

Witness Statement

of

David Allen Green

1. My name is David Allen Green and I write the *Jack of Kent* blog. I am also the legal correspondent for the *New Statesman* and media correspondent for *The Lawyer*. I am both a practising lawyer and a journalist. I was called to the Bar in 1999 and cross-qualified as a solicitor in 2001. I am a member of the National Union of Journalists and hold an accredited press card.
2. My intention in giving evidence to the Inquiry is to assist by explaining the limited but growing extent to which social media is providing a means by which the mainstream media is being regulated and scrutinised in a way which was perhaps not possible until a few years ago. I also want to set out some examples of where there appears to be abuse by the mainstream media of those who participate in social media.
3. This witness statement will be supplemented by a further witness statement giving evidence of a number of blogs which are checking and exposing incomplete or biased journalism. The supplementary witness statement will also provide details of where the mainstream media has abused users of social media including in respect of misuse of photographs.
4. I started the *Jack of Kent* blog in 2007. This is a blog which generally provides a liberal and critical perspective on legal and policy matters. It is not a partisan or gossip blog. Almost all my sources are stated and often quoted in full or linked to. For example, it is my practice to usually publish full press statements given to me in response to queries rather than to gloss or cherry pick quotes.
5. When I blog I comply with the general law of the land. I believe that I blog ethically and responsibly.
6. In over four years of writing about sensitive or controversial subjects, I have never had a significant complaint or a credible threat.

7. I pre-moderate comments as I believe this leads to a higher general level of comments. *Jack of Kent* has a reputation for the quality of its comments, many of which are of a higher quality than the head post itself.
8. In 2010 *Jack of Kent* was shortlisted in the blogging category for the George Orwell prize for political writing. I was then asked to co-judge the blogging prize in 2011 and examined over 200 political blogger entries (and over 2,000 individual blogposts). Also in 2011, my *New Statesman* blog was shortlisted alongside the blogs of the BBC's Business Editor and the Economist's Political Editor in the mainstream media blog category of the *Editorial Intelligence* awards. With this background I believe I have a good general knowledge of political and related forms of blogging.
9. I am also active in and have a good awareness of other forms of social media. I have a Twitter account with 21,700 followers and a public Facebook page followed by 1,190 users. I am also a regular panellist on the highly popular *Without Prejudice* legal podcasts, where Mike Semple Pigot, Carl Gardner and I are joined by figures such as Joshua Rozenberg, John Cooper QC, Frances Fitzgibbon QC and Tim Pitt-Payne QC to explain complex legal issues for podcasts for people to download to listen as they wish.

Blogging

10. I believe the Inquiry may benefit from understanding more about the nature of blogging and other social media, and the (negative and positive) relationship blogging and social media have with the mainstream media.
11. There is no single definition of blogging. That said, one universal quality of blogging is that it is written deliberately to be read on an electronic screen, such as a VDU or mobile telephone.
12. Blogging also tends to have a number of other qualities which distinguishes it from other forms of media activity.

13. First, it is generally a form of self-publication. Apart from the few bloggers who work for mainstream media organisations, almost all blogs do not go through any commissioning, editing or lawyering process before publication to the world. There is also no requirement of a word-count, and so a blogpost can be as long or as short as the author wishes. Most bloggers are private citizens with no job in media or politics. Indeed, many blogs have no media or political content at all, and can range from vintage clothes to album reviews.
14. Second, blogging can be immediate. A post can go from conception to publication on the screen in little more than the time it takes to type or load the content. Accordingly, a blogpost can be posted as and when the author wishes.
15. This means that blogging is extremely well-suited to responding to developing news events (especially when combined with the use of Twitter) and now “live blogs” are becoming the norm on mainstream media websites. For example, there are a number of Leveson live blogs. “Live blogging” is becoming part of the job of many journalists at mainstream media organisations.
16. The elements of speed and self-publication in blogging make it, in my view, akin to pamphleteering.
17. Third, there is the feature which – in my opinion - makes blogging sometimes stronger as a medium than any print journalism, and that is linking. Blogs can easily link to other sites.
18. This means that in terms of original source material, a blogger can link to, say, a government report, a scientific paper, or a case report as an authority for the point being contended.
19. And in terms of commentary or debate, a blogger can link to the webpage being criticised or commended, whether it be a mainstream media site or another personal blog.
20. Links make blogging an incredibly powerful tool for both blogger and reader for testing claims made about materials on other websites. If blogging is akin to pamphleteering, then it is pamphleteering with electronic footnotes.

21. Fourth, many leading blogs have an on-going collaborative relationship with their readers who are able to take matters further and develop ideas or provide new information or links. In my case, this collaboration was most notable in a post about Johann Hari which I refer to below.
22. Whilst it is true that certain mainstream media sites suffer from a disproportionate number of nasty comments “below the line” I think that is not generally true of most independent blogging.

Twitter

23. Blogging must nowadays be considered alongside Twitter, the increasingly popular and influential social media platform. The Twitter user (“tweeter”) has an account and the ability to instantly send and receive “tweets” of other tweeters.
24. Each tweet is limited to 140 characters. On the face of it, this should be a limiting feature. But in practice it is amazingly flexible. This is partly because website addresses (urls) can be truncated and so do not take up all the characters available. It is also because “hashtags” (words or phrases prefaced with a ‘#’) can mean that tweeters can immediately read tweets on given topics. For example, this Inquiry has the hashtag ‘#Leveson’ and so any tweeter interested in reading tweets from the Inquiry, and comments and links other tweeters, can easily create a column to see all relevant tweets.
25. Accordingly Twitter is an incredibly efficient form of sharing information and it is now increasingly popular with journalists for both promoting their own output and obtaining news or sources from others.
26. A tweet can be “re-tweeted” or (“RTed”) to your followers. Tweets which tend to be re-tweeted are either humorous/striking comments or links to some new development. If a tweeter with a higher follower count re-tweets it will mean that the tweet will go to far more people than who followed the original tweeter.
27. As with blogging, there is a significant but informal form of peer approval and self-regulation on Twitter. I would say based on my experience that users of Twitter are more responsible in respect of certain contempt of court matters than many in the mainstream media.

Relationship between social media and the mainstream media - negative aspects

28. I would now like to briefly mention some examples of where there seem grounds for concern at how the mainstream media have made targets of people using social media.
29. Perhaps the most notorious example was the horrific use by the Scottish edition of the Sunday Express on 8 March 2009 of the Facebook pages of Dunblane survivors. In a front page article entitled "Anniversary Shame of Dunblane Survivors" details were taken from Facebook pages of teenage survivors. The newspaper was forced by an online campaign to issue an apology on 22 March 2009. (The PCC did not adjudicate until 22 June 2009.)
30. However, the Dunblane survivors incident is just one example of the routine misuse by journalists (and those hired by them) of social media to obtain information on non-public figures for sourcing or informing news stories. It would seem there is a sense of "anything goes". There is also considerable concern of the unauthorised use (especially by tabloids) of photographs of non-public figures taken from Facebook in particular.
31. The view of the mainstream media appears to be that the risks of complaint or legal action by these non-public figures is of less weight than the advantage of gaining cost-free content for websites and newspapers. Permission is invariably not sought for reproduction of such photographs, and the reproduction often would seem to be infringing act under copyright legislation.
32. This casual approach of the mainstream media in this respect contrasts with the care with which they themselves license images from commercial picture agencies. There is perhaps an irony when some in the mainstream media profess to be concerned about "piracy" when there is such intrusive misuse of the materials. I will give examples of this in the supplementary witness statement.
33. There was also considerable concern at how various mainstream media once sought to "out" pseudonymous bloggers. The two best known examples are that of the author of the police blog "NightJack" by the *Times* and of the popular sex blogger "Girl With A One-Track Mind" by the *Sunday Times*.

34. The *Times* has now confirmed that email hacking was used by the reporter in the NightJack investigation. There still appears to be no plausible explanation as to how the *Sunday Times* obtained details of Girl With A One Track Mind's identity by using non-private information. Once she was outed she was subjected to humiliating and defamatory coverage by the mainstream media. The research scientist Dr Brooke Magnanti, who blogged as "Belle de Jour", has written publicly that she believes a journalist used a "Trojan horse" program to obtain her identity before she chose to out herself.
35. Each of these three cases would, in my opinion, warrant anxious scrutiny by the Inquiry. Whatever the actual public interest, if any, in "outing" such bloggers (and the widely held view is that there was none whatsoever), there should be attention paid of the methods used by reporters in seeking to expose those writing to the public on condition of anonymity. The same public interest which protects the anonymous sources of journalists must apply to the protection of those who write directly for the public.

Social media and the mainstream media – positive aspects

36. Notwithstanding the concerns above, the relationship between the mainstream media and social media is becoming more positive.
37. I would invite the Inquiry to look at carefully at this increasingly positive relationship, as there seems to be emerging an informal form of regulation and scrutiny.
38. But in doing so, it is important for the Inquiry not to accept the negative stereotypes of bloggers put forward by mainstream media figures with little or no experience of reading the relevant blogs. Rather than "cowboys" (as depicted by a previous witness to this Inquiry) many leading figures in the blogosphere are eminent figures in their own right. For example, in "Bad Science" blogging, one leading figure is Professor David Colquhoun, a Fellow of the Royal Society. In "Bad Law" blogging there are a number of distinguished lawyers including Frances Fitzgibbon QC. Such individuals are in my opinion more representative of the serious blogosphere than the throw-away caricatures put forward by ill-informed individuals.

39. That said, the eminence of any blogger is a very small element in understanding why some blogs are more popular than others. A blogpost usually must speak for itself. Many successful blogs are by those who are best able to use the flexibility of the medium to share and communicate information.
40. The success of a blog will therefore tend over time to depend on quality of content and approval by peer review. In respect of those blogs which seek to scrutinise matters in the public domain a further element which goes to long term success is reliability and transparency. There is an important etiquette in independent blogging of acknowledgment of others (or "hat-tipping") which is not often shared by the mainstream media.

"Bad Journalism" blogging

41. Within the "blogosphere" here are a number of highly regarded bloggers who specialise in exposing poor quality or misleading journalism. The usual target is the *Daily Mail* but other newspapers are covered too.
42. What happens is that a selected news story or column is subjected to scrutiny ("fact-checked") and the apparent basis for the story or column questioned. One excellent example of this is the destruction by bloggers of the Tabloid staple of "Winterval" by Andy Mabbett and others. Even the *Daily Mail* now accepts that the story of Winterval as an anti-Christian event is incorrect.
43. I will provide a large number of examples of such posts in my supplementary witness statement

"Bad Science" blogging

44. "Bad Science" blogging is perhaps the most successful form of blogging at the moment. The dominant figure in respect of exposing poor quality science and health reporting in the mainstream media is Dr Ben Goldacre. There are, however, many other science bloggers including Professor David Colquhoun and Dr Petra Boynton.

45. The effect of “Bad Science” blogging has been profound. What used to be an adversarial relationship, with bloggers simply criticising media stories, has now transformed to one where many leading health and science journalists now work in collaboration with bloggers in sourcing and then improving stories.
46. The ability to link to source information has had a particularly positive effect in science and health blogging. The impact of such blogging has been greater than could have been achieved by any deliberate regulatory action.
47. Health and science reporting is still not as good as it could be (especially the “cause/cure cancer” type features which feature in too many tabloids) but the Inquiry should look at the success in this area as an indication as to how collaboration can achieve positive outcomes rather than formal regulation.
48. I will provide a number of examples of such posts in my supplementary witness statement.

“Bad Law”

49. I detail my own blogging in legal and other areas below. I am one of a number of legal bloggers (not all of whom are practicing lawyers) who promote the public understanding of law. Whilst we are careful never to provide legal advice, and always are mindful of any duties to the court and to any client, we use blogs to provide useful legal information and to direct people to original material.
50. One leading legal blogger engaged in correcting media misrepresentations of legal matters is the barrister Adam Wagner. He and others at the UK Human Rights Blog provide an especially useful service in scrutinising bad “human rights” stories in the mainstream media.
51. Also highly regarded in this respect is former government lawyer Carl Gardner, who covers bad reporting of public law stories. The media law blog INFORRM provides detailed and sceptical coverage of how the media portray media law issues.
52. I will provide a number of examples of such posts in my supplementary witness statement.

My blogging

53. *Jack of Kent* is hosted on a straightforward and easy to use blog host website called "Blogger". I have no idea where the servers of Blogger are located. Anyone with internet access is able to create such a blog. The other main site for blogs is provided by "WordPress". Most bloggers who have not built their own website or blog on a commercial or group site tend to use either Blogger or WordPress.
54. In essence, all I do is type into a field to create a "post" (or "blogpost") and, when finished, I press publish. The post is then published to the world and can be accessed by any person able to reach the Blogger site. It used to be that some minor technical knowledge of HTML code was required to blog, but increasingly one can prepare posts on "What you see is what you get" (or WYSIWYG) basis. I usually file my posts for the *New Statesman* and *The Lawyer* by email, and they are uploaded by editorial staff.
55. I am not paid for the writing the *Jack of Kent* blog. It is written as a hobby. I do paid internet journalism, primarily for the *New Statesman*. I do very little print journalism.
56. I am mainly but not entirely a "Bad Law" blogger. My usual approach to legal blogging is to take a legal matter – usually a live case or one just decided – and to explain the applicable law and procedure. I have no particular interest in academic law, but I am fascinated by just how certain cases end up in the courts or how legal items end up in the news. I blog often so as to promote the public understanding of law. As far as possible I seek to help the reader understand the relevant materials and I take full advantage of linking and the lack of a word count. I also work hard at making the layout of a blog page easy to read and scroll down.
57. From spring 2008 to spring 2010 *Jack of Kent* became popular for its detailed and accessible coverage of the libel claim brought against Simon Singh by the British Chiropractic Association.

58. There was intense interest around the world in this case, especially in the scientific community, but no sources of reliable information and I was able to provide a responsible and informative commentary on the case, including links and the reproduction of materials, and also to host discussions as to where the case should go at certain set-backs. Those posts have been credited by Dr Singh's solicitor and others as providing the basis for how support in that case was converted to a libel reform campaign which led to all three major parties committing to libel reform at the last general election.
59. Given the success of the coverage of the Simon Singh case, I started covering other legal stories which appeared to either be the result of bad journalism or showed the misuse of law. These stories include:
- (a) the Gary McKinnon extradition case, where I challenged the media narratives about the case.
 - (b) the Paul Clarke shotgun case, where I showed that a controversial case was not what it seemed;
 - (c) the controversy over Cherie Booth sentencing remarks, where I suggested that the outrage about her comments was misplaced;
 - (d) the "Stupid Scientology" controversy where the bullying tactics of the Church of Scientology were challenged on Twitter in such a way which led to that challenge being an item that evening on Newsnight;
 - (e) the Paul Chambers "TwitterJokeTrial" (where I am now a solicitor for Mr Chambers), where I established that there appeared to be mistakes in key decisions by the those involved in deciding to bring the prosecution (case under appeal);
 - (f) the "Occupation" at St Paul's Cathedral, where I was able to show that the "health and safety" arguments of the Cathedral were not tenable; and
 - (g) the "Obscenity trial" regarding the use of the Obscene Publications Act to prohibit videos of fisting and watersports videos which are perfectly legal to perform in real life.

I can expand on any of these further in oral evidence and/or by a supplementary witness statement.

60. I am currently writing about the Leveson Inquiry and I have written a number of posts over the last week about the incident of computer hacking at the Times in 2009. These posts include a detailed chronology of the "NightJack matter". I attach print offs of those posts as an example of a blogging exercise which the Inquiry may find particularly interesting given its familiarity with the subject matter.
61. I also blog about non-legal subjects, and it was the *Jack of Kent* blog which exposed the systemic exercise of dishonesty and malice in Johann Hari's use of the internet alias "David Rose". In that particular exercise I was assisted with 140 comments in a calm and carefully conducted collaborative investigation.
62. I attach as an exhibit a print off of that blogpost and the comments as an example of how a blogger and his or her commenters can together work in responsibly responding to a concern about mainstream media.

I believe the contents of this witness statement are true.

David Allen Green