What sleazy, degrading company for those who have truly 6 suffered."</p> <p>7 Mr Grant will speak for himself, he's perfectly 8 willing and able to deal with these myths, the myths 9 that those whose self-interest requires it peddle 10 through the page of their newspapers. He can deal with 11 all these aspects without me needing to and he will do 12 so despite running the risk of merely feeding those 13 journalists poised with pen at the ready to dismiss 14 everything he says as the rantings of another whingeing 15 celebrity. See, I've written it for them. He can deal 16 with all of that admirably, but what he finds more 17 difficult to deal with, and who can blame him, is what 18 has happened to those close to him in the months since 19 he became such a vociferous critic of a certain type of 20 journalism as opposed to the public interest journalism 21 which he is very anxious to distinguish and support.</p> <p>22 The story is told in his supplemental witness 23 statement. The fact that it comes as a supplement, 24 despite his main statement being only a week or so old, 25 is testament to how recent these events are. They</p> <p style="text-align: center;">Page 30</p>	<p>1 Unsurprisingly, she was too stressed to call the 2 police.</p> <p>3 After the birth of her child, the fact of which 4 appears to have been leaked somehow, this hounding 5 turned into a continued pursuit of her and her child by 6 paparazzi and other photographers. It became so nasty 7 that when her mother tried to get evidence of the 8 identity of one paparazzo in a car, he then tried to run 9 her over, hence the emergency injunction which was 10 granted by Mr Justice Tugendhat last week. A written 11 judgment is being handed down on Friday.</p> <p>12 LORD JUSTICE LEVESON: Has any of this gone to the police? 13 MR SHERBORNE: It has been notified to the police, yes.</p> <p>14 You can say what you like about Mr Grant, and 15 believe me, enough of the newspapers have now, but then 16 as Mandy Rice-Davies said, they would say that, wouldn't 17 they? However, he has agreed to speak, as others have, 18 not because of any financial motive. He has chosen not 19 to sue for the hacking of his telephone. As the 20 newspapers sit here with their livelihood at stake, as 21 they tell us, the victims are here on their own time and 22 at their own risk.</p> <p>23 The last core participant whose evidence I will 24 refer to and who can tell you about the risks of 25 standing up to such bullies and how very real they are</p> <p style="text-align: center;">Page 32</p>

<p>1 is Anne Diamond. She will give evidence to the Inquiry 2 about the vendetta which she believes was waged against 3 her because of a question she put to Mr Murdoch years 4 ago and the devastating consequences for her and her 5 family as a result.</p> <p>6 Ms Diamond is a journalist and broadcaster as well 7 as a mother of five children, one of whom, as is 8 well-known, unfortunately died of cot death. She had the 9 temerity to ask the owner of News International what 10 he thought about the fact that his newspapers ruined 11 people's lives, exercising her freedom of speech, you 12 might say. But, of course, you can't do that to 13 a newspaper mogul, and that was it, the start of a press 14 war against her from a particular newspaper section for 15 the best part of 20 years. How could she ever win, you 16 might think. She will describe a catalogue of 17 incidents, each more surprising than the last, stories 18 dredged up by the Sun newspaper with headlines such as 19 "Anne Diamond killed my father", paying her family nanny 20 to talk about the relationship she had with her husband 21 at the time and publishing, most shockingly, on its 22 front page a photograph which the Sun newspaper managed 23 to buy from a freelancer who had taken private images of 24 her and her husband whilst they held their son's coffin 25 at his funeral. Her account of the effect on her and</p> <p style="text-align: center;">Page 33</p>	<p>1 mention.</p> <p>2 And the rubbishing didn't end with the chairman. 3 Mr Dacre apparently dismissed the entire board of 4 assessors in one side swipe, stating that none of them 5 have the faintest clue about how newsrooms operate.</p> <p>6 I think I've now had at least my allotted time, and 7 so I will draw my conclusions to a close, sir. I have 8 outlined at some length, perhaps, the various individual 9 but in some ways common complaints which my clients, the 10 core participant victims, have about the culture, ethics 11 and practices of the press as they have observed them 12 and has impacted, in many cases profoundly, on their 13 respective lives, families and friends.</p> <p>14 I leave you obviously with the task of devising 15 a real and effective system of dealing with these 16 abuses, abuses which are largely if not almost 17 exclusively, as I've said, the province of a certain 18 section of the press.</p> <p>19 I say only this, and it is of little comfort, no 20 doubt. I ask rhetorically: what kind of ethical lessons 21 can you teach to those journalists who authorised or 22 condoned the hacking into the voicemail of a murdered 23 schoolchild or who vilified the grieving parents of an 24 abducted toddler by accusing them of her murder? What 25 hope is there about the prevalent culture when the most</p> <p style="text-align: center;">Page 35</p>
<p>1 her family is a sobering tale.</p> <p>2 Unless anyone thinks that this intimidating 3 treatment is reserved only for the well-known or the 4 victims who have chosen to speak out or even the 5 arbitrary judges who rule against the press, the Inquiry 6 has already had a taste of this themselves at the 7 seminars. Who can forget the unedifying spectacle of 8 Kelvin MacKenzie trying to rubbish the Inquiry by 9 attacking its chairman? I won't repeat his particular 10 brand of vilification, but there was nothing accidental 11 in this. It was a smear intended to undermine the 12 process, no doubt, as opposed to anything personal.</p> <p>13 It appears that after the event, Mr MacKenzie 14 somewhat recanted, offering an apology, albeit 15 a somewhat muted one, one which did nothing to retract 16 the smears as opposed to regretting simply the 17 discourtesy that they represented, given how kind the 18 chairman was to him. This, we say, is another classic 19 example of how the tabloid press works. The apology 20 Mr MacKenzie offered was deep in the middle of his 21 column, somewhere buried in the inside pages of the 22 newspaper. A far cry from the prominence which the 23 comments themselves attracted in headlines throughout 24 the national press, as he was no doubt well aware they 25 would. The apology, by contrast, almost went without</p> <p style="text-align: center;">Page 34</p>	<p>1 powerful press organisations in this country, as we've 2 heard, in the face of the incidents I've mentioned, 3 steadfastly maintain that what we need is a freer press 4 as opposed to any greater form of regulation? And what 5 light is there at the end of the tunnel in terms of the 6 change in practices when Britain's most popular Sunday 7 daily newspaper had to be shut down because it was 8 condoning criminal activity on an industrial scale, and 9 instead of getting to the bottom of how it happened, 10 those in positions of responsibility hired another set 11 of private investigators to follow the 14-year-old 12 daughter of the lawyer who had the temerity to sue it in 13 the hope that this tactic would deter further claims?</p> <p>14 The victims who I represent don't want to stop 15 proper investigative or public interest journalism. 16 No one sensibly does. But if the relationship between 17 the press and the public is to recover, then this is the 18 time for it to start, and it must start now.</p> <p>19 Self-regulation through the PCC, as one of my 20 clients says, is tantamount to handing the police 21 station over to the mafia. The press talk about 22 freedom, and with that we say comes responsibility, 23 responsibility particularly for the rights of others. 24 But even leaving that to one side for a moment, it was 25 Albert Camus who said "Freedom is nothing but a chance</p> <p style="text-align: center;">Page 36</p>

<p>1 to be better".</p> <p>2 We've had press freedom for many years and they've</p> <p>3 not got better, they've got worse. It is time, we say,</p> <p>4 for change, and by that I mean real change.</p> <p>5 LORD JUSTICE LEVESON: Mr Sherborne, there's a great deal of</p> <p>6 power behind some of the things you've said, and the</p> <p>7 balance has to be struck, as I'm sure you appreciate,</p> <p>8 between the public interest, properly so-called,</p> <p>9 obviously, and rights of privacy to which you've</p> <p>10 referred, which can't necessarily exclude all</p> <p>11 circumstances in which it's appropriate for the press to</p> <p>12 look at individuals. I'm not trying to draw lines.</p> <p>13 You've been present as I've said more than once that</p> <p>14 a system has to be devised that has to work, and it has</p> <p>15 to work for the press, but it equally has to work for</p> <p>16 the public.</p> <p>17 MR SHERBORNE: Sir, yes.</p> <p>18 LORD JUSTICE LEVESON: So I would hope that you and those</p> <p>19 who instruct you will put the same sort of thought into</p> <p>20 the issues that I have raised with the press, bearing in</p> <p>21 mind that although of course you're acting for 51</p> <p>22 individuals, and of course have a very clear message to</p> <p>23 tell on their behalf, at the end of the day I have to</p> <p>24 find a route that works for everybody.</p> <p>25 MR SHERBORNE: Sir, yes, indeed, you have.</p> <p style="text-align: center;">Page 37</p>	<p>1 the same.</p> <p>2 MR SHERBORNE: Sir, of course.</p> <p>3 LORD JUSTICE LEVESON: Thank you. Thank you very much</p> <p>4 indeed.</p> <p>5 We'll have a break for five minutes, then Mr Jay,</p> <p>6 I wanted to know whether there was anything that you</p> <p>7 wanted to pick up from the various submissions that</p> <p>8 I have received, and then we'll see where we go from</p> <p>9 there. I think there are one or two other matters we</p> <p>10 have to deal with as well.</p> <p>11 MR CAPLAN: Before we break, enquiries have been made. Some</p> <p>12 of the matters which we're hearing about this afternoon</p> <p>13 obviously are in witness statements of some of the</p> <p>14 clients of Mr Sherborne that are being called next week</p> <p>15 and we still do not have those statements. I'm thinking</p> <p>16 of Mr Hugh Grant's further statement, Mr Coogan,</p> <p>17 Sienna Miller. These statements still have not come</p> <p>18 through. I don't know where the problem lies.</p> <p>19 LORD JUSTICE LEVESON: We'll find out in four minutes' time.</p> <p>20 (3.00 pm)</p> <p>21 (A short break)</p> <p>22 (3.09 pm)</p> <p>23 LORD JUSTICE LEVESON: Right. Have you been told,</p> <p>24 Mr Caplan?</p> <p>25 MR CAPLAN: I'm afraid I haven't.</p> <p style="text-align: center;">Page 39</p>
<p>1 LORD JUSTICE LEVESON: I hope you'll take part in that</p> <p>2 debate.</p> <p>3 MR SHERBORNE: Sir, we will. Can I just say this, and I say</p> <p>4 this without having had the chance to take full</p> <p>5 instructions from those I represent, but certainly</p> <p>6 having listened to Mr Rusbridger, it may well be that</p> <p>7 there is some common ground between the interests</p> <p>8 I represent and the statements that have been usefully</p> <p>9 put forward by Mr Rusbridger on behalf of the Guardian</p> <p>10 as looking at a real way, a sensible and responsible way</p> <p>11 of dealing with this area.</p> <p>12 LORD JUSTICE LEVESON: There is no immediate rush. It's</p> <p>13 obviously important that we hear this evidence in proper</p> <p>14 form at an appropriate pace, but the reason I have</p> <p>15 mentioned it so frequently is because the time to start</p> <p>16 at least contemplating the possibilities is now rather</p> <p>17 than in six months' time.</p> <p>18 MR SHERBORNE: Sir, yes, indeed.</p> <p>19 LORD JUSTICE LEVESON: I have been very careful not to</p> <p>20 express concluded views. I have called it various</p> <p>21 things: thoughts, streams of consciousness, but simply,</p> <p>22 as I'm sure the lawyers appreciate, I am preserving the</p> <p>23 position with an entirely open mind and prepared to be</p> <p>24 taken where the evidence leads me, but that's not to say</p> <p>25 that I'm not thinking and I want everybody else to do</p> <p style="text-align: center;">Page 38</p>	<p>1 LORD JUSTICE LEVESON: I'll get the answer. Somebody will</p> <p>2 tell me.</p> <p>3 Discussion re procedure</p> <p>4 MR CAPLAN: One other point whilst I am on my feet.</p> <p>5 Mr Sherborne, shortly before we broke -- and it's really</p> <p>6 for you, sir, more than anybody else -- at page 141 of</p> <p>7 the transcript was talking about Mr Hugh Grant and his</p> <p>8 recently born daughter and was making some criticism of</p> <p>9 columnists in the Daily Mail. He then went on to say</p> <p>10 that last Friday he was making an emergency injunction</p> <p>11 in relation to some events of harassment in relation to</p> <p>12 the mother of that child. I just wanted, having spoken</p> <p>13 to him, because I haven't seen Mr Grant's supplementary</p> <p>14 statement, but he confirms that that injunction was not</p> <p>15 against Associated Newspapers. It was to do in fact</p> <p>16 with some paparazzi photographers and it was</p> <p>17 a harassment injunction in relation to those</p> <p>18 photographers.</p> <p>19 LORD JUSTICE LEVESON: Thank you very much. I'm very happy</p> <p>20 for clarifications, where appropriate, to be provided</p> <p>21 and made clear as and when. The advantage of not doing</p> <p>22 part 2 at this stage is that one is looking at the</p> <p>23 bigger picture, not the specifics of conduct, although</p> <p>24 obviously when we move away from phone hacking, we can</p> <p>25 be rather more particular than we can be in relation to</p> <p style="text-align: center;">Page 40</p>

<p>1 what is the subject of a criminal investigation. Thank 2 you. 3 Right, Mr Jay. 4 MR JAY: Sir, the latest intelligence, the statements of 5 Garry Flitcroft together with exhibits, or one exhibit, 6 and the statement of Mr Ian Hurst went onto the system 7 last night. The statements of Mr Coogan, Ms Church, 8 Ms Diamond, Ms Winter and Mr Grant's supplemental 9 statement have gone to Lextranet today with a request 10 for expedition, and therefore their evidence should go 11 on the system, I imagine, by close of play today. That, 12 I believe, covers the exhibits. 13 Otherwise, it is according to what I told you 14 yesterday, so certainly by close of play tomorrow, 15 everything that is available will be publicly 16 disseminated. We're still waiting for the statement 17 from Sienna Miller. Oh, that's just arrived. 18 LORD JUSTICE LEVESON: All right. Let's see if we can get 19 that on too. 20 MR JAY: Yes. 21 LORD JUSTICE LEVESON: If there is any difficulty at all 22 about affected core participants getting access to 23 statements, is there a mechanism whereby if somebody 24 comes to the team offices they will at least be able to 25 see them?</p> <p style="text-align: center;">Page 41</p>	<p>1 MR GARNHAM: Then I'll deal with them both now, sir. 2 The first one is a misunderstanding that appears to 3 have crept into some of the information supplied by the 4 MPS, at least in the way it's been relayed. 5 LORD JUSTICE LEVESON: Well, let's get it right. Yes? 6 MR GARNHAM: As Mr Jay correctly told you in his opening, 7 there are approximately 28 readable corner names in the 8 Mulcaire notebooks. 9 LORD JUSTICE LEVESON: Yes. 10 MR GARNHAM: But it is not correct to suggest that a fair 11 inference can be that they were all News of the World 12 employees. 13 LORD JUSTICE LEVESON: That's what Mr Rhodri Davies 14 suggested. Yes? 15 MR GARNHAM: Some of them probably are. For many others, 16 it's impossible, at least thus far, to say whether they 17 were or were not. It certainly cannot be said that the 18 MPS have established that all the taskings indicated by 19 corner names were made by News of the World employees. 20 LORD JUSTICE LEVESON: That will get some other 21 representatives of the press jumping up and down, but 22 all right. 23 MR GARNHAM: I'll live with that, sir. 24 LORD JUSTICE LEVESON: Yes. 25 MR GARNHAM: Secondly, the Mulcaire notebooks indeed run to</p> <p style="text-align: center;">Page 43</p>
<p>1 MR JAY: They're going to be provided separately by email to 2 the core participants, I'm told, to expedite that 3 process. 4 LORD JUSTICE LEVESON: Good, right. 5 MR JAY: So any delay at Lextranet's end will be 6 short-circuited. 7 LORD JUSTICE LEVESON: Good. Hopefully once we get into 8 this system, it will all come much -- we'll get into 9 a rhythm and there won't be the difficulty. 10 MR JAY: Yes. 11 LORD JUSTICE LEVESON: It was in part for this reason that 12 I was persuaded, contrary to my own initial desires, to 13 have a three-day week this week rather than a four-day 14 week. 15 MR JAY: Yes. 16 LORD JUSTICE LEVESON: But there it is. 17 MR JAY: Sir, indeed. As I said, the material is not that 18 voluminous, but obviously needs to be considered. 19 I think Mr Garnham has an issue he wishes to raise 20 in relation to numbers. 21 LORD JUSTICE LEVESON: Right. Yes, Mr Garnham? 22 MR GARNHAM: Sir, I have two matters to raise, and I will 23 deal with them at the time you think best, but first of 24 all -- 25 LORD JUSTICE LEVESON: How about now?</p> <p style="text-align: center;">Page 42</p>	<p>1 some 11,000 pages, and Mr Jay correctly told you that 2 they evidence some 2,266 taskings, but the police cannot 3 say, because they do not know, whether every tasking 4 targets a different individual. In fact, that's 5 unlikely, and that's plainly relevant to any estimation 6 of the number of victims and the sport of guessing the 7 number of victims is one that's been playing out in the 8 press and elsewhere. 9 All I would say is to counsel caution about trying 10 to estimate the number of victims from these figures. 11 LORD JUSTICE LEVESON: Right. 12 MR GARNHAM: A third suggested clarification, sir, is this, 13 and it's in fact me rather seeking a clarification from 14 Mr Sherborne. He mentioned a little while ago that the 15 diary of Mrs McCann had been obtained in some way or 16 other from the police. That obviously caused us 17 a little concern. 18 LORD JUSTICE LEVESON: I read that as the Portuguese police. 19 MR SHERBORNE: I thought I had said it was the Portuguese 20 police but if I didn't make that clear, it was the 21 Portuguese police. 22 MR GARNHAM: I'm grateful for that. That will enable -- 23 LORD JUSTICE LEVESON: As I recollect, and I don't know 24 whether I'm giving evidence of this of what I've read or 25 from the statements, or whether Mr Sherborne said it,</p> <p style="text-align: center;">Page 44</p>

<p>1 the diary was seized by the Portuguese police, and just 2 to make it clear, I have an understanding that the 3 Portuguese authorities required it to be returned with 4 no copies kept, but in some way it found its way to -- 5 MR GARNHAM: I suspect that comes from the statement of 6 Mr McCann, but it doesn't matter, as long as the 7 position is dealt with. 8 The second matter I raise is this. By letter dated 9 10 November, those instructing me asked the solicitor to 10 the Inquiry whether the Inquiry would grant the MPS 11 permission to disclose the documents placed on the 12 Lextranet to the senior investigating officer for 13 Operation Weeting. We've not had a response to that. 14 I make no criticism of that, I know how busy the Inquiry 15 staff are, but I raised it with Mr Jay last night and he 16 suggested that I raised it with you orally today. 17 LORD JUSTICE LEVESON: I think you're right to raise it and 18 it raises some very interesting issues, which I will ask 19 for some help about. 20 Is this material that you've now seen material that 21 has been obtained by the Inquiry under compulsion or 22 voluntarily? Do you know? 23 MR GARNHAM: I don't know. I suspect -- the classic example 24 is a particular witness statement. I suspect that was 25 volunteered, but it might have been in response to</p> <p style="text-align: center;">Page 45</p>	<p>1 compulsion, might carry with it certain consequential 2 effects if it were put into the police system. I'm not 3 saying it would, but I'm saying, putting a criminal law 4 hat on, I'm a bit concerned about some aspects of that. 5 Is not the first thing to do, in relation to any 6 statement that you particularly want the police to have 7 because it advances their inquiry, to identify that 8 statement and then, through the Inquiry or through the 9 relevant core participant, seek permission? 10 For example, if one of Mr Sherborne's clients has 11 made a statement which you think would assist the police 12 inquiry, we can ask or I can ask -- it probably won't be 13 me -- Mr Sherborne whether his client would have an 14 objection to that statement being released under the 15 police. Then it's not being provided under compulsion 16 and you have it. That's the first thing. 17 For the rest of it, the need to take instructions 18 I do see as slightly different, and I'll just need to 19 hear what people think about that. 20 MR GARNHAM: Sir, I should say that with the agreement of 21 the Inquiry, News International are providing all their 22 documentation to us and to the Inquiry, so there's 23 a complete duplication in that regard and that's proving 24 helpful. We don't have the same arrangement with each 25 and every core participant.</p> <p style="text-align: center;">Page 47</p>
<p>1 a rule 9 or Section 21 request. I don't know. 2 LORD JUSTICE LEVESON: Are you trying to decide, as you read 3 these statements, whether in each case you want to 4 disclose it to the police or is this blanket? 5 MR GARNHAM: It's for two purposes, sir. First of all, it's 6 because, as we read it, we're seeing things that would 7 be material to the present investigation and we would 8 therefore like the police to have it. 9 The second purpose is that I would like to take 10 instructions from the officers involved in 11 Operation Weeting about that in order to ground 12 a request to you to make a Section 19 ruling in respect 13 of it. 14 I can't do either of those things because of the 15 terms of the confidentiality order as things stand at 16 the moment, which is why I'm asking you, sir, for 17 permission. 18 I'm quite happy to deal with it if the Inquiry 19 prefers it on a document-by-document basis, although we 20 would inevitably prefer to be able to show the senior 21 investigating officer all the material that goes onto 22 Lextranet. 23 LORD JUSTICE LEVESON: One has to be a bit careful about 24 that because what's been obtained by me pursuant to 25 a requirement under the 2005 Act, in other words under</p> <p style="text-align: center;">Page 46</p>	<p>1 LORD JUSTICE LEVESON: No, I can understand that. I have 2 the point. Right, thank you. 3 MR GARNHAM: Sir, I would only say about that that some of 4 that is urgent simply because the witnesses will be here 5 next week. 6 LORD JUSTICE LEVESON: All right. Let's deal with the first 7 point first. Mr Jay, I know, because it was discussed 8 with me, that the information which came in your opening 9 essentially came from -- well, obviously came from the 10 police and there was an opportunity for some checking to 11 be done, but would it be fair to say, in the light of 12 what Mr Garnham has said, howsoever it's arisen, that 13 your opening should be read with that caveat that he's 14 identified in mind? 15 MR JAY: Yes. But we can revisit the question of 16 inferences, indeed we can explore it further, as and 17 when DAC Akers gives evidence because it's one of the 18 matters we will probably ask her about, further clarity 19 on the approximately 19 other corner names. 20 LORD JUSTICE LEVESON: All right. Thank you very much 21 indeed. Let me deal with this point first because the 22 other person who has an interest in saying something 23 about that is Mr Davies. Mr Davies, you flagged this 24 point up immediately. 25 MR DAVIES: Yes.</p> <p style="text-align: center;">Page 48</p>

<p>1 LORD JUSTICE LEVESON: Is it sufficient if we have obtained 2 the correction to the way in which Mr Jay put it, or the 3 elaboration on what Mr Jay said, that we have received 4 which of course is now available for all to see? 5 MR DAVIES: Yes. As I explained to the Tribunal, we haven't 6 seen the whole of the notebook, so we are in no position 7 to make any comment as to the accuracy of what the 8 police say, but I am content if Mr Jay's opening is 9 treated as amended, as Mr Garnham said, and as Mr Jay 10 says when DAC Akers gives evidence, if it's necessary, 11 some further clarification may be obtained then, but the 12 position for the moment will be as Mr Garnham has put it 13 just now. 14 LORD JUSTICE LEVESON: That's fine, thank you. Thank you 15 very much and I'm grateful to Mr Garnham for picking 16 that up so speedily. It is inevitable that seeking to 17 summarise, one might not do the very fullest of justice 18 to every detail and inferences which may be thought 19 appropriate may not be right, so we have to be careful. 20 Right, the second point. First of all, it's quite 21 clear that it does in fact, because of the urgency, 22 concern your clients. Your clients, I think, all gave 23 statements not pursuant to legislation, not because 24 I required it, but I think I invited them all, because 25 I felt that it was appropriate to draw that distinction.</p> <p style="text-align: center;">Page 49</p>	<p>1 something -- 2 LORD JUSTICE LEVESON: You won't be able to do that in two 3 minutes. 4 MR SHERBORNE: No, sir. 5 LORD JUSTICE LEVESON: As regards the broader pictures, that 6 won't affect you, Mr Sherborne. It really affects 7 others who might have been required to make statements 8 who aren't necessarily represented. 9 Mr Jay, what's the position about this? 10 MR JAY: Sir, I am troubled by the possible Article 6 11 reasons. Most of the evidence the Inquiry has received, 12 but not all of it, was obtained pursuant to coercive 13 powers under Section 21 of the Inquiries Act, and the 14 purpose of obtaining that evidence is self-evidently to 15 assist this public Inquiry, not directly to aid the 16 police in its investigation. 17 LORD JUSTICE LEVESON: Yes. I wouldn't release any 18 statement that had been made by somebody who is 19 presently suspected of crime. 20 MR JAY: Yes. 21 LORD JUSTICE LEVESON: Certainly not without them 22 specifically giving authority because they could say 23 anything they liked to the police. 24 MR JAY: Sir, I respectfully endorse that. 25 The two other sort of categories of evidence,</p> <p style="text-align: center;">Page 51</p>
<p>1 MR SHERBORNE: Sir, yes. 2 LORD JUSTICE LEVESON: Do you have any objection, and if you 3 want to take a couple of minutes to take instructions of 4 course you may, to them being shared with the 5 Metropolitan Police? 6 MR SHERBORNE: Can I say this without having had the 7 benefit, which I will take in a moment, of seeking 8 instructions? I suspect that there won't be an 9 objection. We haven't received any request from the 10 Metropolitan Police so we haven't had any time to think 11 about this, but I can see the sense of it and I am aware 12 that one or two of those whom I represent have already 13 been assisting the police in the investigation. Can 14 I take a few moments just to -- 15 LORD JUSTICE LEVESON: Of course you can, of course you can. 16 I won't require you to do it with me sitting here 17 looking on. I will rise for a couple of minutes because 18 it's always much easier to do that -- 19 MR SHERBORNE: I think, with the benefit of that time, 20 Mr Crossley, who sits to my left, will speak to the 21 Metropolitan Police and perhaps we can come up with 22 a mechanism, because of course there are a number of 23 different individuals, at least 20 of whom are giving 24 evidence next week, who may well need to be consulted 25 about their individual circumstances, and that's not</p> <p style="text-align: center;">Page 50</p>	<p>1 however, there are the possibility of witnesses who 2 provided material to the Inquiry under these coercive 3 powers, who are not currently the subject of a police 4 investigation but who might be if that material were 5 provided to the police. And then there is material 6 which, as it were, would not be self-incriminating but 7 which might incriminate other people. 8 Whether it's necessary in both those cases -- maybe 9 it is -- to ask for the individuals' consent before the 10 material is released to the police is something which 11 I believe is worthy of further consideration. 12 LORD JUSTICE LEVESON: Yes. Maybe I'll have to investigate 13 this a bit more with Mr Garnham, but I'll be very, very 14 disturbed, I think, if a statement that had been made to 15 the Inquiry pursuant to a legislative requirement was 16 then used as the basis for identifying the writer of the 17 statement as a suspect. 18 MR JAY: Yes. 19 LORD JUSTICE LEVESON: Because once that's happened, anybody 20 who has anything useful to say about a large number of 21 topics simply won't say it, and the benefit that I have 22 of the widest possible picture will be entirely lost. 23 I say nothing about Saunders and the European 24 Convention. 25 MR JAY: Yes. Of course, anybody who receives a Section 21</p> <p style="text-align: center;">Page 52</p>

<p>1 notice will understand the immunities under Section 22 2 of the Inquiries Act, and those immunities include 3 a privilege against self-incrimination. 4 It might be said that embedded within that is some 5 sort of assurance that the Inquiry will not be providing 6 that information on to the police, let alone the 7 difficulties you advert to in Saunders v The United 8 Kingdom where the European Court held that it was 9 a breach of Article 6 of the Convention for the 10 prosecution to rely on evidence which had been obtained 11 by the then DTI pursuant to statutory coercive powers. 12 LORD JUSTICE LEVESON: I certainly won't give that direction 13 without rather more detailed argument. 14 MR JAY: Yes. 15 LORD JUSTICE LEVESON: The subquestion is slightly 16 different, and is to this effect: is it appropriate for 17 Mr Garnham to be able to take instructions from a police 18 officer simply for the purposes of this Inquiry and, if 19 so, should that police officer be required to sign 20 a similar confidentiality undertaking so as to provide, 21 if you like, a Chinese wall between what is within the 22 knowledge of the police for this Inquiry and their 23 investigation, or is that unrealistic? 24 MR JAY: Putting aside the possible artificiality of the 25 Chinese wall, but that may be capable of being</p> <p style="text-align: center;">Page 53</p>	<p>1 of the Lextranet system to the core participants' 2 section of the system. At the moment, there are not, of 3 course, 2,000 documents on that side of the wall, there 4 are far fewer documents. 5 LORD JUSTICE LEVESON: So all those documents are actually 6 due to enter the public domain because they're 7 statements or exhibits -- 8 MR JAY: Well, some of them will, some of them won't. Can 9 I give you a concrete example? The exhibits to 10 Mr Mosley's witness statement have been provided to the 11 core participants on the basis that they are 12 confidential to the core participants. 13 LORD JUSTICE LEVESON: Yes. 14 MR JAY: The reason being is that although many of the 15 exhibits are quite innocuous, they relate to the public 16 pronouncements of the European Court of Human Rights or 17 Mr Justice Eady, there are the two offending 18 News of the World articles -- 19 LORD JUSTICE LEVESON: There's no question of -- 20 MR JAY: Those are not going to enter the public domain. 21 LORD JUSTICE LEVESON: There's no question of them entering 22 the public domain for reasons that I've given several 23 times, and secondly, they're not the sort of document 24 that would remotely fall within the group that 25 Mr Garnham is concerned about.</p> <p style="text-align: center;">Page 55</p>
<p>1 surmounted by the giving of an undertaking, on my 2 understanding what Mr Garnham wishes to do is in 3 relation to a particular piece of evidence seek 4 instructions from an officer who has given the 5 undertaking as to whether in those circumstances an 6 application should be made to you for some sort of 7 restriction order under Section 19 of the Act. 8 LORD JUSTICE LEVESON: Oh, I see, and only for that purpose? 9 MR JAY: On my understanding, that's the basis of his 10 request. 11 Of course, lest there be any misunderstanding about 12 this, and as everybody knows, there are two separate 13 sections of the Lextranet system. There is a section 14 which is only available to the Inquiry team, which at 15 the moment contains just over 2,000 separate documents. 16 Many of those documents could not be released into the 17 public domain, given Section 19 of the Act and the 18 ongoing police investigation. Of course, we have seen 19 those documents, we have read virtually all of them, and 20 where they are, as it were, confidential documents, we 21 will maintain their confidentiality. That goes without 22 saying. 23 I don't believe that Mr Garnham is asking to look at 24 those documents. What his request relates to are the 25 documents which migrate from that very private section</p> <p style="text-align: center;">Page 54</p>	<p>1 MR JAY: What Mr Garnham is seeking, on my understanding, 2 although I haven't discussed this with him, but he can 3 clarify my understanding if it's incorrect, is that as 4 and when a document migrates from the private part of 5 the site, which only we see, to the core participant 6 part of the site, that document may be of interest in 7 Mr Garnham's view to the officers of Operation Weeting. 8 However, the Metropolitan Police have signed up to 9 an undertaking whereby at the moment they only use the 10 documents for the purposes of Inquiry -- 11 LORD JUSTICE LEVESON: Yes, but we're actually at 12 cross-purposes here because are we saying it is of 13 interest to the Inquiry, the police investigation -- 14 MR JAY: Yes. 15 LORD JUSTICE LEVESON: -- or are we saying actually we want 16 it redacted for whatever reason, not necessarily because 17 we don't know about it, but because it might impact 18 adversely on the police investigation? 19 MR JAY: It may be that Mr Garnham's concern is that once he 20 sees -- once the relevant officer in Operation Weeting 21 sees an unredacted witness statement, which is now on 22 the core participants' part of the intranet system, he 23 may wish to have the opportunity to make representations 24 that further redactions be made under Section 19 to 25 protect the integrity of the police investigation. That</p> <p style="text-align: center;">Page 56</p>

<p>1 may be his concern.</p> <p>2 LORD JUSTICE LEVESON: All right.</p> <p>3 MR JAY: I'm just teasing out, really --</p> <p>4 LORD JUSTICE LEVESON: That's why we have to do it -- I'm</p> <p>5 happy to do it in this way, not only so that everybody</p> <p>6 hears it but also so that everybody, whether or not</p> <p>7 they're involved, can feel it appropriate to make</p> <p>8 recommendations if they wish to.</p> <p>9 Mr Garnham, you can say which it is. Is it because</p> <p>10 there is a statement that you've seen that actually you</p> <p>11 think will further the police investigation, or is it</p> <p>12 because there is a statement you've seen some details of</p> <p>13 which you think the police may want redacted under</p> <p>14 Section 19?</p> <p>15 MR GARNHAM: The immediate prompt for this application is</p> <p>16 the second.</p> <p>17 LORD JUSTICE LEVESON: Yes.</p> <p>18 MR GARNHAM: I'm not keen to ventilate what it is in which</p> <p>19 statement in open forum for obvious reasons, but it's</p> <p>20 the second that prompts the application.</p> <p>21 LORD JUSTICE LEVESON: Once you've done that, as</p> <p>22 Mr Sherborne would say, the cat is out of the bag and</p> <p>23 it's gone, and I understand that.</p> <p>24 MR GARNHAM: Sir, that's the immediate prompt. Mr Jay is</p> <p>25 right to apprehend that in respect of the material on</p> <p style="text-align: center;">Page 57</p>	<p>1 anything to say about the first situation? That is,</p> <p>2 obtaining of the confidentiality undertaking that you've</p> <p>3 all signed from a police officer who is familiar with</p> <p>4 Operation Weeting, and therefore what might particularly</p> <p>5 cause prejudice, being able to give Mr Garnham</p> <p>6 instructions as to redacting some part of the statement</p> <p>7 for public purposes -- I mean, I'll have seen it and it</p> <p>8 will be in, but it will be redacted from public purposes</p> <p>9 if I make an order under Section 19(2).</p> <p>10 Mr Davies?</p> <p>11 MR DAVIES: I don't, sir.</p> <p>12 LORD JUSTICE LEVESON: Mr Caplan?</p> <p>13 MR CAPLAN: No.</p> <p>14 LORD JUSTICE LEVESON: Does anybody else have any</p> <p>15 observations to make about that?</p> <p>16 Right. So that's a given. Nominate an officer --</p> <p>17 MR GARNHAM: Thank you, sir.</p> <p>18 LORD JUSTICE LEVESON: -- and he can sign a confidentiality</p> <p>19 undertaking and give you instructions accordingly.</p> <p>20 MR GARNHAM: Thank you, sir.</p> <p>21 LORD JUSTICE LEVESON: I'll rise now for Mr Sherborne to</p> <p>22 take some instructions and so you can be a little bit</p> <p>23 less coded with him than you've necessarily had to be</p> <p>24 with me, and let me know when you're ready.</p> <p>25 (3.40 pm)</p> <p style="text-align: center;">Page 59</p>
<p>1 the public side of the divide he describes, I was also</p> <p>2 seeking permission for that to be shown to a police</p> <p>3 officer in Operation Weeting for the benefit of the</p> <p>4 police investigation, and we had offered in</p> <p>5 correspondence, the correspondence to which I referred,</p> <p>6 that that officer would be somebody who would sign the</p> <p>7 confidentiality --</p> <p>8 LORD JUSTICE LEVESON: Subject to anything that anybody else</p> <p>9 may say, I have no problem at all about an officer who's</p> <p>10 fully cognisant with the police inquiry but who signs an</p> <p>11 undertaking seeing the statements so as to advise you as</p> <p>12 to what if anything ought to be redacted. I have no</p> <p>13 problem about that at all, but I'll hear everybody else.</p> <p>14 As regards the further step, in relation to those</p> <p>15 for the next two weeks who are, of course,</p> <p>16 Mr Sherborne's clients, I'll rise for Mr Sherborne to</p> <p>17 consider the matter and possibly discuss with you what</p> <p>18 the appropriate way forward is and you can identify the</p> <p>19 statements you're concerned with, because that will make</p> <p>20 the task of Collyer Bristow rather less intense if they</p> <p>21 have to speak to three people as opposed to 53 people.</p> <p>22 You can do that privately and then I'll come back to</p> <p>23 hear what you have to say.</p> <p>24 MR GARNHAM: Yes.</p> <p>25 LORD JUSTICE LEVESON: Right, thank you. Does anybody have</p> <p style="text-align: center;">Page 58</p>	<p>1 (A short break)</p> <p>2 (3.46 pm)</p> <p>3 LORD JUSTICE LEVESON: Mr Garnham.</p> <p>4 MR GARNHAM: Sir, thank you for the time. The result of my</p> <p>5 conversation with Mr Sherborne is that we can arrange</p> <p>6 this. Provided the Inquiry has no objection, and</p> <p>7 I anticipate that it will not, we will do it between</p> <p>8 ourselves by his voluntarily letting me see these</p> <p>9 statements then we can make whatever submissions we want</p> <p>10 to you in the light of them.</p> <p>11 LORD JUSTICE LEVESON: Yes.</p> <p>12 MR GARNHAM: That deals with those statements.</p> <p>13 LORD JUSTICE LEVESON: You'd better do that quite quickly.</p> <p>14 MR GARNHAM: It will happen quickly.</p> <p>15 LORD JUSTICE LEVESON: Yes.</p> <p>16 MR GARNHAM: The second thing is the undertaking. The</p> <p>17 original letter which began this process from my</p> <p>18 instructing solicitor of 10 November proposed</p> <p>19 a willingness to sign a confidentiality undertaking, so</p> <p>20 that will follow suit and that provides no difficulty</p> <p>21 either.</p> <p>22 The third point I would raise simply in case it ever</p> <p>23 arises again, although it won't do this afternoon,</p> <p>24 Mr Jay suggested that there might be some difficulty</p> <p>25 about documents obtained under compulsion being passed</p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 to the police. I interpolate to say I'm not seeking 2 that this afternoon. And he said there might be 3 a difficulty because of the sort of Saunders line of 4 authority. I would only say this in relation to that: 5 Section 21 is qualified by Section 22. You cannot 6 require somebody to provide a statement to the Inquiry 7 that is incriminating of themselves. 8 LORD JUSTICE LEVESON: Therefore that might be the answer. 9 MR GARNHAM: That may be the answer. I say that just in 10 case it needs to arise on other occasions. It need not 11 today. 12 LORD JUSTICE LEVESON: If necessary and we're short of legal 13 things to do -- 14 MR GARNHAM: We can spend an afternoon on that. 15 LORD JUSTICE LEVESON: -- then we can think about that. All 16 right, thank you very much. 17 Mr Sherborne, that's all right, is it? 18 MR SHERBORNE: Sir, it is, yes. 19 LORD JUSTICE LEVESON: Good. I have a request of you, and 20 it's not of the highest urgency but it is moderately 21 significant. I don't think it will cause you too much 22 work. But you have pointed to a number of particularly 23 critical articles -- particularly important, I'm using 24 the word critical -- articles in relation to a number of 25 your clients and have made the point forcefully that</p> <p style="text-align: center;">Page 61</p>	<p>1 like to make sure that I understand whether there is 2 another side and, if so, what it is, in the context of 3 ethical decision-making at journalist level and at other 4 levels. 5 I can always pick these up with editors, most of 6 whom I think are already likely to be giving evidence, 7 but I just wonder whether in relation to some of them it 8 may not be sensible to go a bit further. I'm not saying 9 I will, but I'm saying that I think it's worth thinking 10 about. 11 MR SHERBORNE: Sir, yes. We say of course the articles 12 speak for themselves, but I can understand why the 13 Inquiry might want to hear from the individual 14 journalists as opposed to the editors as to why those 15 stories were written. 16 LORD JUSTICE LEVESON: Yes. 17 MR SHERBORNE: As I say, I will provide those names -- 18 LORD JUSTICE LEVESON: And the considerations that went into 19 them. 20 MR SHERBORNE: Sir, yes. 21 LORD JUSTICE LEVESON: Because that's the other side of the 22 coin. There may be no other side, and I take your point 23 that the articles speak for themselves. 24 MR SHERBORNE: Sir, yes. 25 LORD JUSTICE LEVESON: But it's --</p> <p style="text-align: center;">Page 63</p>
<p>1 there could be no public interest in this particular 2 story and the consequences of harm were very real. And 3 you said, I think more than once, that similar bylines 4 were visible on the stories, in other words written by 5 the same people covering different stories. 6 MR SHERBORNE: Yes, in relation to the Jefferies case and 7 the McCann case. 8 LORD JUSTICE LEVESON: Yes. If you could pick out a number 9 of specific examples, and it may be that your clients 10 will have them very much in mind, and maybe they're 11 collected somewhere, if it's difficult, say so, it may 12 be that I will think about asking the specific 13 journalists to deal with the very points you've raised. 14 I'm not saying I will, but I think it's a potentially 15 fruitful line of inquiry. 16 MR SHERBORNE: Sir, I'm very grateful for that. In terms of 17 that specific point, namely the overlap between 18 journalists who covered the McCann case and the 19 Jefferies case, that is work which will take very little 20 time to do, I can reassure you. I can certainly provide 21 that within the next day or so to the Inquiry. 22 LORD JUSTICE LEVESON: Yes. I'm not asking you to give me 23 100 names, because the timeframe within which I'm 24 operating will bite throughout, but you've presented one 25 side of a picture very graphically, and I would just</p> <p style="text-align: center;">Page 62</p>	<p>1 MR SHERBORNE: It is, and I'm sure that the particular core 2 participants that this refers to would be interested to 3 understand it, if there is another side to their story. 4 LORD JUSTICE LEVESON: Yes. All right. That's food for 5 thought. 6 MR JAY: Sir, may I raise one issue? I haven't seen the 7 text of the proposed undertaking the officer from 8 Operation Weeting would be giving, that is to say solely 9 for the purpose of indicating whether there are any 10 Section 19 redaction issues, but it should be made clear 11 that that is the sole purpose for which the officer can 12 consider the witness statements at this stage and would 13 override any other duty the officer might have to embark 14 on a line of inquiry which might otherwise assist 15 Operation Weeting in general. 16 LORD JUSTICE LEVESON: Yes, I think Mr Garnham understands 17 that. 18 MR JAY: Thank you. 19 LORD JUSTICE LEVESON: And doubtless it can be drafted and 20 you'll agree something and it will be signed and all 21 that will be done very quickly too. 22 MR JAY: Yes, it will have to be done very quickly. 23 LORD JUSTICE LEVESON: It can be subject to an undertaking 24 at this stage while it's sorted out. 25 Anything else? We've managed to conduct a full day.</p> <p style="text-align: center;">Page 64</p>

<p>1 I think it is the first of many. 2 Thank you very much. We'll resume at 10 o'clock on 3 Monday morning. 4 (3.55 pm) 5 (The hearing adjourned until 10 o'clock on Monday, 6 21 November 2011) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 65</p>	

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