

<p>1 Mr Leigh's references on page 72 below to "arms 2 company " was a slip and Mr Leigh has 3 subsequently corrected this to "a construction 4 company " as he intended at the time. 5 Tuesday, 6 December 2011 6 (10.00 am) 7 MR BARR: Good morning, sir. 8 LORD JUSTICE LEVESON: Yes, Mr Barr. 9 MR BARR: We have four witnesses today. We'll be starting 10 in a moment with Mr Nott, then Ms Harris and then 11 finally this morning we have Mr Leigh and this 12 afternoon, Mr Atkins. 13 LORD JUSTICE LEVESON: Very good. 14 MR BARR: The first witness is Mr Nott. 15 MR STEVEN JOHN NOTT (affirmed) 16 Questions from MR BARR 17 MR BARR: Take a seat, please, Mr Nott. 18 A. Thank you. 19 Q. Could you tell the Inquiry your full name, please? 20 A. My name is Steven John Nott. 21 Q. You've provided a witness statement to the Inquiry on 22 a voluntary basis. Are you familiar with the contents 23 of the statement? 24 A. I am, yes. 25 Q. Are the contents of the statement true and correct to the best of your knowledge and belief? A. They are.</p> <p style="text-align: center;">Page 1</p>	<p>1 customers' orders that afternoon and I was in a bit of 2 a panic trying to get -- waiting for the network to come 3 back on my phone so I could access my orders so I could 4 ring the customers up, basically, to put the orders in, 5 and I stopped at a service station and I rang up the 6 customer services at Vodafone to ask them how long the 7 network was going to be off for because of this problem 8 I had, and they explained to me that the whole of South 9 Wales area was down at the time, it had been off for 10 a few hours, and I told them the problem that I had. 11 They said it's not a problem and explained to me that 12 I could access my voicemail from any other phone, from 13 a landline, from a mobile and so forth. 14 It was new to me at the time, and I asked them how 15 I would do it, and they described -- they explained to 16 me that I would have to ring my own mobile phone number 17 up, and when I -- when it went into the voicemail, said, 18 "This is a Vodafone recall service for..." whatever 19 number you were ringing -- after you'd hear that message 20 and it said, "Please leave a number after the tone", 21 after you'd hear the tone, you'd press number 9. This 22 is what the customer service lady was telling me at the 23 Vodafone customer services. She then said, "You'd have 24 to enter your security number", and I didn't realise 25 what she meant by that and I thought that was the</p> <p style="text-align: center;">Page 3</p>
<p>1 Q. We're going to take your statement as read, but there 2 are a few questions that I would like to ask you to 3 amplify what is in your statement and to summarise it. 4 You tell us, first of all, that you are a member of 5 the general public, currently employed as a delivery 6 driver? 7 A. I am. 8 Q. Winding back now to 1999, you tell us that there came a 9 point in time when you discovered that it was very easy 10 to access other people's Vodafone voicemail accounts? 11 A. I did. 12 Q. Could you tell us in summary, please, how you came to 13 find that information out? 14 A. I was a salesman for a food company based in south 15 Wales. I used to have a lot of customers -- new 16 customers ringing up my mobile phone and leaving 17 messages with new orders on the phone as I was driving, 18 and you couldn't take the orders and write them down as 19 you were driving so they would be left on my voicemail 20 until I'd stopped, to be able to write the orders down, 21 the new customer's details, and ring the production -- 22 the sales team up to put the production into order, 23 basically, at the company. 24 At the time this happened, the network went 25 completely down and I was expecting a lot of new</p> <p style="text-align: center;">Page 2</p>	<p>1 security number for when I switch my phone on. At the 2 time, it was new to me, and she said, "No, obviously you 3 don't know what it is, so yours is still at default, 4 which is 3333." And I had that moment where I thought 5 to myself: "This is insecure", straight away because 6 I then said to the lady at customer services: "If that's 7 the case, I could ring anybody else's phone up using the 8 same method and access their voicemail", and they said, 9 "Yes, you can, but you're not supposed to." 10 That was that call and I sort of got my orders and 11 got the food to the company and went on with my 12 business. 13 Q. I see. You then tell us that you later tried to attempt 14 to get Vodafone to change their system and to improve 15 their security. Were you successful in that endeavour? 16 A. Not at all. I made many attempts at ringing the 17 Vodafone headquarters, which was in Newbury at the time, 18 trying to get them to listen. They weren't taking any 19 notice of me, and they kept saying to me: "It's not 20 a problem. We can't see why there's going to be 21 a problem. Why you are making so much of a fuss?" 22 I kept being fobbed off all the time and it wasn't the 23 sort of service I was expecting from them, but then 24 again, who am I to tell a large company to change their 25 system?</p> <p style="text-align: center;">Page 4</p>

1 (Pages 1 to 4)

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

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

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

4 (Pages 13 to 16)

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

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

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

7 (Pages 25 to 28)

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

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

<p>1 you to seek the benefit of your experience as 2 a specialist media lawyer? Have you noticed, in your 3 time in practice, any trend in prior notice? Has it 4 been given more often or less often? 5 A. Generally there's notification. I speak generally. You 6 don't always know. Sometimes if there's a very big 7 media story going on, so many -- you get a certain 8 amount of notification and then all the papers cover it. 9 So you -- you know, you sometimes find yourself in 10 a position -- something's come out on the Internet or in 11 an early publication and then everybody else will 12 publish after that. So it's not always -- you don't 13 specifically always get it. 14 Q. I'm thinking here about exclusive stories, when they are 15 first broken by a newspaper. 16 A. Generally, generally. Exclusive stories by a newspaper 17 I've received prior notification or my client has 18 received prior notification. Sometimes it's not enough 19 prior notification to get a matter sorted. It's very 20 difficult on a Saturday. Saturday can be a very busy 21 day because of the Sunday papers, and so when the phone 22 rings at 4.30 or 5 o'clock, you have to -- and you can 23 tell, because normally there will be a few calls and 24 a journalist on the other end of the phone -- I don't 25 even want to give an example because I don't think I can</p> <p style="text-align: center;">Page 37</p>	<p>1 this story run or are you going to manage it in some 2 other way? Are you going to make a comment? I think 3 that the press have been, during this Inquiry, more 4 careful. I think that my workload in terms of scandal 5 has been somewhat reduced. 6 LORD JUSTICE LEVESON: Is that good or bad? 7 A. I'm delighted. Absolutely delighted. Thank you. 8 LORD JUSTICE LEVESON: I'm pleased somebody's pleased. 9 MR BARR: On the question of injunctions, can I ask you 10 this: have you had experience of injunctions being 11 defeated by talk on the Internet or through social 12 media? 13 A. When you say "defeated", do you mean lifted? Or -- 14 Q. No, I mean -- 15 A. Breached? 16 Q. -- the practical purpose is negated. 17 A. Breached. Certainly in terms of the May injunctions, 18 there were breaches on the Internet and one of the 19 things that people say quite a lot is: "Oh, well, what's 20 the point of having this injunction? There's all this 21 information out there." But the fact is all the 22 information isn't out there. If there's an injunction 23 in places and a small amount of information has leaked 24 out, sure, that's a breach, but that doesn't mean that 25 the newspaper can run an exploitative story where they</p> <p style="text-align: center;">Page 39</p>
<p>1 think of an example that isn't real at the moment. 2 Q. You say generally. Can I ask you about those cases 3 where you don't get prior notice? Is there any 4 particular pattern to those? Is there a particular type 5 of case? 6 A. They tend to be cases that have got something to do with 7 criminal law, actually, where there's possibly 8 a stronger apparent public interest in it. So if, for 9 instance, they're reporting some kind of allegation of 10 a crime, you don't -- you tend to hear from the 11 journalists if it's a sex scandal, if it's some kind of, 12 you know, maybe if there's some kind of chance that they 13 might get an interview out of your client, that can 14 happen. 15 There's always the standard ploy of: "We're going to 16 run this. Are you going to co-operate?" And then you 17 have to decide. Up until May, when there was a lot of 18 movement and debate and discussion in terms of the 19 appropriateness of injunctions and privacy 20 injunctions -- one of the first things you do is you 21 decide whether or not this is private information. Is 22 it something that we should consider instructing counsel 23 on immediately? Is this a story that could be stopped? 24 Now, things have moved on. There are certainly less 25 injunctions and you have to decide: are you going to let</p> <p style="text-align: center;">Page 38</p>	<p>1 pay money to an individual who is breaching the 2 injunction. A lot of the salacious detail doesn't come 3 out. There's a rule of law. There's an injunction in 4 place that has been lawfully provided and one of my 5 problems with it was that it's very easy for -- certain 6 tabloid newspapers who have been eager to expose 7 scandals, I think very hypocritically, don't expose 8 their own scandal. So it's difficult for me to take it 9 seriously when they say that this is all about public 10 morality. 11 Q. I see. Moving to the PCC, have you had much experience 12 of dealing with the PCC? 13 A. I deal with the PCC generally in terms of harassment, 14 generally in terms of photographers. So if, for 15 instance, there have been occasions where I've had 16 clients who have had enormous amounts of photographers 17 outside or they can't exit a building, they've tended to 18 be very effective in terms of sending a notice around. 19 Q. Have they been effective with harassment cases as well 20 as photographer cases? 21 A. One of the things about the PCC is you sort of have to 22 make this choice. You can't have civil proceedings 23 going on at the same time as a complaint with the PCC. 24 So I have tended to go down the civil route, although 25 the relationship that I've had with the PCC in terms of</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 getting something done immediately hasn't been too bad.</p> <p>2 Q. Are there any areas in which you think the PCC could be</p> <p>3 improved?</p> <p>4 A. Whether it's the PCC, whether it's some other body,</p> <p>5 whether everybody decides that it's time to obey the</p> <p>6 law -- which, you know, seems to be strange that you'd</p> <p>7 even have to say that -- something has to be done so</p> <p>8 that there is resolution to law breaking, and whether</p> <p>9 it's, as I said, a PCC, a new tort, regulation, not</p> <p>10 having regulation and following the law, as long as</p> <p>11 matters become better than they are, I'd be pleased.</p> <p>12 But the PCC have limited powers.</p> <p>13 Q. So you don't want to be specific about any particular</p> <p>14 changes you think might help, you simply want a system</p> <p>15 that will ensure the rule of law; is that right?</p> <p>16 A. The approach that we take at my law firm, at Mishcons,</p> <p>17 is that we are -- we have a lot of internal discussion</p> <p>18 about what should happen, and we are lawyers. So</p> <p>19 therefore, as a first base, you want to respect the rule</p> <p>20 of law and you want -- and I think there are decent laws</p> <p>21 that have been properly applied. When it comes to</p> <p>22 speaking of regulation going forward, obviously there's</p> <p>23 a certain reluctance in terms of regulation, not just</p> <p>24 from the press but in terms of what form would it take?</p> <p>25 And so nobody wants a sort of bureaucratic knee-jerk</p> <p style="text-align: center;">Page 41</p>	<p>1 starts and where it stops. These grey lines have come</p> <p>2 up in so many cases, particularly, for instance, just to</p> <p>3 give you an example, where -- if a journalist is looking</p> <p>4 into a public person in a position of authority who they</p> <p>5 suspect might have committed a criminal offence, if they</p> <p>6 haven't committed that criminal offence, you know, at</p> <p>7 what point do you get to where it's okay to investigate?</p> <p>8 Same goes for areas of privacy law. When does your</p> <p>9 privacy start and stop? When do you first become</p> <p>10 a public person?</p> <p>11 So, for instance, if I was addressing some students,</p> <p>12 like you sometimes do, who might, in ten years' time,</p> <p>13 have a career which takes them into the public domain,</p> <p>14 if they become a public figure, does what they did</p> <p>15 yesterday -- is that still private? Can that be</p> <p>16 revealed? And should we be frightened, even when we're</p> <p>17 not a public person, of what we've done or said now?</p> <p>18 Will that be exposed later? There has to be a certain</p> <p>19 amount of personal autonomy and freedom to be, without</p> <p>20 fear that you're going to be a role model in five years'</p> <p>21 time.</p> <p>22 So I think a lot of the law is very grey in that --</p> <p>23 well, actually, the law isn't grey. I think a lot of</p> <p>24 the areas of interpretation of the law is grey if you're</p> <p>25 looking at it from the point of view of how a journalist</p> <p style="text-align: center;">Page 43</p>
<p>1 reaction to some of the terrible things that we've</p> <p>2 heard.</p> <p>3 So I can't be specific at the moment about what</p> <p>4 model and what the outcome of this Inquiry should be in</p> <p>5 terms of recommendation. I just know that I want the</p> <p>6 law to be obeyed in some way so that we don't have this</p> <p>7 ridiculous situation that we had over the injunctions,</p> <p>8 where it was okay to breach them, where if there's</p> <p>9 a scandal exposed, that can be printed all over the</p> <p>10 papers but if there's a phone hacking scandal, there can</p> <p>11 be silence for years. That doesn't seem right. There</p> <p>12 has to be proper sanctions as well.</p> <p>13 LORD JUSTICE LEVESON: It's not just a question of the law</p> <p>14 in that sort of rather grand sense. One can talk about</p> <p>15 the criminal law.</p> <p>16 A. Sure.</p> <p>17 LORD JUSTICE LEVESON: But there are always going to be</p> <p>18 areas that are grey, where the criminal law might not be</p> <p>19 engaged but which many might think -- perhaps not all --</p> <p>20 lines have been crossed which should not have been</p> <p>21 crossed.</p> <p>22 A. Absolutely.</p> <p>23 LORD JUSTICE LEVESON: So that's the really difficult issue.</p> <p>24 A. There are issues in terms of what people agree private</p> <p>25 information should be. There's -- and where criminality</p> <p style="text-align: center;">Page 42</p>	<p>1 or a tabloid newspaper might interpret it or how the PCC</p> <p>2 might interpret it and how the person whose private</p> <p>3 information it concerns interprets it, and then how the</p> <p>4 public might perceive it. I think it's deeply complex.</p> <p>5 LORD JUSTICE LEVESON: I agree with you that it's deeply</p> <p>6 complex. The trouble, of course, is that if you make</p> <p>7 rules specific -- this is on that signed of the line and</p> <p>8 that is on the other side of the line -- in one sense</p> <p>9 that helps, but in another sense it hinders because it</p> <p>10 removes the elasticity that comes with the exercise of</p> <p>11 sensible discretion.</p> <p>12 A. But the judges do that. Part of the rule of law --</p> <p>13 LORD JUSTICE LEVESON: Oh, judges do that. That's --</p> <p>14 A. That's my point and I absolutely agree with you. Trying</p> <p>15 to express it like that, when you're in court and you</p> <p>16 have applied for an injunction, there are areas that the</p> <p>17 judge will look at and evidence that the judge will look</p> <p>18 at where he will consider precisely those points.</p> <p>19 Here's an area that is private: information about</p> <p>20 somebody's health. Here's an area about somebody's</p> <p>21 employment and correspondence or what they've done and</p> <p>22 where, and where there are these balancing processes</p> <p>23 going on, the judge will look at that, look at the</p> <p>24 evidence then make a decision, and then also make</p> <p>25 a judgment. Very few super-injunctions, injunctions</p> <p style="text-align: center;">Page 44</p>

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

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

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

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

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



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

17 (Pages 65 to 68)

<p>1 regards, certainly in relation to Section 55, its own 2 public interest defence. 3 A. Yes. 4 LORD JUSTICE LEVESON: And if one is to have regard to the 5 wider public interest, that's inevitable, isn't it? 6 I mean, one doesn't have to go back very long in time to 7 see prosecutions which, on the face of it, appear 8 unanswerable but which lead to acquittals because the 9 jury are not prepared to convict in those circumstances, 10 and we can all think of the examples. 11 A. Well, that's the law operating in the right way, I'd 12 have thought. Things are tested in that way. 13 LORD JUSTICE LEVESON: And the other problem about the law, 14 if I might just say, is that in one sense you're 15 absolutely right, and if there could be a policeman at 16 everybody's shoulder, then it would be very easy to say, 17 "This isn't our problem, let the police sort it out", 18 and indeed now we're in the position that an enormous 19 police investigation is being undertaken for reasons 20 which everybody understands. But the fact is that there 21 isn't a policeman at everybody's shoulder and there 22 won't ever be, and therefore we can't just say, "Well, 23 it's a failure of the criminal law", and so wash our 24 hands of it, can we? 25 A. I wasn't suggesting --</p> <p style="text-align: center;">Page 69</p>	<p>1 bring in custodial sentences for improper breach of the 2 Data Protection Act for blagging data, that that hasn't 3 happened, and I think the lobbying by some sections of 4 the tabloid press against it shows it would be a good 5 sanction. It would probably make private detectives 6 very reluctant to, you know, risk jail by doing these 7 kind of things unless there was a proper defence. 8 So, you know, I would like to see some deterrents in 9 place, and I'm sure they would have an effect and I'm 10 sure they would have more of an effect than abjurations 11 on editors to behave better and be nicer people. 12 LORD JUSTICE LEVESON: I understand. I understand the 13 point. 14 MR BARR: Can we move now to consider a couple of specific 15 techniques. You tell us at paragraph 19 of your witness 16 statement about an episode in which you stood up, if 17 I use the jargon, a story by making a telephone call 18 under a false pretence to Mark Thatcher. 19 A. Yes. 20 Q. Again to use a jargon, I think that was blagging, wasn't 21 it? 22 A. Sort of blagging. I mean, I was trying, as I said, not 23 to be holier than thou, so I was trying to think of 24 examples about my own practice that people would regard 25 as questionable and, you know, analyse them. And this</p> <p style="text-align: center;">Page 71</p>
<p>1 LORD JUSTICE LEVESON: I know you weren't, but I'm testing 2 the proposition that it's comparatively straightforward 3 to say there's a criminal law, harassment, data theft, 4 RIPA interceptions. All that stuff bites on the 5 individual, but it does have its own complications. 6 A. What I was driving at was I don't think you get very far 7 by improving training or by appealing to the conscience 8 of the editor of a tabloid newspaper that's driven by 9 greedy and cynical attitudes. I don't think you'll get 10 very far by appealing to people's conscience. You have 11 to look at the pressures that are operating upon them. 12 LORD JUSTICE LEVESON: I understand, and with respect, 13 I think that's absolutely right. But if one just 14 presses that a little bit, the more you try to put in 15 levers in place to drive what might be thought to be 16 a more appropriate approach, the more you run into 17 arguments about the freedom of the press and the very 18 real importance that everybody has to be able to express 19 themselves as Article 10 permits. 20 A. I've been campaigning for freedom of the press for as 21 long as I've been a journalist, and I couldn't disagree 22 with you in any way, but fear of the law does act as 23 a deterrent, and one of the things that I've written 24 about is I think it's a shame the law is not enforced. 25 I think it's a shame, for example, that the proposal to</p> <p style="text-align: center;">Page 70</p>	<p>1 was a minor example of the use of subterfuge. I'm 2 trying to prove -- this is many years ago when I was on 3 the Observer. I'm trying to prove there's a connection 4 between Mark Thatcher, the then Prime Minister's son, 5 and an arms company executive because I suspect that 6 they have a relationship, that the arms company has 7 hired Mark Thatcher for their own purposes. 8 The man is called Jamil Amunyi. I ring up 9 10 Downing Street and say, "I'd like to be put through 10 to Mark Thatcher", the switchboard operator says, "Who's 11 calling?" and I say, "Tell him it's Jamil." When he 12 comes on the line, what he immediately does is he says, 13 "Hi Jamil", and I think: "That's brilliant. I've proved 14 that these two men know each other." And we then have a 15 conversation -- I have a conversation with Mark Thatcher 16 about it and say, you know, "You had a deal with this 17 person", and he says, "Oh, it's confidential." So 18 I think: "Ah, that's proved again." And we then wrote 19 a large story on the back of this, with some confidence, 20 saying that Mark Thatcher was employed on the quiet by 21 this firm. 22 Now, I think that was completely in the public 23 interest and I think the minor deception that I used, 24 minor and temporary, was completely defensible and 25 appropriate, and I can't think of another way in which</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

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

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

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

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

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

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



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

25 (Pages 97 to 100)

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

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