1 Wednesday, 4 April 2012 1 proceedings, which runs to some 200 pages. 2 2 (9.24 am)Can I go back in somewhat more detail in relation to 3 LORD JUSTICE LEVESON: Yes, Mr Jay. 3 the earlier events? We have your instructions, which 4 MR JAY: The first witness today is Mr David Perry. 4 were prepared by the CPS on 28 July of 2006. They are 5 MR DAVID PERRY (sworn) 5 under our tab 20. You may have them available Questions by MR JAY 6 separately. The page on our unique referencing number 7 7 LORD JUSTICE LEVESON: Thank you, Mr Perry. I'm sorry to system is 18392. Do you have those instructions, interfere with your professional activities in Northern 8 8 Mr Perry? 9 Ireland and I hope I haven't inconvenienced a court over 9 A. Yes, I do, Mr Jay, thank you. 10 10 there. Q. I just want to identify what you had available. You had 11 A. Not at all, sir. Thank you. 11 a review of the case, you had an advice file, then the 12 MR JAY: Your full name, please, Mr Perry? 12 email from Ms Dowd of 25 April 2006, which we'll have 13 A. David Perry. 13 occasion to look at. Mr Bristow, he was the expert 14 Q. Thank you. You provided us with a witness statement 14 witness, wasn't he? 15 under the standard statement of truth dated 30 March of 15 A. Yes. 16 this year. Is this your formal evidence to our Inquiry? 16 Q. And the Vampire data and the voicemail message data, 17 A. It is. 17 that was the detailed information which indicated when 18 Q. First of all, please, about yourself. You are Queen's 18 voicemails were accessed by Mulcaire, was that your 19 19 Counsel. You were, I think, made Queen's Counsel in understanding? 20 2006. Before then you were senior Treasury counsel and 20 A. That's correct, yes. 21 have practised at the bar now for I believe 32 years; is 21 Q. Can I invite you to look towards the bottom of the next 22 that correct? 22 page, our page 18393, the paragraph beginning: 23 A. Yes. 23 "The Vodafone evidence will form the strongest 24 Q. Thank you. In your statement, you identify the 24 evidence against Goodman and Mulcaire." 25 materials you have looked at in order to refresh your 25 Are you with me, Mr Perry? Page 1 Page 3 1 memory in relation to events which occurred over five 1 A. Yes, I am. 2 years ago now, but if I can take up the story, as it 2 Q. "From the data provided, if it can be proved that on 3 3 were, in paragraph 4, you tell us that in late July four occasions when messages came in to JLP's voicemail 4 2006, you were instructed to act as leading counsel in 4 system, these were accessed before being listened to by 5 the prosecution of Mulcaire and Goodman, and your junior 5 him (on two occasions by the Goodman landline and on two 6 6 was Mr Louis Mably. Did you have any involvement in the occasions by Mulcaire's business line), these then could 7 case at all before July 2006? 7 form the basis of substantive offences under section 1 8 A. No. 8 of RIPA." 9 9 So here the author of the instructions is expressing Q. Thank you. Were you aware in general terms of the 10 10 a view as to the true construction of section 1 and advice which had been given by the CPS, principally through Ms Carmen Dowd, over the period April to August 11 11 possibly section 2 of RIPA, which we might call the 12 2006, or not? 12 narrow construction; is that correct? 13 13 A. The first involvement in the case, so far as I can A. That's correct. 14 14 Q. Then we can see on 18394, three lines down: recall and from looking at the documentation, must have 15 been, I think, the conversation that I had, or the 15 "However, my initial view is that offences of 16 meeting that I had with Ms Dowd on 2 August 2006, and 16 conspiracy (between Goodman and Mulcaire) to commit 17 I think it must have been at around that time that 17 section 1 RIPA offences and section 1 Computer Misuse 18 I became aware of the advice that had been given by the 18 Act offences, may better reflect the alleged criminality 19 19 involved and enable a more comprehensive case to be Crown Prosecution Service in general terms. 20 20 Q. Thank you. You describe the basic chronology in presented." 21 paragraph 4, that you appeared at a plea and directions 21 In relation to the conspiracy offence under RIPA, 22 22. hearing at the Old Bailey in November 2006. The the narrow view of the law would not necessarily be 23 23 defendants pleaded guilty, as we know, and the relevant. Is that correct or not? 24 sentencing hearing took place on 26 January 2007, and 24 A. That's absolutely right, Mr Jay, yes. 25 25 the Inquiry has received a transcript of those Q. Thank you. Of course, the instructions are Page 2 Page 4

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- 1 self-evidently setting out Carmen Dowd's view. She was
- 2 inviting you to apply your fresh mind to the issues,
- 3 presumably; is that correct?
- 4 A. Yes.
- 5 Q. I think what is also relevant in this bundle is the
- 6 email which followed the meeting which took place with
- 7 you. Of course, it's not your email, it's
- 8 Carmen Dowd's, so this is being filtered through her
- 9 mind, not directly through yours, but it's at
- page 18403, and you'll see it's Carmen Dowd to various
- 11 police officers, following the conference which took
- place in your chambers. Do you see that?
- 13 A. Yes.

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Q. I just wanted to check that insofar as you do have
a recollection of the conference, and one would plainly
understand it if you don't, it probably chimes with any
recollection you have. She says that she's had the
chance to speak to you:

"The issues we discussed were around proposed charges and the issues of seizure of material ...

"The meeting was very useful and we concluded that in essence the alleged criminal activity alleged against the suspects does give rise to the offences I have outlined in my previous correspondence. We have briefly discussed before the possibility of arguing that what we

- we use both RIPA and the Computer Misuse Act, that was
- 2 a confusing way to present the case. We really had to
 - be clear about what we were presenting to the court or
- 4 to a jury, if the matter were to be contested, and on
- 5 that basis, the RIPA Act offences more accurately
 - reflected the conduct that the prosecution were saying
- 7 the suspects had at that time engaged in. So I think
- 8 that's the way I'd answer your question. I hope I have
- 9 answered it --
- 10 Q. Yes, that is a clear answer, Mr Perry. There were
- 11 really two points. First of all, you had evidence in
- the four main substantive offences which established in
- any event that the interception was before the true
- 14 recipient had accessed the email, and this is referred
- to by Ms Dowd in the paragraph we've just been looking
- at. Secondly, in relation to the conspiracy charge, the
- 17 distinction between the narrow and the wide construction
- of sections 1 and 2 of RIPA was not relevant because you
- would have the ingredients of conspiracy, even if the
- wide view was incorrect. Does that broadly summarise
- 21 it?
- 22 A. Yes, exactly, thank you.
- Q. I think there were also concerns, maybe borne out of
 previous experience, that juries had sometimes struggled
- 25 with the Computer Misuse Act, and therefore it was more
 - Page 7

1 have termed our Computer Misuse Act offences might fall

Page 5

- 2 to be considered as RIPA offences -- that the issue had
- 3 not definitively been argued. I was reticent about
- 4 arguing the point in this case. However, having
- 5 considered the matter with counsel we have concluded
- 6 that we could properly argue the point -- and in any
- 7 event nothing would be lost as we already have the four
- 8 main clear RIPA offences (if not more I hear!). We
 - would therefore propose sample substantive offences to
- 10 reflect the period of offending plus the four main
- 11 offences under RIPA."
 - Was she saying there that you advised her that the case could be brought under RIPA, in other words on
- a broader interpretation of sections 1 and 2 of RIPA,
- than the interpretation she, Carmen Dowd, had previously
- 16 believed was correct?
- 17 A. I think that's right, Mr Jay. I think there were
- 18 a couple of aspects to this. I think the first was that
- 19 if the narrow view of the RIPA offence was to be
- 20 pursued, could you nevertheless argue that the conduct
- complained of amounted to a Computer Misuse Act offence?
 My own view was that we could take the broader approach
- 23 to the RIPA offences and in any event with the
- 24 conspiracy the point didn't really matter, and I think,
- doing the best I can, I think my view also was that if
 - Page 6

- 1 palatable strategically to go under RIPA. Might that be
- 2 broadly speaking right?
- 3 A. Yes. I think broadly speaking that's correct.
- 4 Q. There's one other point on the email. The third
- 5 paragraph, and you've referred to this in your
- 6 statement, at the end of it you say, or rather
- 7 Carmen Dowd says:
- 8 "Although not able to provide a review decision
- 9 until the evidence has finally been submitted, counsel
- 10 does agree with me that the data provided does present
- 11 a strong case thus far."
 - But may I ask you what the review decision is
- a reference to, please, Mr Perry?
- 14 A. My understanding would be that that would be the
- 15 decision as to whether or not the evidence provided
- 16 a realistic prospect of conviction. As everyone, I'm
- 17 sure, knows, the Crown Prosecution Service has to apply
- its own code of test, and my recollection, assisted by
- 19 the instructions to counsel, is that at the time of
 - these discussions, we did not have the evidence that was
- 21 to form the basis of the prosecution case as
- 22 subsequently presented to the Crown Court.
- 23 LORD JUSTICE LEVESON: What you did have was information
- 24 that technically the phone companies could link up some
- calls, which gave you the basis for concluding that

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- 1 there was a strong case of interception. Of course, the
- 2 other thing you did not have then was a single piece of
- 3 paper from either of those who were going later to be
- 4 arrested. You were doing this entirely on the basis of
- 5 the police investigation through the mobile phone
- 6 companies and through the victims. Is that fair?
- 7 A. That's correct, yes. Thank you, sir, yes, that's
- 8 correct.
- 9 MR JAY: You also discuss in general terms, because the
- 10 nature of the discussion was necessarily in general
- 11 terms, given the paucity of evidence you had, the reach
- 12 of the PACE powers, particularly under section 1, in the
- 13 context of journalistic material. Do you recall that,
- 14 Mr Perry?
- 15 A. Yes, I do, Mr Jay, thank you.
- 16 O. The email records some of the obvious constraints there
- 17 are in relation to seizing material which might include
- 18 journalistic material, since, on my understanding of the
- 19 law, one first of all has to engage the person being
- 20 searched to obtain their consent, and it's only when
- 21 they don't consent that you go for a production order.
- 22 In crude terms, does my summary of the law reflect what
- 23

- 24 A. Yes, yes, I think so. There may be nuances to that, but
- 25 I think that's right.

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- Q. I think I've squeezed all the nuances out and given
- 2 a very crude summary, but I hope I didn't cause you too
- 3 much consternation. Could we move forward then to the
- 4 next conference, which was a bigger, as it were, more
- 5 considered conference inasmuch as the police officers
- 6 were there and of course the material had been obtained
- 7 from Goodman and Mulcaire, and inconclusive interviews
- 8 had taken place. That conference took place in your
- 9 chambers.
- 10 We have two notes of the conference. There's the 11 notes which Mr Williams took, which I know you've seen,
- 12 which is in our master bundle, as it were, in file 3,
- 13 tab 131. But there's another note, which is your own
- 14 note, I believe -- you may be in a position to confirm
- 15 this -- which is under tab 41 of the bundle which has
- 16 been provided to you for the purpose of this hearing.
- 17 A. Yes.
- 18 Q. Do you have both those notes, Mr Perry? May we be
- 19 absolutely --
- 20 A. Yes, I --
- 21 Q. Mr Williams' note is a note you've only seen in the last
- 22 few weeks; is that right? Or did you see it in
- 23 2009/2010?
- 24 A. To be clear, the first time I saw the note prepared by
- 25 Mr Williams was when I was provided with it for the

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- 1 purposes of preparing my witness statement for your
- 2 Inquiry.
- 3 Q. Thank you. That's when I emailed it to you about three
- 4 weeks ago. But the notes which are your notes -- first
- 5 of all, may I confirm that they are your notes, at
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- 7 A. Yes, I can confirm that the points for discussion, with
- 8 the manuscript annotations, at tab 41, the manuscript
- 9 annotations as they appear on that page, that they are
- 10 my annotations in my handwriting.
- 11 Q. Thank you. So we can just identify another document,
 - a document which has come out more clearly in the
- 13 photocopy, about two or three pages further on,
- 14 I believe are junior counsel's notes?
- 15 A. Yes, that's Louis Mably's handwriting and that goes over
- 16 in my bundle over three pages.
- 17 Q. Thank you. The page reference for your note on our
- 18 system is 18605. You'll probably want to use your
- 19 notes, because they were made contemporaneously, as
- 20 being your best guide to what you said at the
- 21 conference. Presumably you'd agree with that, Mr Perry?
- 22 A. Yes.
- 23 Q. You say in paragraph 12 of your witness statement --
- 24 this is clear from all the evidence we've seen -- that
- 25 you believed that "the essential matter on which we were
 - Page 11
- 1 asked to advise concerned the charges and the shape of
- 2 the case."

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- You say:
- 4 "I was of the view that offences of conspiracy to
- 5 commit unlawful interception were appropriate. In
- 6 relation to the latter, I was concerned to keep the case
 - within manageable proportions."
- 8 If you look at your notes, we can see on the
- 9 left-hand side, about halfway down the page, the
- 10 reference to "180 names". Do you see that?
- 11 A. Yes.
- 12 Q. These were 180 targets of interception, although was it
- 13 your understanding that in relation to perhaps very few
- 14 of them, there was evidence to the criminal standard of
- 15 proof that interception had taken place, particularly on
- 16 the narrow view of the law?
- 17 A. Yes. I think the position, doing the best I can to
- 18 recall, was I'm not sure, first of all, whether we had
- 19 evidence in relation to other individuals, and I think
- 20 that what was being discussed at this stage was that the
- 21 case went wider than the three original victims, but
- 22 quite how wide or whether there would be evidence to
- 23 establish how wide was not yet or had not yet been
- 24 determined.
- 25 Q. To be clear, at the time you were advising, you weren't Page 12

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shown any evidence in relation to these 180 names; was

- 2 that correct?
- 3 A. I don't believe that I was.
- 4 Q. Your advice was, in line with standard practice, that
- 5 you would take a sample number -- you deal with this in
- 6 your statement -- say five or six individuals, as
- 7 representative of the wider number of individuals whose
- 8 voicemails had been intercepted. I've asked a bit of
- 9 a leading question there, "standard practice". Could
- 10 you explain in your own words why you don't go for all
- 11 180? Why just take a sample?
- 12 A. Well, I think the essential point is that in presenting
- a case or preparing a case, the most important
- 14 consideration is to keep the case manageable and for the
- presentation of the case to be simple for all concerned,
- defendants and courts and juries, and by taking a sample
- of victims and including them within an indictment, you
- get a picture of the criminality and it means that the
- 19 sentencing court in the event of a conviction can impose
- a sentence that reflects the scope of the criminality
- and it also means that the case can be prepared more
- 22 efficiently, with more effective use of resources. So
- 23 I think that's the thinking behind it as I understand
- 24 it.
- 25 LORD JUSTICE LEVESON: But the critical phrase in that Page 13

- basis that encouragement would be a sufficient basis for
- 2 secondary party liability, and I think that that's what
 - we were exploring at the time, or certainly what I was
- 4 exploring at the time of the conference.
- 5 Q. Can I be clear, exactly what question did you ask the
 - officers in relation to the possibility of other
- 7 potential defendants? Can you recall?
- 8 A. My recollection of this is that I asked whether there
 - was any evidence implicating any other individual
- 10 employed by News International in the criminality that
- we were looking at in this particular case.
 - Q. Your note of 14 July 2009 refers to journalists and
- 13 editors. Do you think you asked that question
- 14 specifically or not?
- 15 A. I don't think I would like to say that I necessarily
- 16 expressed it in precisely those terms, but I was
- 17 concerned to discover whether this went further than
- just the particular individuals with which we were
- 19 concerned and I think I was conscious in my own mind
- 20 that the question had to be whether it was journalists
- 21 to the extent of the editor.
- 22 Q. Did you ask the question through your own forensic
- curiosity, as it were, or did you ask it because you'd
- seen any evidence which suggested that others might be
- 25 involved?

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- answer, Mr Perry, is that you have to reflect the scope
- 2 of the criminality, isn't it? You have to make sure
- 3 that while keeping the case within bounds, you reflect
- 4 the broad totality of the alleged criminality and not
- 5 just a section of it. Of course, you're dependent
- 6 entirely upon what you're told, but that's what you
- 7 would aim to do?
- 8 A. That's what you would aim to do, and I think in this
- 9 case, when we did end up with further counts on the
- 10 indictment, as I understood it, those counts reflected
- the individuals from whom we were able to get
- statements, because, as I understood it, it proved not
- 13 to be possible to take it further in respect of all
- 14 those who were possibly the subject of interception,
- because it wasn't possible to obtain statements from
- 16 them.
- 17 MR JAY: Thank you. If you look at your note as well, under
- the heading "Scope of case", you see the reference under
- 19 (c) to "Other potential defendants" and then you've
- written in in manuscript: "encouraged by others". So
- 21 the piece in manuscript relates to something which
- emerged during the conference, did it?
- 23 A. I think that must have been -- I think that must have
- been me explaining what I was really driving at, which
- 25 was whether there were other potential defendants on the
 - Page 14

- A. First of all, I hadn't seen any evidence that other
- 2 individuals had been involved, but I think I was also
- 3 basing the question on my own, I think, knowledge and
- 4 experience of journalists and newspapers. I have
- 5 friends who are journalists, and I was trying to
- 6 establish whether there was something that -- or whether
- 7 there was some evidence that went further than what we
- 8 had.
- 9 Q. Okay. What answer did you receive from the police
- officers in riposte, as it were, to the question you
- 11 put?
- 12 A. We were informed that there was no such evidence.
- 13 I can't recall which officer gave that reply. I think,
- in fairness to everyone involved in the case, I think
- 15 it's right to say that this was still at a time when the
- information that we were obtaining was continuing to
- 17 develop.
- 18 Q. Yes. Is it possible that there were speculative
- 19 discussions along the lines that there might be
- 20 circumstantial evidence or inferential evidence, but at
- 21 the moment we have nothing concrete, words to that
- 22 effect?
- 23 A. It's certainly possible, although I have no recollection
- of it, and I think from my point of view I would have
 - been looking to see whether there was a possibility of

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- a case, rather than whether there was something that was
 speculative. We could all speculate.
 LORD JUSTICE LEVESON: But many cases are built on circumstantial or inferential evidence.
 A. Yes.
 LORD JUSTICE LEVESON: That's not a mistake you would make.
- 7 A. But it depends on the combination of circumstances and
- 8 the strength of any evidence, but certainly in the
- 9 context of looking at the material that we had in this
- 10 case and the evidence available to us, I certainly don't
- think I saw anything that would have enabled me to
- present a case in any -- on the basis of any inference
- 13 or circumstantial evidence.
- 14 MR JAY: Can I ask you now to look at paragraph 14 of your
- statement. This is the reference to a production order,
- which of course you touched on on 2 August, and we
- 17 understand the law. Mr Williams' note reads:
- "On scope of case at the moment pursue productionorder s1.
- 20 "-- see what it shows.
- 21 "-- if identifies another defendant -- consider."
- We see, Mr Perry, your interpretation of that, but
- 23 I've been asked to put this to you, that the note by
- 24 Mr Williams clearly suggests that when the question
- 25 whether there might be other defendants was raised, the
 - Page 17
 - answer given was to in effect go on investigating and
- 2 then reconsider, and that was the whole purpose of
- 3 pursuing the production order route. Would you accept
- 4 that?

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- 5 A. Well, I think I take it in stages, because I think the
- 6 first thing was that we were looking at the possibility
- 7 of a production order, and my recollection is that we
- 8 were looking at it for two reasons. First of all,
 - whether there was a basis for obtaining evidence
- generally, which I think I deal with in my statement,
- and secondly, whether we could get a production order in
- relation to any evidence concerning payments made by
- 12 relation to any evidence concerning pay
- 13 Goodman and Mulcaire.
 - Clearly, in any case, if in the course of pursuing your inquiries or in the course of the police pursuing their inquiries, the evidence changes, then that may require other decisions to be taken. And I don't think anyone's mind would have been closed to the possibility of decisions having to be taken, depending upon evidence that became available.
- 21 I hope, Mr Jay, that that expresses my view. I'm 22 not sure if I've actually answered your question, but --
- 23 Q. I think you have. I think you're making clear,
- 24 Mr Perry, that the door was at least being kept open to
- 25 the possibility of evidence in relation to other

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- defendants emerging, subject to whatever a production
- order under section 1 might unearth. Is that broadly
- 3 speaking the position?
- 4 A. Yes.
- 5 Q. Thank you.
- 6 A. Yes.
- 7 Q. I'm asked to put this point to you: do you think that
- 8 the production order, which was drafted by Mr Mably but
- 9 never executed, was drafted on the basis that there was
- 10 at least some circumstantial evidence which existed on
- 21 August 2006, which indicated that a further line of
- inquiry was appropriate?
- 13 A. I'm not sure about that, and, I mean, my understanding
- was that this was -- yes, the door had been left open,
- and yes efforts were going to be made to attempt to
- obtain a production order, but I don't think I would go
- so far as to say that it was done on the basis that
- 18 there was circumstantial evidence with another line of
- inquiry open to the police.
- 20 Q. Okay. At the conference, there was some discussion as
- 21 to whether the narrow or the wider view of the law was
- 22 correct. Do you recall that, Mr Perry?
- 23 A. I don't have a clear recollection of it, but I think
- 24 inevitably it must have been discussed because it
- 25 dictated the shape of the case and the approach, and the
 - Page 19
 - fact that we were not proceeding under the Computer
- 2 Misuse Act as well, I think there must have been an
- 3 explanation as to why we were proceeding as we were, and
- 4 I see that Mr Williams' note records some discussion in
- 5 relation to that, and I'm sure that he's got it -- I'm
- 6 sure that that is an accurate reflection of what was
- 7 discussed.

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- 8 Q. It's quite terse on the answer, as it were, although it
- 9 identifies the technical argument which we've been
- discussing. Could I invite you, please, to look at
- 11 Mr Mably's note and see whether that gives us any
- 12 further clues? It's on the second page of his note.
- 13 **A. Yes.**

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- 14 Q. Which is going to be in our bundle, I think it's going
 - to be about page 18610. You can see what he's written
 - down:
- 17 "Charges, section 1 RIPA: see section 2(7) and
- 18 before message listened to."
- And at the bottom of the page, although it's not
- 20 very clear, there's a reference to Lord Woolf's case of
- 21 NTL Group Limited, paragraph 19.
- 22 A. Yes.
- 23 Q. Again it's possible to subject that to at least two
- possible interpretations, but I think what one core
- 25 participant wants me to put to you is that you may have

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- 1 advised that the narrow view of the law was correct. Do
- 2 you think that's possible?
- 3 A. Well, I'm confident that that was not the approach that
- 4 we took because it wouldn't be consistent with the terms
- 5 of the indictment that was originally settled, and
- 6 I think that the view that Mr Mably and I took was that
- 7 what Lord Woolf had said in the Ipswich Crown Court case
- 8 certainly provided an arguable basis for someone to
- 9 contend that the narrow view was correct, but we thought
- 10 that we should proceed on the broader view, and if the
- 11 point were taken against us, we could meet it in
- 12 a number of ways, because it was about making sure that
- 13 we didn't lose the case overall, and we could meet it in
- 14 a number of ways.
- 15 First of all, we could say that that was not in fact
- 16 what Lord Woolf had decided, and even if he had decided 17 it, it wasn't necessarily for the purpose of his
- 18 decision in that case, and the court was free to depart
- 19 from it.
- 20 Q. Yes.
- 21 A. And in any event, the conspiracy charge could outflank
- 22 any such argument.
- 23 LORD JUSTICE LEVESON: That's the point, isn't it, Mr Perry?
- 24 That's the point, isn't it? That actually this couldn't
- 25 be a sole offence, there had to be some other people

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- involved. He's not doing it for fun, and therefore you 1
- 2 do have a conspiracy allegation which blows this point
- 3 into very nice criminal law, but of no practical impact
- 4 on this case at all. I mean, I'm delighted to analyse
- 5 the dicta of Lord Woolf at any stage, but it's just not
- 6 relevant, is it?
- 7 MR JAY: Well --
- 8 A. No.

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- 9 Q. -- can I just -- counts 16 to 20 were not put as
- 10 conspiracy charges, were they? They were put as the
- 11 substantive offence solely against Mulcaire, weren't
- 12 they?
- 13 A. Yes.
- 14 Q. So unless the charge was going to be reformulated as
- 15 Mulcaire and others unknown, the point as to the narrow
- 16 or broad view of section 1 and 2 of RIPA was relevant to
- 17 counts 16 to 20, wasn't it?
- 18 A. Yes, I think there are two points, Mr Jay. First of all
- 19 in relation to the conspiracy, the narrow point is not
- 20 so relevant, if relevant at all. In relation to counts
- 21 16 to 20, that demonstrates, to my mind at any rate,
- 22 that we did not take the narrow interpretation to be
- correct, because I'm not sure if in relation to counts 23
- 24 16 to 20 there was any basis for saying that the message
- 25 had been listened to by an interceptor before it had

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- 1 been heard by the intended recipient.
- 2 Q. Yes. Can I just ask you this, though, in relation to
 - counts 16 to 20: did you at any stage think, "Well,
- 4 Mulcaire must have been acting in concert with one or
- 5 two others, or maybe more than one or two others; we
- 6 don't know who they are necessarily, but they must have
- 7 existed, therefore there was a conspiracy"?
- 8 A. I mean, I -- I'm sure the thought would have crossed my
 - mind as to what the possibilities were, but in terms of
- 10 the evidence that was available, as I understand it, the
- 11 evidence available was that Mr Mulcaire, on occasions,
- 12 would obtain information and sell it on.
- Q. Yes. 13
- 14 A. Having obtained it through the interception.
- 15 Q. Okay. Did you at any stage, Mr Perry, look at the
- 16 Mulcaire notebooks and see the existence of what we're
 - calling corner names?
- A. I think I must have seen some of the notebooks, because 18
- 19 I think some of the notebooks formed the basis of the
- 20 exhibits that were deployed in the Crown Court
- 21 proceedings, and I think some extracts may have been
- 22 included in the bundles that we prepared.
- 23 Q. Your recollection is --
- 24 A. But I'm not sure if I -- sorry.
- 25 Q. You did, actually, Mr Perry, because it's come back to

Page 23

- me from the transcript, that when you opened the case to
- 2 Mr Justice Gross, you referred to Clive as being on the
- 3 corner names relevant to counts 1 to 15. Do you recall
- 4 that, now? That's Mr Goodman, of course.
- 5 A. Yes, ves. Yes.
- 6 Q. By the time we get to the plea and directions hearing,
- 7 and in particular the sentencing hearing, did you see
- 8 any of the paperwork which related to counts 16 to 20?
- 9 A. I must have seen the evidence and exhibits in relation
- 10 to counts 16 and 20. Precisely what I saw I cannot now
- 11 recall, but I would have seen the statements that we
- 12 had. I think we had a number of schedules as well in
- 13 relation to the particular interceptions and individuals
- 14 and I would have seen the technical materials or the
- 15 evidence, technical evidence, in relation to that as
- 16 well.
- 17 Q. Yes, because in terms of the procedure, the papers had
- to be prepared for trial, and you weren't to know, 19 indeed you didn't know until shortly before 29 November
- 20 2006, that you were going to get guilty pleas. Is that
- 21 right?

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- 22 A. That's right.
- 23 Q. So the evidence against Mr Simon Hughes, for example,
- 24 must have been prepared on the basis that there might be
 - a trial, and you therefore saw it. Is that correct?

Page 24

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A. Yes. I'm confident that that's right.

- 2 Q. But can you not recall seeing relevant pages from the
- 3 Mulcaire notebook, which included corner names, unique
- 4 voicemail numbers, PIN numbers and the rest of the
- 5 paraphernalia which was part of his modus operandi?
- 6 A. I'm sorry, Mr Jay, I can't recall that, but if you -- if
- 7 there is something that you want to show me and ask me
- 8 whether I saw a particular document, I'm perfectly happy
- 9 to look at it and give you my best evidence in relation
- 10 **to that.**
- 11 Q. There is one document from Mr Surtees, which I think you
- might have seen because it's part of the material which
- is under tab 20, which is the tab which included your
- instructions. I hope it's paginated in the same way.
- Look at page 18434. This comes to light on 10 August
- 16 2006, so you certainly wouldn't have had it on 2 August,
- but you might have had it on 21 August.
- 18 LORD JUSTICE LEVESON: It's not part of the instructions,
- 19 Mr Jay, because the instructions in tab 20 are 28 July.
- 20 MR JAY: Yes.
- 21 LORD JUSTICE LEVESON: So they've just been collected
- 22 together. This is an internal police document.
- 23 MR JAY: Yes. I know it's difficult at this range of time,
- 24 Mr Perry, but do you think you might have seen this? It

Page 25

- 25 refers to what in general terms Mr Mulcaire had been
- doing, and the documents including details of home
- 2 addresses, business addresses, PIN numbers, passwords
- 3 and everything else.
- 4 A. May I just check, Mr Jay? I'm looking at a document
- 5 18434. It's manuscript.
- 6 Q. Yes.

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- 7 A. And it's a decision log that begins:
- 8 "It is clear from the documents recovered ..."
 - Have I got the right page?
- 10 Q. That's the one, yes, Mr Perry.
- 11 LORD JUSTICE LEVESON: It's obviously part of a much larger
- 12 document.
- 13 A. Thank you. It looks to me -- I may be wrong. It looks
- 14 to me as though this is a police decision-making log.
- 15 I would not have seen an internal police log of this
- 16 **sort.**
- 17 MR JAY: Okay.
- 18 A. As a matter of course.
- 19 Q. I'm not going to ask you to speculate as to what you
- 20 might have seen in relation to counts 16 to 20, save, of
- 21 course, as a matter of practice the papers would have
- been prepared for trial and whatever was necessary for
- 23 the trial would have been sent to you. I think we can
- agree that much, Mr Perry?
- 25 A. Yes.

Page 26

- Q. There's one document which has acquired a certain degree
- 2 of controversy. It's the "for Neville" email. Can you
 - help us with your best recollection as to whether you
- 4 saw that or not?

$5\,$ $\,$ A. I -- I don't have a recollection of seeing that, I'm

afraid.

- 7 Q. We know it was in the unused material. We know that it
- 8 was capable of being relevant to the count on the
 - indictment which related to Mr Gordon Taylor, but that
- doesn't prove that it was within the case papers for
- 11 Mr Taylor's case, but there's one document which may
- throw light on this, and it's tab 89 in the files which
- were provided to you for the purposes of this hearing.
- 14 It's a note of a conference between the CPS and the MPS
- 17 10 those of a conference between the CFS and the Wi
- on 1 October 2010. If you look at the second page of
- 16 the note, it's going to come up, the unique reference
 - number, the second page is 18749, it's items 3.10 and
- 18 3.11. Item 3.10 says this:
- 19 "AH [AH is Mr Husain] stated that thought Thurlbeck
- 20 is referred to in the Neville email, this does not of
- 21 itself make him liable or guilty in any way.
- 22 "SC [Simon Clements] also agreed, stating that
- 23 David Perry QC looked at this in the original
- 24 investigation and stated that if they pursued the
- 25 element of the email and its contents would not have had

Page 27

- 1 any real effect as it had no real evidential value."
- 2 There are two points there, Mr Perry. First of all
- 3 is whether you think you might have seen the "for
- 4 Neville" email. To be clear, it's highly unlikely you
- 5 would have seen it on 21 August 2006. If you did see
- 6 it, it would have been later on when the Taylor papers
- were being prepared. You can see that the assertion is
- 8 being put forward there that you did see it. Do you
- 9 think it's possible?
- 10 A. I'm just looking to see what Simon Clements was saying
- 11 precisely in relation to this. My own feeling is that
- 12 I didn't see it.
- 13 LORD JUSTICE LEVESON: Mr Clements wasn't involved in -- was
- 14 Mr Clements involved in the original investigation?
- 15 **A. No.**
- 16 LORD JUSTICE LEVESON: So --
- 17 **A. Sorry.**
- 18 LORD JUSTICE LEVESON: If he wasn't, then he could only get
- this if there was a piece of paper that said something
- 20 like this.
- 21 A. I assume so.
- 22 MR JAY: Or piece of information. We haven't seen any
 - document which substantiates that. It may be he was
- simply told that by someone who was involved in the
- original investigation or it may be that people's wires

Page 28

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- 1 are crossed and they're just wrong, you didn't see it as
- 2 part of the original investigation. That's probably as
- far as we can take that issue, isn't it?
- 4 A. I think so.
- 5 Q. The second point is the evidential value of it, that
- 6 what is attributed to you there is in fact correct to
- 7 this extent, that we know from later opinions you wrote
- 8 in 2009 and 2010 that that was in fact the view you had
- 9 as to the evidential value of the "for Neville" email
- 10 taken in isolation, wasn't it?
- 11 A. Yes, and I wonder whether that sheds light on this,
- because I think that when I was asked to look at this
- much later, I think Simon Clements was involved in that
- stage of the inquiry, and I wonder whether this is
- 15 actually a reference -- I wonder whether this is an
- 16 elided reference to the later investigation and the
- 17 views then expressed.
- 18 Q. Yes, I can see that, Mr Perry, that they may just be
- 19 referring to the wrong period of time. Of course, when
- 20 you looked at the "for Neville" email or were asked to
- 21 assess its significance, were you asked to do so in the
- 22 context of any other evidence, for example the corner
- 23 names in the Mulcaire notebook, or were you just asked
- 24 to consider it in isolation?
- 25 A. It was just in isolation. And also, I think -- it was Page 29

- your advice was that the focus should be on the cash
- 2 benefit to Mulcaire, which was £12,300, rather than any
 - greater sum which he received under his continuing
- 4 retainer with News International. Is that correct?
- 5 A. I think -- yes, if you boil it down to that. I think at
 - the time of the conference, looking at Mr Williams'
- 7 notes, I don't think we had all the information at that
- 8 point, because there's a reference to "work out
- 9 a benefit figure later", and I note from the
- documentation that you -- to which you drew my
- 11 attention, there was the statement of information, the
- conventional statement of information provided by the
- 13 prosecutor in the Proceeds of Crime Act case, and there
- was also a defence response to that, in which the
- defence stated that Mr Mulcaire had received payments
- under the retainer for legitimate work and they were
- 17 contending that the payments in respect of the
- interception were those he received under the pseudonym
- of Alexander, which amounted to £12,300, and I think the
- 20 conclusion by the time of the hearing before
- 21 Mr Justice Gross was that I took the view that that was
- 22 the appropriate approach to take.
- 23 Q. Yes.

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24 A. I think that was my decision.

or what did happen?

25 Q. I understand, Mr Perry. I'm asked to put this to you, Page 31

really on behalf of the police officers, that they were

trying to argue for a more substantial sum based on the

monthly retainer, because they thought it was part and

were, advised them that that couldn't be done or words

to that effect. Again, is that what might have happened

A. Well, I think the position in relation to the Proceeds

something for which they were contending, but the

a matter of law is that the question of benefit for the

depends upon whether a person who commits a criminal

offence obtains property as a result of or in connection

with their offending, which sounds rather simple, but it

in fact conceals a degree of complexity, and the short

point seems to me to be this: that if you do legitimate

work and you're paid for that, it's difficult, it seems

or in connection with your illegitimate, illegal work.

to me, to argue that you've obtained that as a result of

difficulty with that approach it seemed to me as

purposes of confiscation is a difficult issue. It

of Crime Act statement is clearly the police were contending for a higher benefit figure, and that's

parcel of the same criminal enterprise, but you, as it

- 1 in isolation, and I think it was also difficult because
- 2 things were -- I think we were trying to look at things
- 3 very quickly for understandable and perfectly reasonable
- 4 reasons, but I think I was just asked to look at it in
- 5 isolation and give a view.
- 6 Q. Yes, I understand. At the conference of 21 August 2006,
- 7 do you recall any discussion about the strategy for
- 8 notifying victims?
- 9 A. I can't -- I can't recall the precise details in
- relation to that, but doing the best I can, I've tried
- 11 to think about this, and doing the best I can, I think
- 12 that would have been a matter for the police, and I may
- say, I think the police officers were trying to do their
- best and were sensitive to the difficulties that this
- 15 case threw up, but I think, in answer to your question,
- Mr Jay, that anything to do with the strategy on that
- 17 aspect of it was not really -- I didn't see that as
- 18 being a criminal law question.
- 19 Q. No. It was more a public law question, engaging
- 20 Article 8 considerations, but I see where you're coming
- 21 from.
- 22 A. Yes.
- 23 Q. I think the last topic which was discussed at the
- 24 conference was the issue of confiscation under the
- 25 Proceeds of Crime Act, and I can boil it down to this: Page 30
- nfiscation under the 24 A.
- 23 Q. Yes.
 - A. Now, I guess we could have argued this and spent several
 - 25 days in the Crown Court and possibly gone to the Supreme

1	Court to have the Supreme Court tell us who was right or	1	LORD JUSTICE LEVESON: But you wouldn't expect him to, would
2	who was wrong, but in the end I, in response to the	2	you, Mr Perry? The exercise of reviewing unused
3	defence statement, took the view that the more	3	material, which, speaking for myself, I have done over
4	conventional and appropriate legal approach was the	4	many days in certain cases, is specifically that
5	£12,300.	5	contained within the CPIA, within the legislation. It's
	LORD JUSTICE LEVESON: Mr Perry, you do not need to convince		not doing a review of what the police have done for the
7	me at all about the state of the law in relation to	7	purposes of investigation of crime. It's simply trying
8	confiscation, and we need not spend any longer on it at	8	to be fair to a defendant, to ensure that there's
9	all, but there is a question, which is this: does it	9	nothing that on the face of it undermines the case
10	hide what was a subterranean concern that although, for	10	you're running or assists a potential defence case, and
11	reasons which you've explained, you'd chosen six	11	that's the long and the short of it, isn't it?
12	specific counts and a conspiracy, that underneath it all	12	A. That's exactly right, sir, yes. And that was exactly
13	there was a far greater degree of criminality going on	13	the process that he was undertaking at this particular
14	here in respect of which a lot more money had been made?	14	time.
	A. Well, all I there were only a number of things	15	MR JAY: Okay. When we get to the sentencing hearing you
16	I could go on. I could go on the documentation	16	deal with this in paragraph 18 counsel for Mulcaire
17	available to me and what I was told, and also, of	17	said, and this is referred to in the transcript, that
18	course, I could go on what the defence were contending	18	the information relating to counts 16 to 20 would not
19	in their confiscation statement. And the point that was	19	have been passed on to Mr Goodman pausing there, he
20	being made by the defendant's lawyers was that	20	was the royal editor after all, he wouldn't have been
21	Mr Mulcaire had conducted legitimate assignments, for	21	interested in this material but to the same
22	which he had been paid, they were itemised	22	organisation.
	LORD JUSTICE LEVESON: Mr Perry, I'm not challenging you.	23 24	So that was Mr Mulcaire's own instructions to
24 25	I'm not in any sense suggesting that the approach which you took wasn't entirely appropriate in the context of	25	counsel. Then Mr Justice Gross said:
23	Page 33	23	Page 35
	1 age 33		1 age 33
1	the case. The only question I'm asking is whether you	1	"You had not dealt with Goodman but with others at
2	had the feeling and it may be you can't remember	2	News International."
3	that actually there was a concern that there was a lot	3	Mr Justice Gross was basing that statement on what
4	more going on here than actually the indictment	4	he'd been told by Mulcaire's counsel, and I suppose one
5	reflected. You may not have seen any evidence to	5	might add this: a bit of common sense added in. Would
6	justify it, you didn't go trawling through the bin bags,	6	you accept that?
7	I'm not for a moment suggesting you did, but I'm trying	7	A. Yes. Yes.
8	to get a feeling of what was going on at the time.	8	Q. We can move the clock on in time to 14 July 2009 when
9	That's all.	9	you prepared a note, quite a short note, it's at tab 28
10	A. All I can say is that the question that I asked at the	10	of the DPP bundle, where you set out your recollection
11	conference on 21 August 2006 was prompted by a feeling	11	of what you were told at the conference. It's our
12	that there was possibly something more to this, but	12	page 18304. You say this:
13	that's a feeling you very often get in criminal cases.	13	"We did enquire of the police at a conference
	LORD JUSTICE LEVESON: Yes.	14	whether there was any evidence that the editor of the
	MR JAY: Okay. What happened next is that Mr Mably carries	15	News of the World was involved We were told that
16	out a review of the unused material, and as you make it	16	there was not (and we never saw any such evidence)."
17	clear, that's not with a view to seeing whether	17	Now, the clause in brackets, does that relate merely
18	additional defendants are involved, but whether there is	18	to what you saw on 21 August or does it relate to what
19	material which is capable of being exculpatory of	19	you saw at all material times until 26 January 2007?
20	existing defendants. Can we deal with it in this way:	20	A. That refers to what we saw at all material times.
21	did Mr Mably draw anything to your attention which	21	Q. Thank you. Then the same point in relation to
22	caused him concern as to whether the extent of the	22	journalists:
23	criminality in fact went much further than was being put	23	"We also enquired whether there was any evidence
24	to you by the officers?	24	connecting Mulcaire to other News of the World
25	A. No. So far as I can recall, he did not.	25	journalists. Again, we were told that there was not
	Page 34		Page 36

1 (and we never saw any such evidence)." 2 Can you recall why you were asked to produce this 3 note? 4 A. My understanding is that this was something that we were 5 asked to prepare at the request of the Crown Prosecution 6 Service at a time when the Crown Prosecution Service 7 were looking again at the prosecution decision-making 8 and strategy, and I think that a good deal of effort was 9 being put into the attempt to reconstruct what had 10 happened in the case and what had been known to the 11 individuals, including myself and Mr Mably, and I was 12 trying to do my best to assist in the Crown Prosecution 13 Service attempt to recreate the state of mind that 14 existed in 2006/2007. 15 Q. Thank you. On 20 July 2009, you gave an advice which is 16 described as a draft advice. It's tab 52 of this 17 bundle. To be clear about it, this was an advice which 18 you were asked to do overnight. Do you recall this one? 19 A. I have a recollection getting a call some time late in 20 the course of a day when I was -- I think I was already 21 obliged to or I was in the process of preparing 22 something else, and I was asked to do something at

obliged to or I was in the process of preparing
something else, and I was asked to do something at
pretty short notice.

Q. Yes. The something else you were preparing was a case
in the Court of Appeal the following day -- actually, it
Page 37

- 1 we did not take the narrow issue --
- 2 Q. Okay.
- A. -- of the law. And the moral of the story is: don't do
 advices overnight if you don't have the papers.
- 5 Q. That's certainly right, Mr Perry, but you do say, and
- 6 I've been asked to draw this to your attention, in
- 7 paragraph 15 of this advice, that not merely did you
- 8 find DCS Williams' note to be extremely helpful:
- 9 "... it certainly accords with such recollection as
- 10 I do have."
- Do you see that?
- 12 A. Yes.
- 13 Q. Okay.
- 14 A. Yes.
- 15 Q. And the other --
- 16 A. I have --
- 17 Q. Sorry, please continue.
- A. No, I was just going to say that I did find it extremely helpful, and looking at it, I took a view, I had no
- reason not to, and I think now if someone were to say,
- 21 two years later or however long later, that this is the
- 22 position, then that's an error that I think is probably
- 23 easily made, but on more considered reflection, and
- 24 having looked at the indictment and the material in more
- detail, I am confident that the narrow view was not the
 - Page 39

- 1 was on 25 July, I think, but you did this overnight and
- 2 you fitted it in, as it were, and we can see that the
- 3 advice runs to eight pages, so it took you some time to
- 4 type up.
- 5 The view of the law which you took in this advice,
- 6 if I can take it shortly, was the narrow view of the
- 7 law, and it suggests that that might have been the
- 8 advice which you gave to the police on 21 August 2006.
- 9 There are really two questions built into that, but can
- 10 you take them both individually, please?
- 11 A. Yes. First of all, I think the position in relation to
- 12 this was that I was asked to do this at a time when
- 13 I didn't have access to any of the papers in the case,
- 14 but I was provided with a document prepared by Detective
- 15 Chief Superintendent Williams, and I think this note or
- 16 draft note was largely dependent upon what Detective
- 17 Chief Superintendent Williams had said, and if I did in
- 18 this document give the impression that the narrow view
- 19 had been adopted, then that is incorrect, and I think if
- 20 it is incorrect, it's because both Detective Chief
- 21 Superintendent Williams and I, our recollections were at
- 22 fault. I don't criticise Detective Chief Superintendent
- 23 Williams at all. He, of course, had been receiving
- $24 \qquad \text{advice throughout the period up to August, and it was} \\$
- 25 quite a technical issue of law, but I'm confident that
 - Page 38

- 1 view that we took.
- 2 Q. Yes. If you look at your advice which was given the
- 3 following year, on 13 September 2010, under tab 80,
- 4 which is page 18696, by which time you did have your
- 5 papers, you reverted, as it were, to the advice you gave
- 6 on 21 August 2006.
 - A. That's correct.
- 8 Q. The summary of your advice is paragraph 28, where you
- 9 said

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- 10 "It was a difficult point, tenable arguments either
- 11 way."
- 12 **A. Yes.**
- 13 Q. But you're entitled to continue to say that counts 16 to
- 14 20, which weren't conspiracy charges but substantive
- charges, could only have been advanced on the basis that
- you thought the wider view was tenable. That of course
- is right, isn't it?
- 18 **A. Yes.**
- 19 Q. On the first advice we looked at, the 20 July 2009
- advice, you expressed views about the evidential value
- of the "for Neville" email, which I think we've already
- addressed as a discrete issue, because that was the
 - issue concerning the DPP, who asked you to give the
- 24 advice.
- 25 Can I just look at some points you make between Page 40

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1 paragraphs 29 and 32 of your second advice.

2 A. Yes.

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3 Q. Where you say:

> "In addition to the fact that the prosecution's approach to section 2 of RIPA 2000 did not affect the course of the proceedings or the charges against the defendants, it is also clear that it did not affect the police investigation. There were three principal reasons for this.

"First, the police were already, prior to our instruction, of the view that the section 1 RIPA 2000 offence required proof that the message had been accessed without authority before it had been listened to by the intended recipient. It is however necessary to point out that this approach to the offence does not appear to have limited the scope of the investigation."

I've been asked to put to you two points on that, Mr Perry. Whereas it's true that that was the police view before they went to Carmen Dowd in April 2006, the police view was confirmed by her. Would you accept that?

A. Well, yes, I do accept that, but I think the point that is being made in this paragraph is: when you're collating the data, you wouldn't necessarily know whether a voicemail message had been listened to either Page 41

recipient. I think that's the point that's being made

basis of Carmen Dowd's advice, which did coincide with

before or after it had been accessed by the intended

3 there.

4 Q. Okay, but then the second point is this, that on the

the MPS prior view, the police went away and got

7 sophisticated expert evidence through Vampire data

8 following a sting operation of Mr Lowther-Pinkerton's

voicemail in May and June 2006 which was able to

10 differentiate between before and after accessing by

11 Mulcaire. Do you recall that?

12 A. I know we had some basis for saying in some of the 13 charges that you could distinguish that point, but I'm 14 not sure if that was the case in all cases, but yes,

15 I know that in some instances it was possible to make

16 that distinction. 17

Q. Yes. It was the four instances which were referred to 18 in the original instructions of 28 July and in the 19 context of the Vampire data.

20 I'm also asked to put to you this: that the narrow 21 view of the construction of RIPA, which emanated really

from Carmen Dowd in April 2006, so the argument runs,

23 had an impact throughout the police investigation,

24 because not merely did it cause the police to go away

25 and get this complex expert evidence, but it also

Page 42

coloured their view throughout as to what had to be

2 proved for the substantive offence as opposed to the

conspiracy charge. Would you agree with that or not?

4 A. Well, I suppose the first thing I would say is I'm not

5 sure whether I'm in the right position to say what view

the officers took or what approach they adopted, but

7 certainly the approach we adopted as counsel in the case

8 was that the broad view was the one that we were going

9 to take and that's the one that we did take and the

10 point was never tested at the Crown Court.

11 Q. Yes.

12 A. The point was never taken against us to argue it.

13 Q. That's correct, Mr Perry, that whatever Ms Dowd advised

14 in April, by the time you arrived on the scene on

15 2 August, you gave advice, and if it contradicted the

16 CPS' earlier advice, well, then the MPS understood the 17

position, didn't they?

18 A. Well, I suppose that's a matter for them as to whether 19 they understood it, but certainly that was the advice

20 that was being given.

21 Q. The only other document which might be relevant to the

22 advice you gave in August 2006 is document 64, tab 64,

23 in what I'm calling the DPP bundle, which is page 18654,

24 an email from Mr Mably. If you look at paragraph 3,

25 this is Mr Mably's recollection in October 2009. He Page 43

savs:

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2 "There was no written legal opinion. Our advice on

3 the ambit of section 1 was given to the CPS orally in

4 conference. It may be helpful to point out that our

advice was based on section 1(1) of RIPA, which requires

6 the communication to be intercepted 'in the course of

7 its transmission'; section 2(7), an interpretative

8 provision, which gives an extended meaning to the times

9 while a communication is to be taken as being in

10 transmission; and the observation of Lord Woolf CJ ...

11 in relation to the effect of section 2(7): 'Subsection

12 (7) has the effect of extending the time of

13 communication until the intended recipient has collected

14 it'. Our view was that the observations of Lord Woolf

15 were correct, and accorded with the rationale of the

16 prohibition in section 1(1). Moreover, it was also our

17 view that in this case there was nothing to be gained

18 from seeking to contend for a wider interpretation of

19 section 2(7) than that contemplated by Lord Woolf."

20

Might that be right?

21 A. Well, I think this may be following on from the note

22 that I had done, because again I think this was -- when

we -- when both Mr Mably and I were being asked, I think

24 if a wrong turn had been taken earlier, probably as

25 a result of what I'd written, I think I've put -- given

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- 1 my view earlier that year, then that may well have
- 2 infected what Mr Mably had recollected but I think in
- 3 consideration of the contemporaneous documents and the
- 4 decisions that we took, that this may -- or does not
- 5 appear to be an accurate reflection of the advice that
- 6 we gave.
- 7 Q. I think that must be right, Mr Perry. We keep returning
- 8 to counts 16 to 20, which is conclusive evidence of the
- 9 view you must have taken, because I reiterate: those
- 10 weren't conspiracy charges, and you, of course, would
- 11 not have caused an indictment to be drafted which was
- 12 based on an untenable view of the law. Self-evident,
- isn't it? 13
- 14 A. Yes.
- 15 LORD JUSTICE LEVESON: Did anybody ever suggest to you:
- 16 "Hang on, why are we doing these charges when we can't
- 17 prove that these messages were accessed before they'd
- 18 been listened to"?
- 19 A. No. There was no such suggestion. And also, may I just
- 20 add that it's not just the conspiracy in counts 16 to
- 21 20, because of course the conspiracy was an alternative
- 22 to substantive charges that went up to count 15, and
- 23 I don't think in relation to those charges, in addition,
- 24 there was necessarily any evidence as to whether it had
- 25 been listened beforehand or afterwards.

- LORD JUSTICE LEVESON: Yes. I think we've done this point
- 2 to death, Mr Jay.

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- 3 MR JAY: We have.
- 4 The last document is tab 86. You gave a note on
- 5 16 September 2010 when you explained the circumstances
- 6 in which your 20 July 2009 advice was given, the
- 7 circumstances in which your later advice was given, and
- 8 made it clear that your later advice was correct because
- 9 it was based on all the case papers, whereas your
- 10 earlier advice had not been.
- 11 A. Yes.
- 12 Q. I think that, as it were, closes the position.
- 13 Finally, out of fairness to everybody, do you have
- 14 a view as to the conscientiousness or otherwise of the
- 15 police officers with whom you were involved over the
- period 2006 to January 2007? 16
- 17 A. Mr Jay, may I say that -- sorry. May I say --
- 18 LORD JUSTICE LEVESON: Just hang on a minute, Mr Perry.
- 19 Just hang on a minute. I suppose if you've been asked
- 20 to ask the question, it's hardly determinative of very
- 21 much, is it?
- 22 MR JAY: No.
- 23 LORD JUSTICE LEVESON: All right. Answer the question,
- 24 please, Mr Perry.
- 25 A. Thank you. My view is that my impression throughout

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- 1 this case, which was not an easy case, given all the
- 2 sensitivities as well as the technical aspects and the
- 3 difficult issues of law, was that everyone involved,
- 4 both at the Crown Prosecution Service and in the police,
- 5 were conscientiously attempting to do their jobs
- 6 professionally and with some skill, and my distinct
- 7 impression at the end of it all was that it was an
- 8 example of collaborative efforts on the part of the
- 9 Crown Prosecution Service and the police that had led on
- 10 the face of it at any rate to a successful outcome on
- 11 the facts of this case.
- 12 I must say, I found everyone involved highly
- 13 skilled, competent and professional.
- 14 LORD JUSTICE LEVESON: I'm not at all sure of the value of
- 15 that question, Mr Perry, but it needs, therefore, to be
- 16 put into context. Were you aware that some of the more
- 17 junior officers involved in this investigation were
- 18 extremely concerned that there was material that wasn't
- 19 being looked at? Perhaps for good reason, because of
- 20 the terrorist threat, but their concern was there
- 21 nonetheless.
- 22 A. No. I wasn't aware of that.
- 23 MR JAY: Thank you, Mr Perry. Those were all my questions.
- 24 LORD JUSTICE LEVESON: Thank you very much indeed, Mr Perry.
- 25 MR GARNHAM: Sir, may I make an application --

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- A. Thank you very much.
- LORD JUSTICE LEVESON: One moment, Mr Perry. 2
- 3 MR GARNHAM: May I make an application to ask questions on
- 4
- 5 LORD JUSTICE LEVESON: What's the topic?
- 6 MR GARNHAM: The conference that took place with Mr Perry on
- 7
- 8 LORD JUSTICE LEVESON: Very good.
 - Questions by MR GARNHAM
- 10 MR GARNHAM: I don't know whether you can see me but can you
- 11

9

- 12 A. I can both see and hear you.
- Q. Thank you. The conference that took place at your 13
- 14 chambers on 21 August took place I think 12 days after
- 15 the arrest of Mulcaire and Goodman, and the search of
- 16 their premises; is that right?
- 17 A. I think that must be right. Were they arrested on
- 18 8 August?
- 19 Q. Yes. Do you recollect, during the course of that
- 20 conference, there being discussion about what had been
- 21
- 22 A. No, I'm afraid I can't, I can't recall that.
- 23 Q. Given that it had taken place -- I'm sorry?
- 24 A. No, I was just going to say I have no clear recollection
- 25 of any discussion in relation to what had been seized.

1 Q. Given that that seizure had taken place less than 1 statement of truth. Is this your formal evidence to the 2 2 a fortnight before the conference, might it have been 3 3 a question you would have asked, "You've been into A. Yes, it is. 4 LORD JUSTICE LEVESON: Lord MacDonald, thank you very much 4 News International, what did you find?" 5 5 A. Yes, I -- that's a possibility. for the effort that you've put into the statement and 6 Q. But you don't recollect any conversation about 6 I also publicly express my gratitude to the President of 7 7 the Queen's Bench Division who has deferred hearing a substantial volumes of notebooks? 8 A. No. 8 case in which I know you're involved. 9 Q. But your recollection understandably, because I imagine 9 A. Thank you. 10 10 MR JAY: First of all, who you are. This is paragraph 3 of you've done one or two cases since then, of the details 11 11 your statement. If I can just focus on the highlights, of this conference is thin, is it? 12 if I may, you were Director of Public Prosecutions for a 12 A. Well, it's not -- it's not that clear. I mean, I can 13 five-year term between November 2003 and November 2008, 13 picture where it took place, I can picture some of the 14 14 having taken silk in 2007. people, but I'm afraid trying to reconstruct it is 15 extremely difficult, and I wonder in answer to your 15 A. 1997. 16 question -- I mean, I don't know what had been looked at 16 Q. 1997, pardon me. You would have been the first to be 17 DPP without being in silk, so I apologise for that. 17 by this time, and I know that we were trying to get the 18 papers put together for service on the defence and to 18 In July 2010, you became a Liberal Democrat here. 19 19 You are visiting Professor of Law at the LSE and you are make sure that the shape of the case was correct so far 20 20 as we wanted to present it. warden elect of Wadham College, Oxford. Is that broadly 21 21 speaking the picture? Q. Thank you. The last question in relation to that 22 conference and at all is this: did you have occasion 22 23 23 during that conference or afterwards to consider what Q. Thank you very much. You explain in your statement the 24 effect the advice the MPS had received from the CPS had 24 role of the CPS and the role of the DPP. We're going to 25 25 had on the shape of the investigation? Was that take those parts as read and go straight to paragraph 9 Page 49 Page 51 1 something to which your attention was directed? 1 of your statement, first of all making it clear that 2 2 A. No, I don't think that was something that we considered your statement has been prepared from documents some of 3 3 which you did not see at the time, some of which you've or that my attention was directed to, because as of our 4 involvement as counsel, and I was the person responsible 4 only seen for the purpose of putting together your 5 5 for giving the advice, the position was that we were statement, and your overall recollection of events is 6 6 going to present the case in such a way that the broad necessarily limited by the passing of time? 7 view was to be adopted and we would meet the argument as 7 A. Yes, I think I've only seen three of the documents 8 and when it was put. That's the approach that we were 8 before, that's the two briefings sent to me and to 9 9 Lord Goldsmith the Attorney General, and I believe I saw 10 MR GARNHAM: Thank you very much. 10 an email from Carmen Dowd informing me that the suspects 11 LORD JUSTICE LEVESON: Thank you. Right. Thank you very 11 were in custody and being questioned. I think the rest 12 12 much, Mr Perry. Thank you. We'll rise for just a few of the documents I saw for the first time in preparing 13 minutes. 13 my statement. 14 A. Thank you, sir. 14 Q. Thank you. The prosecution was handled by SCD, which 15 15 (11.00 am) you explain, this is paragraph 9. Can we link that with paragraph 10. First of all what is SCD and what is CTD, 16 (A short break) 16 17 (11.08 am)17 please? 18 MR JAY: The next witness is Lord MacDonald. 18 A. When I was DPP, we set up four specialist case work 19 LORD JUSTICE LEVESON: Thank you. 19 divisions for serious and sensitive criminal cases: the 20 LORD MACDONALD (affirmed) 20 organised crime division, the counter terrorism 21 21 division, which was CTD, headed by Sue Hemming; the Questions by MR JAY 22 MR JAY: Your full name, please? 22 special crime division, which was headed by Carmen Dowd 23 23 A. Kenneth MacDonald. and dealt with particularly sensitive cases; and the 24 Q. You kindly provided us with a witness statement dated 24 fraud prosecution service, whose purpose is

19 March, running to 39 pages, under the standard

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self-explanatory, which was headed by David Kirk.

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1	Q. Although this case was within SO13 of the MPS, which is	1	suspected of being able to access mobiles."
2	the counter terrorism division broadly speaking, when it	2	I'm not sure whether we can take that point any
3	came to the CPS it was dealt with by the SCD?	3	further.
4	A. Yes. It was not a terrorist case, self-evidently, and	4	"He may well prove to the be the conduit between the
5	so it was placed within special crime division as being	5	telephone companies and Goodman."
6	a case of particular sensitivity because it involved	6	You see on the next page, 4.4:
7	members of the Royal Family and Royal household.	7	"A vast number of UVNs belonging to high profile
8	Q. Thank you. Within paragraphs 10 and 34 of your	8	individuals, politicians and celebrities have been
9	statement you give an overview. A lot of it we're going	9	identified as being accessed without authority these
10	to take as read, but because they are documents you saw	10	may be the subject of a wider investigation in due
11	at the time, we're going to focus on two documents.	11	course. A number of the targets of this unauthorised
12	First of all, a briefing you received on 30 May 2006,	12	access have been informed some of whom have declined
13	which is under tab 19 of this bundle. It's page 18382.	13	to assist in a police investigation."
14	A. Yes.	14	And then the conclusions, 5.2 and 5.3:
15	Q. This comes to you from Carmen Dowd, comes to you and the	15	"Once arrests are made the media will have a
16	Attorney, which is standard practice, and it gives	16	field day."
17	a broad overview of the state of play as at that date	17	That was obvious I think on a number of levels.
18	and it was no doubt of particular sensitivity and	18	A. Yes, I think it was pretty obvious.
19	interest owing to the involvement of those close to the	19	Q. The second point:
20	Royal Family?	20	"The system for accessing voicemail messages appears
21	A. Yes, there's a convention that any criminal case	21	to be rife."
22	involving members of the Royal Family is brought to the	22	So not merely were you being given the flavour of
23	attention of the DPP and the Attorney General as	23	something which related specifically to the Royal
24	a matter of course.	24	household and therefore gave rise to concern in its own
25	LORD JUSTICE LEVESON: Nothing to do with the fact it's to	25	right, but the picture here was the possibility, at
	Page 53		Page 55
	<u> </u>		<u> </u>
1	do with a newspaper, it's because of the Royal	1	least, of a much broader concern?
1 2	do with a newspaper, it's because of the Royal household?	1 2	least, of a much broader concern? A. Yes, it looks as though the details relating to
2	household?	2	A. Yes, it looks as though the details relating to
2 3	household? A. Nothing to do with journalists at all. It's members of	2 3	A. Yes, it looks as though the details relating to individuals other than members of the Royal Family,
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1 bomb plot, and we had the continuing ramifications of 2 the fertiliser plot, all serious attempts at mass murder 3 on the London transport system and around the country. 4 The airline plot itself would have been utterly 5 catastrophic had it occurred, not least to the British 6 economy, because I imagine trade around the world would 7 have closed down for a number of days at least. 8 So we had a great deal on our minds and 9 Peter Clarke, I know, because I worked closely with him 10 during this period, had an enormous workload. Enormous. 11 Q. Thank you. The next briefing you received --12 LORD JUSTICE LEVESON: Just before we pass through this 13 briefing, what you're being told in May 2006, whatever 14 is to be done with it, and I recognise entirely the 15 validity of the points that you've just made, indeed 16 I did to Mr Clarke, that before there's a search or 17 anything like that, there is already material to the 18 effect that a large number of people have been accessed 19 without authority. That's outwith what might emerge 20 from a search. 21 A. Yes. 22 MR JAY: The second briefing, it was the search, it was 23 14 July, it's in a number of places in the bundle but 24 I'm looking at it under tab 12, page 16551. 25 A. Yes, I have it. Page 57 1

1 placing themselves in a position where the defence might 2 try to embarrass them in that way.

3 Q. Thank you. Could you turn over now to the next page,

2.10. There's a reference to the expert evidence:

5 "The Vodafone evidence will form the strongest 6 evidence against Goodman and Mulcaire. From the data

7 provided if it can be proved that on four occasions when

8 messages came into JLP's voicemail system these were

9 accessed before being listened to by him (on two

10 occasions by the Goodman landline and on two occasions

11 by the Mulcaire business line), these could form the

12 basis of substantive offences under section 1 of RIPA."

13 So that necessarily is premised on a narrow

14 construction of the Act?

15 A. Yes, it is.

16 O. Then 2.11:

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"The other numerous calls made from the Goodman line. News International line and Mulcaire number to

19 JLP's UVN number could form the basis of offences under

section 1 of Computer Misuse Act. (Subject to

21 confirmation that the voicemail system amounts to

22 a computer and the messages 'data'.)"

> So the technical issues in law were not impacting on the Computer Misuse Act?

25 A. No.

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Q. Again, we're just going to alight on a number of points. If you look at 2.3, Lord MacDonald:

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"The police have requested initial advice about the data produced and whether the case, as it stands, could be ring-fenced to ensure that extraneous matters will

not be dragged into the prosecution arena."

The reference to ring-fencing is to ensuring that members of the Royal Family in particular would not have to give evidence, it's not a reference to excluding victims, other victims, from the net of a possible prosecution?

A. That's right. And I think the extraneous matters referred to the content -- I mean, I think I can confidently say, as someone who's been a defendant more than a prosecutor in his career, there's always a risk in a case of this sort that the defence might adopt a strategy of shall we say trying to embarrass the prosecution out of bringing a case, and that might be by making it unattractive to prosecute the case for a number of reasons, including, for example, creating a situation in which one of the royal princes would have to step into the witness box.

I think Carmen Dowd, my reading of it now having looked through this file is that both she and the police were very, very aware of that risk and keen to avoid Page 58

1 Q. So different points there, although they were surely 2 easily surmountable, the voicemail system would be a 3 computer and the messages data, but I suppose those 4 points needed to be nailed. 5

Then we see 2.12:

conspiracy (between Goodman and Mulcaire) to commit section 1 RIPA offences and section 1 Computer Misuse Act offences may better reflect the alleged criminality 10 involved and enable a more comprehensive case to be presented."

"However, my initial view is that offences of

So that wasn't far off the mark?

A. No, I don't think it was.

14 Q. The conclusion, section 5, page 16554:

15 "The police appeared to be able to present a cogent 16 and presentable case which could proceed without the need to delve into the content of any messages left 18 and/or retrieved, any use the information obtained has been put to, or who left such messages. Witnesses other 20 than JLP and HA should not be required from the palace for prosecution."

22 That was the summary of the position as at that 23 date, and again something that you would just have noted and filed away in your memory, presumably? 24

25 A. Yes. Papers come across my desk, I read them and Page 60

1 initial them and date them to indicate that I've read 1 that she would have advised the police to pursue that 2 them, and then they go off into the filing system. 2 investigation. Whether or not they chose to accept that 3 3 I also had regular meetings with the heads of the advice would entirely be a matter for them because, as 4 4 specialist case work divisions to discuss particularly I think it is well-known, the prosecutor, the CPS has no 5 important cases. I'm not sure whether this at that 5 power to direct the police in the course force of their 6 stage would have come into that category, but I'm sure, 6 investigation. 7 7 because I'd asked to be kept informed, that from time to LORD JUSTICE LEVESON: Would you expect the CPS to be 8 8 involved in that sort of decision? I appreciate we're time when I had meetings with Carmen Dowd, she would 9 update me on the position so far as this case was 9 talking about a very specific set of facts, but have you 10 10 concerned. experience of having to discuss with the police or would 11 11 Q. In terms of the overview you give over the succeeding you have expected to have been involved with the police 12 12 pages -- we're going to look at some of the detail from in discussion about the extent to which one line of 13 paragraph 35 onwards -- you make the point on 13 investigation should be pursued in preference to 14 14 page 15530, the question was at the bottom of the page: another? You've identified the terrorist plots and 15 "What thought you gave to the relevant law". You say: 15 we've already discussed those, but have you had 16 "I gave no thought to the relevant law. That was 16 experience of the police saying, "We have this 17 the responsibility of the reviewing lawyer and counsel." 17 operation, this is the position, this is where it could 18 And that, of course, is standard practice, isn't it? 18 go, but actually, for reasons A to E, we don't think 19 19 this is sensible". Could you provide a view? A. I'm sorry, which page is this? 20 Q. It's page 15530 on the internal numbering, original 20 A. If their conclusion was as you've just set out, that 21 21 internal numbering, page 7? would, I think, invariably be accepted by the CPS since 22 LORD JUSTICE LEVESON: It's your subparagraph H. You 22 operational decisions are for the police. In very 23 wouldn't to have to do the work yourself; that's why you 23 serious case work, terrorism, for example, the police 24 24 instruct counsel? would sometimes come to us and say, "We could pursue 25 25 A. Yes. I think I made the point that Ms Dowd was head of this line of investigation to obtain evidence X, Y and Page 61 Page 63 1 the special crime division and therefore one of the four 1 Z. Do you think we need evidence X, Y and Z in order to 2 2 or five most senior lawyers in the CPS. David -- well, mount a case?" 3 I think I can safely say that David Perry's reputation 3 For example, one of the very earliest bits of advice speaks for itself. 4 I gave was to Peter Clarke when I became DPP when he 5 MR JAY: Can I ask you to move forward to paragraph 18, 5 came to see me with the transcripts of tape recordings 6 6 page 11 on your internal numbering, our page 15534. that they had obtained of terrorist suspects to ask me 7 A. Yes. 7 whether I thought there was sufficient evidence on those 8 Q. Can I ask you to comment on this. You say: 8 tape recordings to arrest or whether they should see if 9 "I would have expected that if the MPS had indicated 9 they could wait a bit longer and get something more, and 10 that the police were in possession of evidence to 10 so they would -- we would give them that sort of advice, 11 implicate other individuals within News International, 11 which is somewhat analogous, I think. 12 the CPS would have advised them to continue with their 12 LORD JUSTICE LEVESON: It's not quite the same. 13 investigation. As there was confirmation to the 13 A. Not quite the same. 14 contrary, the CPS was unable to provide this advice." 14 LORD JUSTICE LEVESON: I'm just wondering about the 15 You were dealing with a hypothetical there, but 15 relationship between the CPS and the police, and 16 would not the issue of resources at least for the MPS 16 I understand that the operational responsibility is the 17 have entered into the equation? 17 police, but I wondered whether you had ever been 18 A. Well, I can't speak to that, except to say that there 18 involved in the sort of discussion of a type that I've 19 does seem to be material in documents that I have 19 described whereby there is an investigation which has 20 20 reviewed to indicate there was some concern in the -potential ramifications, may not be of the most grave 21 within the counter terrorism command about the level of 21 crime, because that would tend to answer itself, where 22 22 resources that this investigation might consume, and you are asked for a view as to the public interest. 23 I understand that. But I do think, as I said in 23 A. I think I personally haven't and I think that would be 24 paragraph 18, I would have expected had Carmen Dowd been 24 extremely rare. It's rather difficult to imagine 25 25 told that there was material implicating other people a situation where the police would come for that sort of

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1 advice, partly because they would jealously protect 1 Whether the evidence implicated others would depend on 2 2 their own role in the situation, as we protected ours, the elements of the offence under consideration, namely 3 which was the charging decision, but I cannot think of 3 that if the narrow view of the law was the correct 4 4 premise on which to proceed, that would colour whether a situation in which the example that you've just set 5 out occurred, certainly not one in which I was involved. 5 there was no evidence to implicate any other individual 6 LORD JUSTICE LEVESON: It might have been in this 6 as opposed to the wide view of the law? 7 7 A. I don't follow that. First of all, I don't think that particular -- well, it obviously wasn't, but in this 8 8 was -- I don't think that can have been the advice that circumstance, if rather more had been done so that they 9 9 were in a position to say, "Actually, we could go down was being given, otherwise the indictment would have 10 10 all these routes, but we have all this terrorism work to made no sense, and I would have expected anyone who 11 11 do, would you agree with us or would you express a view thought that that was the advice that had been given to 12 on the public interest?" your paragraph 18 suggests 12 query the indictment, and of course that didn't happen. 13 you'd have said, "Just carry on." 13 Secondly, I'm not sure that the narrower 14 A. I think it depends what they're saying. If they came to 14 interpretation could impact in any sensible way upon the 15 me and said, "We found evidence that two other 15 answer that David Perry was given in that conference. 16 journalists at the News of the World were involved in 16 His question was whether there was any material to 17 17 this", then I would imagine she would say, "Oh, well implicate other employees or journalists at 18 that's interesting, I assume you're going to pursue 18 News International and the answer was no. I'm not sure 19 19 that", or words to that effect. I wouldn't expect her how a technical narrow piece of advice on a rather 20 to say, "Why are you doing that? Don't bother with 20 obtuse legal point could have seriously affected the 21 21 that." Why would she say that? answer he was given in that regard. It doesn't seem to 22 LORD JUSTICE LEVESON: It's not that it's irrelevant, it's 22 me, from what subsequently transpired, that he could 23 the pressure of other work is supervening. 23 have been giving that advice in any event. 24 24 A. I have no knowledge of any conversation of that sort Q. I follow that, Lord MacDonald. I'm not going to pursue 25 25 that one any further. Can I move on to paragraph 33 taking place. Page 65 Page 67 LORD JUSTICE LEVESON: I was actually trying to work out the 1 now, please, page 15, our page 15538. Were you made 1 2 2 relationship. aware of the degree of co-operation or lack of it 3 3 A. I think it would be rather unlikely. I think it would provided by News International in relation to the police 4 be extremely unlikely in the context of this case that 4 investigation? 5 the police would come to the CPS for advice of that 5 A. No, I don't have any recollection of this at all, and 6 sort. 6 I would think that if I had been told by anyone that 7 MR JAY: Would resource considerations within the Crown 7 there was a lack of co-operation, it's something that 8 Prosecution Service, as opposed to the MPS, have any 8 would have concerned me and I would have made enquiries 9 9 impact on the course of the investigation? about it and I would probably remember it. I haven't 10 A. No. The CPS financially was an extremely well-managed 10 seen anything to indicate that I was told that and 11 organisation. We came in just dead on budget every year 11 I don't believe I was. 12 12 that I was DPP. We had contingency funds for serious Q. You refer there to Carmen Dowd on 15 August receiving 13 13 a call from News International's solicitors, that was cases. We never, in my experience when I was DPP, 14 14 abandoned or limited a case, a serious case for those **Burton Copeland?** 15 15 reasons. Obviously one takes decisions, as David Perry A. Yes. 16 has set out, so that a case is clear and appropriate for 16 Q. Just out of interest, really, it's in the bundle at 17 17 prosecution, but I'm absolutely confident from the tab 20, page 18438. 18 material that I have seen that there were no resource 18 A. Is this the note? 19 pressures within the CPS in respect of this case. 19 Q. It's a manuscript note, which I deduce must have been 20 20 Q. I move forward now to paragraph 27, page 14 or our written by Carmen Dowd. 21 21 page 15537. This relates to the advice which was given A. Sorry, my bundle isn't numbered. 22 22 in conference, at least what you were told subsequently Q. Right. In tab 20, it's about two-thirds of the way 23 23 that advice was, on 21 August 2006, the no evidence through. It's probably going to come up -- yes, it's up 24 point, to implicate any other individual. I've been 24 on that screen there.

asked to put to you this question, if you bear with me.

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A. Ah.

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- 1 Q. Is that Carmen Dowd's writing?
- 2 A. I don't know, I'm sorry.
- 3 Q. What it records is that she was told that the relevant
- 4 information about the financial relationship between
- 5 Mulcaire and Goodman would be provided voluntarily.
- 6 A. Yes.
- 7 Q. I'm not going to ask you to comment on that because --
- 8 A. I didn't see this at the time.
- 9 Q. No. In paragraphs 35 and following, page 16, our
- 10 page 15539, you look at some of the evidence in more
- 11 detail.
- 12 A. Which page?
- 13 Q. Page 16.
- 14 A. Of my statement?
- 15 Q. Yes. Paragraph 35. There isn't actually a 35, it says
- 16 40.
- 17 A. That's why I was confused, yes.
- 18 Q. Yes, the numbering goes awry but it's supposed to be 35.
- 19 A. Yes.
- 20 Q. The story from 2 August 2006 we've covered with
- 21 Mr Perry, but the story between April 2006 and August
- 22 2006 I'm going to cover with you, but I understand
- 23 throughout that you're really providing us with
- 24 a hearsay commentary on evidence which you weren't aware
- of at the time?

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- 1 **A. SCD.**
- 2 Q. Pardon me. The documents pick up the position as at
 - 4 April 2006. Can we look at tab 3 in our bundle,
- 4 page 15967, which is the second page in tab 3. This is
- 5 a request for guidance from the CPS. We can see that
- 6 the police officers identified two relevant statutes,
- 7 which was correct. You can see their analysis, which is
- 8 really before any considered advice had been given by
- 9 the CPS, slap in the middle of the page, in relation to
- 10 RIPA:
- 11 "This is an indictable offence and would attract
 - a maximum two years imprisonment and/or fine."
- 13 A. Are you looking at the document headed "Review of case -- SIL66"?
- 15 Q. Yes, I am, in the middle of that page.
- 16 A. In the middle of the first page of that document?
- 17 Q. Yes. Do you see that passage?
- 18 **A. Yes.**
- 19 Q. "In terms of points to prove the key aspect would be
 - that any interception took place prior to the intended
- 21 recipient receiving the message."
- 22 So this it's reasonable to deduce is the MPS view
- 23 reached without any considered advice from the CPS?
- 24 A. Yes.
- 25 Q. Do you agree with that?

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1 A. Yes, essentially my statement is going through the

- 2 documents which I read in the course of its preparation.
- 3 Q. Thank you. Can I just alight on a number of points
- 4 because you do assist us on those.
- 5 There was a telephone call, you say in paragraph 35,
- 6 made in March 2006 to the head of CTD --
- 7 A. Counter terrorism division.
- 8 Q. Yes. I think that was Sue Hemming, wasn't it?
- 9 A. Yes, it was.
- 10 Q. But the case as it were was transferred to Carmen Dowd.
- 11 In paragraph 36 you say:
- 12 "I understand that the principal legal adviser to
- the DPP, Alison Levitt QC has spoken to the head of CTD
- 14 [that's Sue Hemming] about this call. The head of CTD
- does not recall giving any specific advice and believes
- that she would not have given any without knowledge of
- 17 the facts. She accepts that had the MPS asked her which
- offences might be appropriate to consider on the brief
- 19 facts relayed to her, she would probably have given an
- indication, but any views that she may have expressed
- would necessarily have been provisional, not least
- because she was indicating that she would not be dealing
- with the matter herself."
- Because of course the matter had been passed on to
- 25 the head of STD?

Page 70

1 **A. Yes.**

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- 2 Q. And the Computer Misuse Act, there were two
- disadvantages with that statute which really flowed from
- 4 it being a summary offence attracting six months'
- 5 imprisonment and/or fine, first of all that the
- 6 sentencing options to the court were less, and secondly
- 7 that certain statutory time limits would come into play
- 8 with regard to charges?
- 9 A. Yes. Prosecutors have a duty to put counts on the
- indictment that enable the court in the event of
- conviction to pass an appropriate sentence and I imagine
 - the view was taken that a maximum sentence of six months
- 13 would not be appropriate.
- 14 Q. Thank you. If you pass through this tab to page 15979,
 - which is four or five pages from the end --
- 16 A. Again I'm afraid I don't have numbers.
- 17 Q. It will come up on your screen in a moment. This is
- 18 another case --
- 19 LORD JUSTICE LEVESON: It's the penultimate page of a case
- 20 review, page 5.
- 21 MR JAY: Dated 20 April 2006. What the police are saying at
- the top of that page:
- 23 "Following a brief and initial consultation with
- 24 Sue Hemming ..."
- 25 That's the one you referred to in your statement?

A. Yes.

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- Q. "... back in March 2006 the following are believed to be
 the most appropriate criminal offences that could be
- 4 considered if a prosecution was feasible."
- 5 Then there's reference to RIPA. You see the same 6 point again:
 - "In terms of points to prove, the key aspect would be that any interception took place prior to the intended recipient receiving the message."
- 10 It's unclear whether that view flowed from
 11 Sue Hemming's brief and initial opinion, as it were, or
 12 whether it was already in the mind of the MPS, but there
 13 is evidence we've seen that it was in the mind of the
 14 MPS before Sue Hemming arrived on the scene in any
- 16 **A. Yes.**
- Q. The advice was sought on 25 April, you say in
 paragraph 39 of your statement, and the advice was given
 on 25 April at page 15989, which is in the next tab,
- 20 tab 4.
- 21 A. Yes, I have it.

event?

- Q. It in fact refers to a conference on 21 April between
 the police and Carmen Dowd. She's now giving her more
- considered view. I don't think we need look at her
- analysis under the Computer Misuse Act, if you don't Page 73
 - mind. We're going to look at her analysis under RIPA, page 15990, the second page of this. Four lines down:

"The offences under section 1 of RIPA would as far as I can see only relate to such messages that had not been previously accessed by the recipient. However, this area is very much untested and further consideration will need to be given to this."

Well, we can interpret that for ourselves, but what she's probably saying there is that her opinion is the narrow view of the law is correct, but she's recognising that it's untested and further legal analysis would be required?

- 13 **A. Yes.**
- 14 Q. Then she says:

"Again, the actual technical evidence would need to be carefully considered before any firm view could be taken about whether the offence is capable of being proved. Unless the offence is capable of showing all of the details we discussed (length of original message, length of call to recipient's voicemail, et cetera) it is unlikely we could proceed with the technical evidence alone. If such evidence was forthcoming, it is in my view entirely possible to ring-fence the investigation and any subsequent prosecution to ensure that only those witnesses discussed [that's to say the secretaries to

Page 74

- 1 the Royal household, not the princes] would be the
- 2 subject of matters before the court."
- A. Yes, again obviously a focus on avoiding the need for
 members of the Royal household to give evidence in the
- 5 trial. I should say members of the Royal Family.
- 6 Q. Would you accept at least this much, Lord MacDonald,
- 7 that the narrow view of the law, which probably would be
- 8 your preferred view but you accept it's untested, had an
- 9 impact on the investigation at least to the extent to
- which it defined the way the expert evidence would have
- 11 to be obtained to prove the substantive offences as
- opposed to any of the inchoate offences?
- 13 A. Yes that appears to be the case.
- 14 Q. Okay. We know from evidence we took at the end of
- 15 February that a sting operation was undertaken in May
- and I think early June 2006 where the two secretaries
- were told not to use their voicemails and so the expert
- were told not to use their voicemans and so the expert evidence could be obtained with highly sophisticated
- evidence could be obtained with highly sophisticated technical data.
- 20 A. Yes, that's right.
- 21 Q. It's also relevant, as you point out in paragraph 42 of
- your statement, a correct summary really of what
 - Carmen Dowd was saying, but there were two legally
- viable offences, namely the RIPA offence and the
- 25 Computer Misuse Act offence, and both remained in the Page 75
- 1 frame, as it were. Is that right?
- 2 A. Yes

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- $3\,$ $\,$ Q. We know that from the police's own understanding of the
- 4 position. Go to tab 11, page 16498. This is a decision
- 5 log of Mr Williams. He says in terms, summarising the
- 6 advice Carmen Dowd gave, point 1:
 - "The behaviour described does give rise to offences
- 8 under section 1 RIPA and section 1 Misuse Computer
 - Act -- subject to appropriate evidence."
- 10 You rightly point out that the 1990 Act was still
- very much in play, wasn't it?
- 12 A. Yes, it was.
- 13 Q. The way in which the investigation then proceeded in
- 14 terms of the technical aspect, I refer to the sting
- operation, that's at the bottom of this page, do you see
- 16 that?
- 17 A. Yes.

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21

- 18 Q. And that would enable evidence to be obtained which
- would bring home the RIPA offence, even on the narrow
 - view of the law?
 - A. Yes, exactly.
- 22 Q. Thank you. Paragraph 43 next, please. We're moving
- forward in time to the end of June 2006, where you say:
- 24 "The MPS sent a file to the CPS seeking further
- advice. That file indicated that the investigation was

1 indeed proceeding into offences under RIPA and the 1 a different offence which has different ingredients, 2 2 Computer Misuse Act." neither more nor less. 3 That is correct. We can see that from paragraph 12, 3 MR JAY: The trouble with using metaphors is that it gives 4 4 rise to some loose thinking on occasion, particularly on page 16534. We can really just note that in passing 5 because the position had not really changed since 5 the part of the person who has just asked that question. 6 26 April. At this point, the investigation was 6 Let's move on. 7 7 What you've just said, Lord MacDonald, takes the proceeding under both statutes, although the technical 8 8 matter slightly further than what you said in evidence for the purpose of RIPA was directed to the 9 9 narrow view of the law being correct? paragraph 45. You use the adverb "necessarily" there. 10 10 A. Yes. You say: 11 "A charge of conspiracy would not necessarily 11 Q. We move forward now to paragraph 44. There's a letter 12 12 of advice from the head of SCD dated 18 July 2006. It's require proof that every interception had taken place 13 tab 12, page 16559. Again, it's about two-thirds of the 13 before it had been accessed by the intended recipient." 14 way --14 A. One tries to be very careful with words drafting 15 15 statements of this sort. I think I was being unduly A. Yes, I have this. This is dated 18 July. 16 Q. Thank you. It's going directly to DSI Williams. 16 cautious. 17 Q. Unless it can be said that the agreement was only to 17 Carmen Dowd is looking at the expert evidence now, 18 because the expert evidence which had been analysed 18 intercept voicemails after the intended recipient had 19 19 following the sting operation was predicated on the already accessed it, which of course would be fanciful, 20 basis that you could see that the accessing had taken 20 then you're being far too cautious in paragraph 45, 21 21 aren't you? Do you see my point? place before the intended recipient had ever heard the 22 22 A. Yes. message. 23 At the bottom of that page: 23 LORD JUSTICE LEVESON: Yes, I think he's agreed with you. 24 24 "Whilst there are many aspects of the evidence which A. Yes, I do. 25 I require to be clarified, it is my initial assessment 25 LORD JUSTICE LEVESON: He said it before you did, Mr Jay. Page 77 Page 79 1 that offences under the Computer Misuse Act and RIPA may 1 MR JAY: Paragraph 46. This is the issue of instructions 2 be provable. However, in addition, I would be looking 2 being prepared and this is really where Mr Perry can 3 3 to consider an offence of conspiracy to commit these take over the baton from you. We have heard evidence as 4 offences on the basis of the other evidence being 4 to what he advised at all material times throughout, 5 available relating to HA's telephone, the O2 telephone 5 haven't we? So I'm not going to ask you to comment on 6 6 recordings, the financial evidence and the contact that, in other words, because we can take it from him. 7 between target 2 and target 1 via mobile. The case 7 I have one point for you which I've been asked to 8 8 appears to be cogent and presentable." raise, much later on in your statement, page 24, 9 She then identifies the possible weaknesses in the 9 page 15547, on CPS resources. 10 10 case, but there's not much of particular concern. A. Yes. 11 I'm asked to put this to you: 18 July appears to be 11 Q. Can I ask you to comment on one document which is 12 the first occasion when the offence of conspiracy was 12 tab 55, the first page of it, 18643. It's Mr Clements. 13 mentioned as another possible way forward. It certainly 13 We're much later down the road, 21 July 2009. 14 accords with my recollection of the documents. 14 Paragraph 8 and 9 suggest that there might have been 15 15 a limitation on Crown Prosecution Service resources. A. I'm sure you're right about that. I can't really A. These paragraphs, I think, are referring to the review 16 assist. I can't remember all the documents I've seen --16 17 I'm sure if it's put in that way, that's correct. 17 of what had occurred, the 2009 review of what had 18 Q. Would it be your understanding that the advantage of the 18 occurred in 2006 and 2007. I think Mr Clements is 19 conspiracy charge would, as it were, steamroller or iron 19 acknowledging that the situation when it comes to 20 out all the technical issues that arise as to the 20 a review of that sort might be slightly different than 21 correctness or otherwise of the narrow view of the law 21 the situation when one is investigating criminal 22 22 on sections 1 and 2 of RIPA? offences, but I'm absolutely confident that the 23 23 A. Yes, because the offence becomes the agreement. resources, the question of resources had no impact 24 LORD JUSTICE LEVESON: I'm not sure I agree with either the 24 whatsoever on the CPS' approach to this case in 2006 and 25 25 words steamroller or iron out. It's because it's 2007.

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- 1 Q. Thank you.
- 2 LORD JUSTICE LEVESON: And nobody has suggested to the
- 3 contrary.
- 4 A. No. Thank you.
- 5 MR JAY: In paragraph 56 of your statement -- the rest of it
- 6 we're going to take as read, if you'll excuse us for
- 7 doing that. Page 29, 15552.
- 8 A. Paragraph 56?
- 9 Q. Yes. You say that Mr Davies came to see you?
- 10 A. Yes, he did.
- 11 Q. This was Nick Davies. Which was -- can you remember the
- 12 month?
- 13 A. It would have been following -- shortly following the
- publication of his article, so I'm sure it would have
- been in July 2009. He came to see me in my chambers and
- he wanted to speak about the 2006/2007 inquiry. I knew
- 17 Nick Davies, I'd met him on numerous occasions and
- spoken to him on numerous occasions, both in connection
- with articles that he'd written and I'd seen him at
- various receptions. So he came to see me, but I think
- 21 I told him I had very limited involvement, I couldn't
- 22 really assist him.
- 23 Q. You wouldn't even have had the briefing notes which we
- 24 know were sent to you at the time because they remained
- 25 with the papers at the DPP whose office you'd by then
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- 1 set out some of the examples of this work in my
- 2 statement. I regarded it as part of the work of senior
 - prosecutors, particularly Chief Crown Prosecutors, to
- 4 engage with their local media, to go on local radio
- 5 stations, to speak to the press, to give interviews
- 6 after cases, to become public figures in their areas,
- 7 and I saw this as being a part of raising our profile,
- 8 a demonstration of our public accountability, and
- 9 a means by which we could develop public confidence in
- 10 our work. So it was a deliberate strategy which
- 11 I instituted, and which I was enthusiastic about
- 12 promoting across the service.
- Indeed, when I appointed new Chief Crown Prosecutors
 during my period in office, I made it absolutely plain
- 15 to them that part of their role would be to engage much
- more positively with their local communities and indeed
- with their local media, and the instructions which
- 18 I gave them of course I followed for myself at a
- 19 national level.
- 20 Q. Thank you. You also say in your statement at
- 21 paragraph 65 that on occasion you would meet an editor
- 22 or a journalist for lunch --
- 23 A. Yes.
- 24 Q. -- or much less commonly dinner, to discuss matters of
- 25 interest. Why was it necessary to meet them over

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- 1 left?
- 2 A. Actually, I had to be reminded about those notes. I had
- 3 no recollection of them at all.
- 4 Q. May I now finally deal with some more general matters to
- 5 cover, paragraph 58 and following, which deals with --
- 6 these paragraphs deal with engagement by the media.
- 7 **A. Yes.**

9

- 8 Q. You explain that the CPS were seen by the media and by
 - the public as "vague, remote and unaccountable". Public
- 10 confidence in the work of the CPS was "extremely low".
- 11 So did you embark upon a policy better to engage the
- media in order to ameliorate that position?
- 13 A. There were two sides to this. First of all, better
- engagement with the public. We had a series of
- 15 programmes of policy development which had been started
- under my predecessor, Sir David Calvert-Smith. We would
- 17 publish policies in particular areas of prosecution
- work, domestic violence, sex crime, race hatred cases,
- 19 and in order to develop these policies, we would meet
- with community groups and interested parties, we would
- 21 consult and then we'd publish. So we were doing a lot
- of community work of that sort.
- 23 We also as another part of this effort had
- 24 a deliberate policy, I introduced a deliberate policy of
- 25 deeper and broader engagement with the media, and I've
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1 a meal?

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- 2 A. Well, it wouldn't always be thus, but it was really
- a question of having an opportunity to talk to senior
- 4 journalists and editors about our work off the record in
- 5 circumstances where the conversation would flow
 - naturally and easily.
- 7 In that sort of role, the role of DPP, one does
- 8 begin to build up relationships with significant figures
- 9 in the media. Some journalists who were particularly --
- 10 for example, specialists in legal work I would see quite
- regularly, so it was a perfectly natural and I thought
- 12 useful thing to do it in that way.
- 13 I think that the coverage of our work became
- a little less hostile than it had been in the past. It
- provided me with an opportunity to engage directly with
- senior journalists and editors when inaccurate stories
- were printed about us, and that also had a positive
- 18 **effect.**
- 19 It also I think demonstrated to my own staff the
- 20 importance that I attach to this work, that I thought
- 21 that the way we were written about in the press was
- important, not just from the public's point of view but from the point of view of our staff. It's extremely
- debilitating if people work for an organisation and all
 - they ever read about themselves in the newspapers every

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- 1 day is what you might describe as knocking copy.
- 2 I thought that was bad for morale, and I thought it was
- 3 presenting an untrue and unfair picture of our work. So
- 4 that everything did in this regard, including my
- 5 lunching with journalists, was part of an effort to
 - combat this and to get a better, fairer and more rounded
- 7 impression of our work out to the public.
- 8 Q. In terms of what journalists printed, do you feel that
- 9 that policy was successful or not?

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- 10 A. I think it was successful. There were some distinct 11 examples of particular newspapers who quite changed 12 their approach towards us when we were able to confront 13 them in a friendly way with demonstrably inaccurate
- 14 stories that they featured sometimes on their front 15 pages.

16 I think generally -- an organisation like the CPS is 17 never going to please everyone, it's not in business to 18 please people, but I think generally the portrayal of

- 19 the CPS and of prosecutors in the press improved, and
- 20 I think improvement that has been maintained and I think
- 21 the policy of engagement which I've described has been 22 continued by my successor; he can speak for himself.
- 23 I should say it was instituted by my predecessor, so
- 24 I didn't entirely invent all of this, but I'm sure that
- 25 it was the right policy and remains the right policy.
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 - Q. The review of the hospitality records show, as you said,

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- 2 that you tended to see journalists interested in or
- 3 practising in legal affairs more than any other, then
- 4 I suppose crime journalists, crime correspondents next.
- 5 But you did meet with I think the editors of virtually
- 6 all of the national newspapers from time to time?
- 7 A. The only editor I didn't meet was Mr Dacre.
- 8 Q. Yes, you're right, I haven't found his name here. But 9
 - everybody else --
- 10 A. Yes, I met instead with his social affairs editor on a number of occasions, Mr Doughty. 11
- 12 Q. You say in paragraph 67, Lord MacDonald, you agree with
- 13 the evidence given by Nick Davies that it's not contact
- 14 with journalists that's the problem, it's whether you
- 15 allow that contact to corrupt your decision-making. Is
- 16 it not possible to say that there's an intermediate
- 17 position, namely the perception in the legitimate public
- 18 eyes, as it were, that decision-making might be impacted
- 19 adversely?
- 20 A. I think this is a situation which has to be handled
- 21 carefully, and there are obviously strict rules. One
- 22 doesn't breach confidences, one doesn't have
- 23 inappropriate conversations with journalists and one
- 24 doesn't allow journalists to influence in any way
- 25 whatsoever prosecution decision-making. But with those

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- 1 caveats, I think that contact between public bodies and
- 2 journalists is strongly in the public interest, and
 - I think we need to avoid a situation where public bodies
- 4 feel that contact with journalists is something which is
- 5 unprofessional or inappropriate. There are obviously
- 6 boundaries that have to be observed, but I do believe
- 7 that part of living in an open, democratic society, one
- 8
- aspect of that, an important aspect of that, is contact 9 between public bodies, people working in public bodies
- 10 and those journalists who are conveying ideas and news
- 11 to the public on a daily basis.
- 12 Q. Might I ask you this: do you have a reaction to some of 13 the evidence this Inquiry received in the first two
- 14 weeks of hospitality enjoyed by police officers, senior
- 15
- police officers paid for by journalists?
- 16 A. The Inquiry will draw its own conclusions. You just 17 asked me whether perception is important, and I accept 18 perception is extremely important. It's as important to 19 public confidence as the desire to explain yourself to
- the public is important to public confidence. 21 I think there's a slightly sharper issue, which is
- 22 the issue of whistle-blowing, which I've also addressed
- 23 in my statement.
- 24 Q. Yes. I was going to ask you to develop that. I think
- 25 the essential question is that the this, that the

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- 1 Protected Disclosures Act of 1996, if I correctly recall
- 2 its title, sets out a specific mechanism by which
- 3 whistle-blowing could take place, namely within the
- 4 organisations rather than to journalists outside the
- 5 organisation. Why isn't the statutory route, as it
 - were, the appropriate one?
- 7 A. I have a fundamental difficulty with the idea that
- 8 whistle-blowers have always in all circumstances to
- 9 exhaust their remedies internally. I worked in
- 10 Whitehall for five years as DPP, having come from the
- 11 bar. I'm now back at the bar. My fear is that if the
- 12 internal remedy is the only route for a whistle-blower,
- 13 too often that would result in suppression in one form
- 14 or another.
- 15 My own view is that there is a very strong public
- 16 interest in appropriate circumstances for there to exist
- 17 a route from whistle-blowers direct to journalists.
- 18 I acknowledge that it is extraordinarily difficult to
- 19 design a system which allows for this and it may just
- 20 have to be something which exists and which occurs from
- 21 time to time, but we can all think of cases in which it
- 22 would be critically in the public interest for
- 23 a whistle-blower to go straight to a newspaper or to
- 24 a media organisation, and I think it is strongly in the
 - public interest from time to time that that occurs.

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1 So obviously whistle-blowers face a number of 1 MR JAY: May we take a short pause? 2 2 LORD JUSTICE LEVESON: Yes, we'll have a second break this existing legal impediments. I think it would be 3 3 a matter -- this is my personal view, if you forgive me morning because we started early. 4 4 for expressing it -- it would be a matter of significant (12.10 pm) 5 5 regret if this Inquiry resulted in further legal (A short break) 6 impediment to that process. Whistle-blowing is often in 6 (12.17 pm) 7 7 LORD JUSTICE LEVESON: There's no need for you to be sworn my view -- from time to time in my view in the public 8 interest and should not face further legal 8 9 9 MR KEIR STARMER (recalled) discouragement. 10 LORD JUSTICE LEVESON: I'm not sure anybody has suggested 10 Questions by MR JAY 11 11 MR JAY: Your second witness statement dated 27 March runs further legal impediment. 12 12 to 63 pages. Is this your formal evidence to the A. I'm sure they haven't. 13 MR JAY: Thank you for that. I'm just checking, there is 13 Inquiry? just this general point, if I can close with this point. 14 14 A. It is. 15 I've been asked to put this to you by others. We don't 15 LORD JUSTICE LEVESON: Again I thank you and, reading 16 see many notes from Carmen Dowd in the papers. Do you 16 between the lines, Alison Levitt, for the work that was 17 happen to know whether it was her practice to keep any? 17 put into this. 18 A. I don't know. I've seen what you've seen, and as you've 18 MR JAY: Mr Starmer, we're going to take up the chronology 19 19 as from 9 July 2009, because we've had evidence in said, there are a number of emails, there are the two 20 briefings to me and to Lord Goldsmith, there's an email 20 relation to Operation Caryatid which it's not necessary 21 21 to me, there are some records of meetings and so on and for us to travel over through you. You explain how the 22 so forth, but not a great amount of notes, I accept 22 statement was in part prepared with the assistance of 23 23 Ms Levitt. You made it clear that Ms Dowd left the CPS 24 24 before 2009; is that correct? Q. Do you have a view as to the acceptability of that? 25 A. That's right, yes. In fact, before I became the DPP so A. I think that it's good practice, which ought to be Page 89 Page 91 followed, for lawyers to make notes of important 1 1 I've never worked with her. 2 decisions and important stages of cases, not least 2 Q. Can you explain the role of Mr Simon Clements, please, 3 3 because if there has to be an inquiry later into what paragraph 17 of your statement? 4 happened, those notes can prove to be of great 4 A. Simon Clements succeeded Carmen Dowd as head of the 5 assistance. So I think it's good practice to keep 5 special crimes division and when this case was first 6 records of the progress of a case, and particularly of 6 brought to my attention, which was on 8 and 9 July 2009, 7 important decisions that are taken during the course of 7 I quickly ascertained that the person who had previously 8 8 dealt with the case was no longer a member of the CPS 9 Q. A different core participant has asked me to put this 9 staff. That obviously presented difficulty because usually when there are enquiries about a case which is 10 general question, that especially given this was 10 11 a difficult and sensitive prosecution, would you agree 11 no longer a live case, the first port of call would be 12 that there should have been greater oversight of 12 to the lawyer who dealt with it. I therefore had to 13 Carmen Dowd or not? 13 appoint somebody else to assist with any questions that 14 A. Well, Carmen Dowd was, as I said, one of the four or 14 were being asked of the Crown Prosecution Service. 15 15 five most senior prosecutors in the CPS. When I recused I appointed Simon Clements, then head of special crimes 16 myself from the cash for honours case because I'd been 16 division, on the basis that he was best placed to help. 17 in chambers with the then Prime Minister's wife, the 17 Q. Thank you. Your involvement began, paragraph 24 of your 18 person I nominated to conduct the case was Carmen Dowd. 18 statement, our page 18115, in the evening of 8 July 19 She was an extremely senior and experienced prosecutor 19 2009, which was when the Guardian article went online; 20 of sensitive crime and she was being advised by one of 20 is that correct? 21 the outstanding silks at the criminal bar, and I for my 21 A. Yes. As you know, the case had ended in convictions and 22 22 part then and still regard the process in that sense as sentence in 2007, and from my perspective, it hadn't 23 23 having been entirely adequate and appropriate. featured in anything I'd had to look at since my 24 MR JAY: Thank you very much Lord MacDonald. 24 appointment and 8 July 2009. 25 LORD JUSTICE LEVESON: Lord MacDonald, thank you very much. 25 Q. In paragraph 26, page 18116, you say you were concerned Page 90 Page 92

1 by the statements made in the Guardian and you therefore 1 sort of inquiry will lead to difficulties later on down 2 2 the track and therefore there ought to be a greater held a meeting with a senior lawyer, that's Mr Husain, 3 3 Mr Clements' deputy, and others, and you: understanding of the need for caution before responding? 4 4 "... asked them to conduct an examination of the A. Yes, I think that's right. Had I attempted to answer 5 material supplied to the CPS by the police three years 5 these questions based on what then would have been very, 6 ago so I could be satisfied that appropriate action had 6 very limited information, I think there would have been 7 7 been taken at the time." a great risk that further information might shed further 8 So is one to infer from that that you were concerned 8 light and the initial answers would be seen to be wrong 9 with whether appropriate action had been taken by the 9 or not full, and therefore what I didn't want to do was 10 10 CPS rather than by the police? to answer questions until I at least had an appreciation 11 11 A. Yes. My concern was really in relation to what had been myself of what actually happened in 2006 and 2007. 12 12 reported in the Guardian, that was namely how the Crown I didn't even have that. I didn't have the next best 13 Prosecution Service had taken a decision not to take 13 thing, which was the lawyer who dealt with it to call in 14 14 News Group executives to court. That was the issue that for an urgent meeting and to walk me through the 15 I was concerned about. I wasn't able to deal with it 15 process. So I wasn't inclined to answer those questions 16 straight away because I didn't know anything about the 16 at that time for that very reason. 17 17 MR JAY: Paragraph 33 next, Mr Starmer, page 18118. case, Carmen Dowd had left and I wanted to satisfy 18 myself that we had taken appropriate decisions on the 18 Mr Husain had indicated he had: 19 19 evidence available to us at the time, and that's the "... made contact with DCI Keith Surtees and had 20 exercise that I asked to be commenced on 9 July 2009. 20 asked him to send an email setting out 'the approach 21 21 Q. On 9 July there was a massive flurry of activity, some taken by the prosecution team when the matter was 22 of which required close to instantaneous responses by 22 originally brought to our attention'." 23 you. You cover this in paragraph 27 and following. 23 Your comment on that is this: 24 24 "This began a history of reliance on what the MPS First of all, there was an urgent question tabled by 25 Dr Evan Harris MP which covered the CPS as much as the 25 told us about the events of 2006-7." Page 93 Page 95 1 police, and the Home Secretary was going to have to 1 Can I seek to break that down. At least as regards 2 answer that question within I think 43 minutes. So that 2 what was happening within the CPS, although there were 3 3 required, as I said, an almost instantaneous response. difficulties with the departure of Carmen Dowd, there A. Yes. 4 4 was at least a documentary record base of the decisions 5 5 Q. Then there was a request for an interview by the CPS had made, but you were reliant on what the MPS 6 6 Mr David Leigh, who again was travelling over salient were telling you about their decision-making, is that 7 ground which related to the CPS, not the police action; 7 fair? 8 is that right? 8 A. Exactly. We had limited documentation on the premises 9 A. Yes. 9 and a record of any decisions we may have made. As for 10 10 Q. Did you respond to his bid for an interview? the wider documentation, the approach taken by the 11 A. No, I didn't. The Guardian had obviously been working 11 police and all their records events, we relied on them. 12 on this for some time and this story broke in the 12 Q. Thank you. You think it's about 3.30 in the afternoon 13 13 evening of 8 July and in the paper press on 9 July 2009. that AC Yates made his press statement. We've seen the 14 14 press statement, it's under your tab 22. I just wonder As I say, I'd never really had cause to look at it. 15 15 where you got the time from because Mr Yates put it I knew generally what had gone on in 2007, I'd never 16 16 looked at the papers, never had cause to think about it. later on that afternoon, maybe closer to 5.00 or 5.30. 17 17 During the morning of 9 July, there was a huge A. I don't know now where I got that time from. If 18 flurry of activity because, as you say, we were being 18 Mr Yates says it was later in the day, then I wouldn't asked to deal with all sorts of queries and to provide 19 19 quarrel with that. I think probably to get this 20 20 information, which was difficult in the circumstances. statement we must have seen something which suggested it 21 I was then asked, or I should say David Leigh asked of 21 was 3.30, but if that's wrong, it might have been 22 22 the organisation some quite specific questions and I was slightly later in the afternoon. 23 23 clearly not in a position to begin to deal with them, so The point I was making about it in paragraph 34 is 24 therefore I declined to do so. 24 that I didn't at that stage know that he was going to 25 25 LORD JUSTICE LEVESON: Is there a risk that the pace of this make a statement, nor did I know that he had carried out

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2

a review of the material.

- 2 Q. He would emphasise that he was establishing the facts
- 3 around his inquiry rather than carrying out a review, it
- 4 would seem.
- 5 A. I understand.
- Q. I'm not going to ask you to comment on what his
- 7 statement says, we can draw our own conclusions about
- 8 it.

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- 9 A. Save that what I said in paragraph 38 is important.
- 10 What he said was some of the first information I was
- 11 receiving about this case, and given his position at the
- 12 time, I have to say I took it pretty much at face value
- 13 in building up the picture.
- 14 Q. You had no reason to doubt what he was saying, that must
 - be right. Just a small point on the last sentence of
- 16 paragraph 38 where you say:
- 17 "It was only much later that I came to know of the
- 18 short time Mr Yates had spent considering the case."
- 19 Didn't you draw the inference at the time that
- 20 Mr Yates was responding to the Guardian article, which
- 21 after all had only just seen the light of day, and he in
- 22 his statement himself said, "I've been asked by the
- 23 Commissioner today to establish the facts", so what he
- 24 was doing was an exercise which was completed within one
- 25 day. Isn't that fair?

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- inappropriate in the prosecutions undertaken in this
- 2 case. In the light of the fresh allegations that have
- 3 been made, some preliminary inquiries have been
- 4 undertaken. I have now ordered an urgent examination of
- 5 the material that was supplied to the CPS by the police
- 6 three years ago. I am taking this action to satisfy
- 7 myself and assure the public that the appropriate
- 8 actions were taken in relation to that material."
- 9 A number of points on that, Mr Starmer. You're 10 confining it to the material supplied to the CPS by the
- 11 police three years ago, so are you excluding from
- 12 account all of the unused material?
- 13 A. I was, and that was deliberate. It's always difficult
- 14 when there are questions about a case which is no longer
- 15 live to decide how to answer those questions. One would
- 16 be to call for all material generated in the course of
- 17 the full investigation and require it to be reviewed
- 18 from start to finish. That would be an extremely long 19 exercise. The other is to look at the possession -- the
- 20
- material in the possession of the CPS and check the 21 decision that the CPS made.
- 22 That was my real concern. I wasn't -- my
- 23 responsibility was to ensure that on the material that
 - was provided to us that we made the right decisions, and
 - that's what I wanted to be assured about, so I limited
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- A. I think that's fair, looking at the statement, and
- 2 I accept that. At the time, it was a very busy day,
- 3 I didn't pick that up at the time and I didn't
- 4 appreciate at the time that whatever Mr Yates looked at,
- 5 he completed the exercise in a day. I know that some
- 6 months later I think he gave evidence to a Select
- 7 Committee making that even clearer. I have to confess
- 8 I didn't pick that up at the time. It was only later
- 9 that I appreciated the entire exercise had been done in
- 10 the short time that it had. But I accept it's there on
- 11 the face of the document where he says I did it today.
- 12 Q. You say in paragraph 39 that Mr Yates made no reference 13 to the investigation having been curtailed or otherwise
- 14 circumscribed by advice on the law given by the CPS,
- 15 which is correct, that's not indicated by his statement.
- 16 But I think that point -- we may go back to it, but
- 17 we've covered it largely to the extent we need to. 18
- 19 that evening.
- 20 LORD JUSTICE LEVESON: 23.
- 21
- 22 MR JAY: Yes, tab 23. Did I give a wrong tab? All right,
- 23 tab 23. It was obviously based on the limited data you
- 24 had available:
- 25 "... no reason to consider there was anything

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You issued your own statement, which is at tab 33,

- 1 the exercise to the material we had and the decision
 - that we made as the Crown Prosecution Service.
- 3 Q. Whatever material had been supplied in relation to
- 4 counts 16 to 20, which were the calculations of those 5 outside the Royal household, that material was within
- 6 the contemplation of your press statement, wasn't it? 7
 - A. That was, yes.
- 8 Q. Can I ask you, it may be implicit, your reaction to the
- 9 Guardian article, it might be said it's only one
- 10 article. Why did you take it or appear to take it so
- 11 seriously?
- 12 A. Well, it was only one article. It was quite an
- 13 important issue that we had deliberately taken the
- 14 decision not to bring a case against an executive at the
- 15 News of the World. And the number and seriousness of
- 16 the requests that were coming in thick and fast on
- 17 9 July 2009 persuaded me that this was something
- 18 I really needed to understand and to be reassured about
- 19 what had happened. And I needed to reconstruct the
- 20 picture from the CPS point of view as quickly as
- 21
- 22 And so it was really the Guardian article that 23
- started the process and my thinking, but it was very 24 rapidly followed by very many requests for more
- 25 information, either from the press or from official

- 1 sources. So it was really all of that taken together 2 that in the course of 9 July persuaded me that I needed 3 to reconstruct the picture and to do it pretty rapidly. 4 LORD JUSTICE LEVESON: It's not just the press article, but 5 particularly the political overtones, questions in the 6 House and all this sort of thing. 7 A. Yes, and I think I'd understood that Lord West was going 8 to be making a statement later that day on behalf of the 9 whole government. We were being asked to contribute to 10 that. I was finding it difficult to do so because 11 I didn't have any knowledge, I didn't have the person 12 who dealt with it, we were getting the material as 13 quickly as we could, but when something is being treated 14 as seriously as that, across government, it was obvious 15 to me that I needed myself to get a much better picture. 16 Q. Can I ask you about paragraph 43. You say: "On reflection I could have been clearer with my
- 17 18 team than I was. They (thinking that I was most 19 concerned about the advice which the CPS had given to 20 the police at the time) concentrated on the 21 correspondence between the CPS and the police at the 22 time and did not examine the entirety of the material in 23 the possession of the CPS, which included witness 24 statements and exhibits ... However, I am satisfied 25 that this misunderstanding made no material difference Page 101

- 1 premises and were part of the unused material, and
- 2 therefore what we had was a fraction of a much bigger
- 3 picture.
- 4 LORD JUSTICE LEVESON: Could I unpick your answer in two
- 5 ways, Mr Starmer? The first is what you were really
- 6 concerned about was: have we given advice that somebody
- 7 shouldn't be prosecuted which is now being challenged?
- 8 A. Yes.
- 9 LORD JUSTICE LEVESON: That's not infrequent, happens.
- 10 You're asked for an advice and you give it.
- 11
- 12 LORD JUSTICE LEVESON: So that would be all available within
- 13 the papers that you held?
- 14 A. Yes.

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- 15 LORD JUSTICE LEVESON: The second question is -- sorry, in
- 16 relation to the first question, that's the four corners
 - of what you were asking your team to do: have we done
- 18 the job we were asked to do properly?
- 19 A. Yes. That was essentially what I wanted to know.
- 20 LORD JUSTICE LEVESON: The second question flows from the
- 21 assurance that you received from Mr Perry, because
- 22 I would be grateful for your comment upon the extent to
- 23 which you should be relying upon leading counsel, very
- 24 experienced and capable though he is, recollecting back
- 25 three years without the benefit of papers on issues
 - Page 103

- 1 and the conclusions of the examination I had called for 2 would have been the same."
- 3 Why do you say that, that it made no material 4 difference?
 - A. Because the question I was essentially focusing on was on the material available to the CPS at the time were appropriate decisions taken in relation to the prosecution in 2006 and 2007, and there's nothing in the material that was then held on the premises of the CPS

that would have affected my review in July 2009.

I should say this: by then, I had -- my team had drawn on David Perry's recollection and I had seen the note that he produced on 14 July about his recollection of the conference back in August 2006, so by then I was drawing on not only the material that we had on the premises, but also the help and assistance that David Perry and Louis Mably were giving us.

18 Q. The --

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19 A. I should perhaps add this, if it's not clear: the 20 material we held on the premises at the CPS was 21 a fraction of the material that had been collected in 22 the investigation, and to give that some flavour, on the 23 premises of the CPS, so far as I'm aware, there were 24 probably about 40 extracts from the Mulcaire diary. The 25

other whatever it is, 10,960 pages were never on our

Page 102

- 1 which might become quite sensitive. 2
 - A. Well, ideally that wouldn't be the position. My own
- 3 view from working, because we had to work swiftly on 4 this, was that in the absence of Carmen Dowd, and from
- 5 recollection we tried to contact Carmen Dowd -- we were
- 6 successful on one or two occasions but we didn't have
- 7 open access to her -- the next best way of approaching
- 8 this was to involve counsel instructed at the time, the
 - only other people available who could help reconstruct
- 10 the picture. I do accept that that isn't an ideal
- 11 situation and I do accept that that on occasion put
- 12 counsel in a rather difficult position, because they
- 13 were being asked to recollect things which were then two
- 14 or three years old, and they hadn't had provided to them
 - all the papers that they'd had provided at the time.
- 16 So far as David Perry's recollection of the August
- 17 2006 conference is concerned, however, that is something
- 18 which he put in his note of 14 July 2009. It's
- 19 something that only a few days later, I think on
- 20 17 July, I personally discussed with him, because as
- 21 soon as I -- as soon as the Neville email was brought to
- 22 my attention, I had a conversation with him,
- 23 particularly about what he'd been told in 2006. So in
- 24 that respect, that was a face-to-face discussion with
- 25 David Perry, and the way he discussed it with me gave me Page 104

26 (Pages 101 to 104)

- Day 61 AM 1 the clear impression that he did actually remember that 2 part of the conference, whether he had his notes or not. 3 MR JAY: We'll come to that, but on 10 July junior counsel 4 was involved in a meeting at the old offices of the CPS. 5 This is tab 25, page 18299. 6 A. Yes. 7 Q. It's fairly clear that only limited documentation was 8 available, although a draft chronology was prepared. 9 Mr Mably gave some explanation about the charges and how 10 they evolved. We can see from clause 2.7, page 18200, 11 halfway down that paragraph: 12 "Junior counsel Louis Mably recollected that the 13 situation changed after the search on Glenn Mulcaire's 14 premises. He also added that the original charges only 15 reflected a small number of calls and Glenn Mulcaire was 16 involved in the celebrity aspect of the case [well, 17 that's what became counts 16 to 20] whilst Goodman was 18 not." 19 Then he explained that the indictment included five 20 additional counts and that the guilty plea is at 2.11. 21 A. Yes. 22 Q. The extent to which you were still reliant on the police 23 seems to come through the conclusion, paragraph 6, 24 page 18301:
 - the police would have submitted their report and we will
 be in a position to deliver a briefing to [you] which is
 diligent, accurate and swift. The meeting was then
 concluded."

"Simon told the meeting that hopefully by next week

- So one does draw the inference that what the police were telling you at least factually was going to inform the briefing that would come up to you in due course?
- 8 A. Yes.

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- 9 Q. The story then moves on paragraph 49 of your statement.
- 10 A. Yes.
- Q. 18122. The Home Secretary asked for the terms of
 reference of your review and you decided that they
 should be articulated thus:
- "Whether the CPS gave any advice to the police atthe investigative stage --"
- 16 I think that should be 2006?
- 17 A. It should be.
- Q. "(And if so, what?) What information was passed to the
 CPS to consider prosecution and who was considered. The
 strategy. Whether any of those now alleging that their
 cases were not considered for prosecution were in fact
 considered ..."
- Again that should be in 2006, and reasons for that.
- 24 You were now coming under pressure from the highest
- level, really. You say in paragraph 50:

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- 1 "It is fair to say at the time that Simon Clements
- 2 was under some pressure to complete his task."
- 3 Is it right to say that there were two background
- 4 difficulties here: first, your reliance on the police to
- 5 provide you with factual evidence, and secondly, the
- 6 background consideration that the Home Secretary wanted
- your response as soon as possible?
- 8 A. Yes.

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Q. 14 July now, paragraph 51:

"Nick Davies gave evidence to the CMS committee. As part of his evidence he presented the committee with copies of a number of documents, which included what has come to be known as the 'for Neville' email and the contract between Mulcaire and [someone else at News of the World] which related to the payment of a bonus for the Gordon Taylor story."

Presumably those came immediately to your attention, or those matters came immediately to your attention?

- A. They didn't come immediately to my attention. I was waiting for the report that I would get later that week.
- And, as you will see, one of the issues when I issued
- 22 the results of my examination was a query from the
- 23 Guardian as to whether or not the "for Neville" email
- had been considered. It is wasn't brought to my
- nad been considered. It is wasn't brought to in
- 25 attention at that stage. I hadn't seen the "for

- Neville" email.
- 2 Q. We'll come to that in a moment.
- On the same day you had David Perry's note or the
- 4 joint note from counsel, 14 July.
- 5 A. Yes.
- Q. We've seen it earlier on today. You say at the bottomof this page:
- 8 "As far as this aspect of their collective memory is 9 concerned, Mr Perry personally emphasised to me (in
- 10 2009, see below) that he had a firm recollection of 11 asking these questions."
- Taking the story forward three days, that was on
- 13 17 July?
- A. That was on 17 July. I mean, the reason that was of
 importance is because the issue that had first concerned
- me was the suggestion that the CPS had not prosecuted an
- executive from the News of the World, in other words,
- executive from the News of the World, in other words,
- some deliberate decision had been taken not to prosecute
- 19 an executive, impliedly notwithstanding evidence that
- $20\,$ $\,$ the CPS had. So David Perry's recollection of that
- 21 conference was obviously important to the concern I had
- 22 at the time, but it was three days later that he and
- 23 I had a face-to-face conversation about that conference
- 24 back in 2006.
- $\,$ Q. Thank you. On 14 July as well there's an email from $\,$ Page 108

- 1 Mr Williams, tab 29 of your bundle, page 18305. He sets
- 2 out the position at the conference on 23 August --
- 3 although he has the wrong year in the email, that
- doesn't matter -- as to how the five or six victims 4
- 5 would be selected.
- 6 A. Yes.
- 7 Q. And I think it's fair to say that what Mr Williams says
- 8 there is wholly consistent with the evidence we've heard
- 9 from Mr Perry this morning.
- 10 A. I think that's right.
- 11 Q. There was a later email from Mr Williams the following
- 12 day, 15 July.
- 13 A. Is that the next tab?
- 14 Q. Yes, it's tab 30. Again you were heavily reliant on
- 15 what he was telling your department in terms of the
- 16 factual position?
- 17 A. Yes.
- 18 Q. He refers to the conference on 21 August again, and then 19 the last paragraph:
- 20 "At this stage Mulcaire and Goodman had been
- 21 arrested and charged in terms of the main royal victims.
- 22 The conference was now considering what we had
- 23 considered as a consequence of the arrests and how it
- 24 affected the way forward, within which, of course, there
- 25 was consideration as to what other potential victims did Page 109
- we have. I'm deliberately using the term potential 1
- 2 victims as I feel it's important to understand the we
- 3 all recognise that proving that someone was the victim
- 4 of interception is extremely challenging, if for no
- 5 other reason than to varying degrees the airtime
- 6 providers' software was never designed to be used to
- 7 prove such activity in court."
- 8 And then he refers to what happened subsequently and 9 I paraphrase: there were issues concerning parties'
- 10 willingness to be witnesses, but eventually came up
- 11 with, as we know, five additional counts.
- 12 A. Yes.
- 13 Q. It isn't explicit that the reference to this being 14
- extremely challenging wasn't necessarily predicated on a 15 narrow interpretation of sections 1 and 2 in RIPA, it
- 16 might have been more general observation, but he's not
- 17 expressing a view of the law there, which he was given
- 18 by anyone, is he?
- 19 A. No, he's not. I think in fairness the fact that the 20 police were trying to get evidence to show whether or
- 21 not the message had been listened to before it was
- 22 intercepted shows that they thought that for part of the
- 23 case that was something they might need to show.
- 24 Q. Yes. I'm not going to ask you what he says about 25
- victims but what Mr Williams said about other defendants Page 110

- 1 may be relevant on the next page, 18308, four lines
- 2 down, in relation to whether or not anyone else was 3 involved:
- 4 "As part of this same conference and considering
- 5 what we had discovered we actually commented that we
- 6 were open to the potential for there to be other
- 7 defendants and in fact part of our discussion was around
- 8 the merits of getting a production order to see if it
- 9 would reveal more to help our understanding."
- 10 Well, I can probably stop there. That can be read
- 11 a number of ways. It's certainly consistent with
- 12 Mr Perry being told that there was no other evidence at
- 13 the moment relating to other defendants but a production
- 14 order may reveal the existence of such evidence, which
- 15 may be the better interpretation, or it could be
- 16 interpreted on the basis that there was discussion
- 17 around there being some circumstantial or inadequate
- 18 evidence at the moment, and the production order may
- 19 beef up the position?
- 20 A. I'm not sure I am able to comment one way or the other.
- 21 When I was looking at this in 2009, I was interested in
- 22 the questions that Mr Perry had asked at that conference
- 23 for obvious reasons, but I had understood his note to
- 24 the CPS of 14 July 2009 to mean that he had never,
- 25 David Perry, during the course of the prosecution, seen

- 1 evidence implicating others, because it wouldn't
- 2 necessarily have helped me to know that on 21 August
 - 2006 there wasn't such evidence, but it arrived two
 - weeks later.

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- 5 So I was concerned -- I mean, I was interested in
- 6 the fact -- in the dates, and that he had asked those
- 7 questions, but I was more concerned with whether that
- 8 evidence had ever been seen by him in the period
- 9 2006/2007 at all, in whatever capacity, because
- 10 obviously other counts were -- the indictment hadn't
- 11 been drawn up at that stage, counts were later added to
- 12 the original indictment and more material would have
 - been supplied to him for that exercise.

 - So I really can't comment on this passage, but my understanding was that David Perry hadn't then or
- 16 subsequently seen evidence implicating others.
- Q. At any stage did this pass through your mind, 18 Mr Starmer, that if one looks at counts 16 to 20, the
- 19 non-Royal victims, evidence was clearly provided to the
- 20 CPS and counsel by the police in relation to those
- 21 matters. You mentioned 40 pages from the Mulcaire
- 22 notebook, so those pages may have been related to those
- 23 charges.
- 24 A. Yes.
- 25 Q. It could be said, well, if you look very carefully at Page 112

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- 1 that material, or perhaps not so carefully, you could
- 2 see, well, the corner names relate to other first names
- 3 than Clive Goodman, by implication this must be others
- 4 at News International, and you put the story together,
- 5 you're coming fairly quickly to the conclusion that
- 6 there must have been others at News International who
- 7 were being at least potentially implicated and whose
- 8 existence therefore was known to the CPS.
- 9 A. I've never gone through that exercise myself, and that
- 10 question I think was put to David Perry this morning and
- 11 he gave his answer. I was, rightly or wrongly, relying
- 12 on what Mr Perry was telling me in 2009 that he had seen
- 13 and what he concluded from what he had seen. To be
- 14 honest, if leading counsel says to me, "I did not see
- 15 material that implicated others", it's highly unlikely
- 16 that I'm going to say, "I think I will now look at
- 17 material myself to double-check what you've just told
- 18
- 19 LORD JUSTICE LEVESON: There's no point at all in looking
- 20 over the same material provided he has been asked to do
- 21 that particular exercise.
- 22 A. Exactly. He'd been asked and told me in 2009 what his
- 23 conclusion was and I had no reason really to go back and
- 24 double-check what he'd told me.
- 25 MR JAY: That must be right, Mr Starmer. The only issue

Page 113

- in paragraph 3, as I understood it --
- 2 O. It's 18280. The last sentence there.
- 3 A. Well, it's not just that, it's paragraph 3. This is
- 4 what I was being told as a result of my examination. My
- 5 concern was it was being suggested that there had been
- 6 another suspect and we the CPS had taken a decision not
- 7 to pursue that suspect for whatever reason and I'm being 8 told:

"No other suspects were considered or charged. This has been confirmed to Asker Husain [that's the person who was dealing with it in 2009 on my behalf] by DCI Surtees: 'no other named subjects [apart from the three named individuals] were identified as suspects of criminal activity through this investigation'."

That I understood to be a quote of what had been said to Asker Husain by the police in 2009.

"Prosecution counsel has also confirmed that the police informed them that there were no other suspects ..." apart from those three.

So on the issue I was most concerned about, this is what I was being told. Counsel says at the time there weren't any other, it's been confirmed to us, as I understood it, in July 2009 that that was the position.

24 That obviously gave me an answer to the concern that

25 I had.

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- 1 might be with the reliability of Mr Perry's memory in
- 2 2009, being asked to throw his mind back to the fine
- 3 detail of a quite complicated case and remember: what
- 4 exactly was I shown in relation to any particular issue
- 5 or particularly an issue which didn't feature very
- 6 starkly, given there were quite early guilty pleas.
- 7 A. No, no, I accept that. I was asking David Perry to work
- 8 quickly with us to try and re-establish the picture. He
- 9 did that to the very best of his ability, I'm grateful
- 10 to him for having done that. We were under considerable
- 11 time pressure for the reasons that are obvious in my
- 12 statement.
- 13 LORD JUSTICE LEVESON: But the classic part about all this
- 14 is the exercise that you were undertaking, which was to
- 15 review what the CPS had done, not what the overall
- 16 position was.
- 17 A. Precisely.
- 18 MR JAY: You were provided with a draft submission, this is
- 19 under tab 31.
- 20 A. Yes.
- 21 Q. Including a draft press statement and a helpful
- 22 chronology, which sets out the position in some detail.
- 23 I don't think it's necessary to dwell on that, but --
- 24 A. Well, other than -- I'm sorry, you may be coming to
- 25 this, the review itself? What I was -- what I noted was

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- 1 Q. The press statement which went out on 16 July, under
- 2 tab 35, if you go to page 18294, we can see at the
- 3 bottom of that page what you said about other suspects.
- 4 A. Is that the third page of the -- under "Findings"?
- Q. It is indeed.
- 6 A. Yes, I see that.
- 7 Q. You can see what you said:
 - "Having examined the material that was supplied to the CPS by the police in this case, I can confirm that no victims or suspects other than those referred to
- 11 above were identified to the Crown Prosecution Service
- 12 at the time. I am not in a position to say whether the 13 police had any information on any other victims or
- 14 suspects that was not passed to the CPS."
- 15 So that was appropriately cautious.
- 16 I've been asked to put to you this point by the MPS,
- 17 really: given that the police had not provided you with
 - all relevant information, why didn't you seek it from
- 19 them?
- 20 A. Because I was not concerned with whether the police had 21 taken appropriate decisions on the material available to
- 22 them. I was concerned with whether the CPS had taken
- 23 the appropriate decisions on the material supplied to
- 24 the CPS. It really wouldn't have been appropriate for
- 25 me to say I'm going to investigate material the police

have to consider whether they took appropriate
decisions. I was focusing on my organisation and the
decisions taken in 2006 by the CPS.
Q. Yes, I understand that. We're going to move on now to
the two documents we referred to about five minutes ago,
but it may be convenient
LORD JUSTICE LEVESON: Fine, 2 o'clock if that's all right.
Thank you very much.
(1.00 pm)
(The luncheon adjournment)
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