

<p>1 Tuesday, 31 January 2012 2 (10.00 am) 3 MR JAY: The first witness today is Sir Christopher Meyer, 4 please. 5 LORD JUSTICE LEVESON: Thank you. 6 SIR CHRISTOPHER JOHN ROME MEYER (sworn) 7 Questions by MR JAY 8 MR JAY: Your full name, please -- 9 A. Christopher John Rome Meyer. 10 Q. Thank you very much. You have provided the Inquiry with 11 a witness statement dated 14 September 2001. If you 12 look in the file directly in front of you under tab 1, 13 you will find it. 14 A. Yes. 15 Q. Subject to the caveat which you give at the top, which 16 I will read out, this is your truthful evidence to the 17 Inquiry; is that right? 18 A. It is. 19 Q. You make it clear that in the short time available, you 20 have drafted much of what follows from memory but you 21 haven't been able to check anything against the 22 archives. It's accurate to the best of your ability but 23 you cannot exclude the possibility of mistakes, and the 24 statement has not been seen by a lawyer. 25 Although you don't want to refer to it specifically,</p> <p style="text-align: center;">Page 1</p>	<p>1 spokesman between 1984 and 1988 and press secretary to 2 Howe, and that was when I had my first, as it were, 3 intimate contacts with the press. 4 Q. We'll cover those a little bit later, but between 1994 5 and 1996, you were also press secretary to the then 6 Prime Minister Mr John Major; is that correct? 7 A. That is absolutely correct. After I had finished with 8 Geoffrey Howe, I went to the United States, my first 9 incarnation there, spent five years at the British 10 embassy in Washington and from there was approached by 11 Downing Street to see whether I'd put my hat in the ring 12 to succeed Gus O'Donnell as the Prime Minister's press 13 secretary. I did, I started that job in 1994, and 14 I left, as you say, two years later in 1996. 15 Q. At the end of your career at the FCO, you moved across 16 with the agreement of the Cabinet Office -- but I'm 17 going to ask you about the process of interview and 18 selection -- to become chairman of the PCC, which was 19 in March 2003. Page 2 of your statement at 00086, 20 towards the bottom of that page. 21 A. Yeah. 22 Q. You say that you were interviewed by members of the 23 Press Standard Boards of Finance. Can you remember who 24 was on the interview committee? 25 A. Well, Sir Harry Roche was then chairman of the committee</p> <p style="text-align: center;">Page 3</p>
<p>1 there is a typographical error in the second line of 2 paragraph 2 of the introduction. The date there is 2009 3 and not 2007. That will be corrected on the version 4 which is put online. 5 First of all, Sir Christopher, may I deal with your 6 background. You had a long and extremely distinguished 7 career in the diplomatic service, culminating as 8 ambassador to the United States of America. Can you 9 tell us, please, a little bit about your career before 10 you went to the PCC in March 2003, the particular 11 highlights. Obviously you were in the US at the end of 12 your career, but tell us a bit about your earlier career 13 and your service between 1994 and 1996? 14 A. I started out in the diplomatic service as a Soviet 15 expert. I was sent away to learn Russian, I did that, 16 and I was posted to Moscow in the late 60s. That was my 17 first posting abroad. I returned to Moscow in the early 18 80s and I fully expected to end up possibly as 19 ambassador in Moscow and that would be my career. 20 Fate, however, dealt me some unexpected cards, one 21 of which was in the shape of Sir Geoffrey Howe, who 22 arrived in Moscow in 1984 said to me: "Would you like to 23 be my press secretary?" I asked him what this would 24 entail. He said, "You'll find out soon enough", and on 25 that basis, I was hired. I became the Foreign Office</p> <p style="text-align: center;">Page 2</p>	<p>1 and the only other person that I can remember on the 2 committee at the time was Jeremy Deeds. The rest of it 3 is a blur. 4 Q. Were you asked specifically whether you were a believer 5 in and defender of press freedoms? 6 A. Yes, I was, and I think I must have stated very 7 categorically, as I always have been, that I was 8 a strong believer in freedom of expression and freedom 9 of the press, even though I had been wrestling with 10 journalists for a number of years in those two jobs to 11 which you've made reference, and I also was very firmly 12 against statutory regulation of the press, and I made 13 that clear as well. 14 Q. Were you asked specifically whether you were a believer 15 in self-regulation of the press? 16 A. Yes, I was, and I said yes. 17 Q. What do you understand, Sir Christopher, by the term 18 "self-regulation of the press"? 19 A. Well, I have said in my witness statement that the 20 actuality in the United Kingdom is that the press is 21 regulated by a hybrid system, which is partly by law and 22 partly through the implementation of the code of 23 practice of the PCC. So what I understood at that time, 24 and still do, by "self-regulation" was the system which 25 worked through the PCC.</p> <p style="text-align: center;">Page 4</p>

<p>1 Now, I gather there has been some discussion over 2 the last few days about whether or not the Press 3 Complaints Commission is a regulator. I believe very 4 firmly that it is a regulator, that there is such 5 a thing as a self-regulation, but it is regulation 6 unlike anything else, for the very reason that it deals 7 with freedom of expression and freedom of the press, and 8 there is no industry, therefore, in the United Kingdom, 9 which is like the press.</p> <p>10 So it is a form of regulation, and the way it 11 works -- and I'm going to say this in just a couple of 12 sentences -- is that as you develop a kind of 13 jurisprudence through the application of the code of 14 practice, the judgments and rulings, you are actually 15 telling journalists what they can do and what they can't 16 do, and in my book, that is a form of regulation.</p> <p>17 Q. Fair enough. In relation to that, though, does it 18 follow that the body of jurisprudence and therefore the 19 corpus of standards derives only from the PCC's response 20 to complaints it receives?</p> <p>21 A. That is the heart of it. The heart of it is the way in 22 which the PCC responds to complaints. There is 23 a tendency to dismiss this as a cottage industry which 24 the PCC trundles along with while people are thinking 25 great thoughts about new structures for enforcement and</p> <p style="text-align: center;">Page 5</p>	<p>1 there?</p> <p>2 Q. We'll come back to it.</p> <p>3 A. Okay, I can see that.</p> <p>4 Q. Obviously that's an important issue.</p> <p>5 A. Yes.</p> <p>6 Q. Can I just understand philosophically, is your position 7 this: that because the press is in the business of free 8 speech and exercising almost a constitutional function 9 in a mature democracy, namely to hold politicians and 10 others to account, it necessarily follows that the only 11 appropriate and desirable form of regulation is 12 self-regulation rather than anything more powerful?</p> <p>13 A. Well, I think the system that we have of hybrid 14 regulation is actually pretty good and actually works 15 quite well. So far as the PCC is concerned, there are 16 a number of things, which I'm sure we'll come to, where 17 its performance could be improved, but by and large -- 18 I mean -- no, I am very firmly still of the view that 19 you do not go down the path of statute, with one 20 possible exception.</p> <p>21 Q. I'm not sure that quite, with respect, addresses the 22 point I was making, which was more a philosophical 23 point. Do you want me to repeat the question?</p> <p>24 A. Well, the answer is -- is self-regulation the only way 25 consistent with maintaining freedom of expression and</p> <p style="text-align: center;">Page 7</p>
<p>1 punishment. It is, in fact, a moral heart of the Press 2 Complaints Commission, because this body is a public 3 service. It's a public service that exists for the 4 99 per cent of those who come to the PCC for help who do 5 not lay claim to celebrity of any kind. By definition, 6 we respond to their complaints, but one of the things 7 that I hope we managed to do when I was chairman is 8 being far more proactive, anti-harassment, 9 pre-publication advice.</p> <p>10 Q. Would you agree that unlike any other regulator, the 11 sole sanction is the publication of the adverse 12 adjudication, or exceptionally, a letter of admonishment 13 to the editor, but nothing more than that?</p> <p>14 A. It is essentially that, yes. The ultimate sanction, 15 I suppose, would have been -- and I never did this -- to 16 have written a letter to an editor to say that his 17 journalist, X, had behaved so lamentably -- or write to 18 a proprietor and say his editor had behaved so 19 lamentably that they did not deserve still to be in 20 office.</p> <p>21 I could have written that letter. I never did 22 because the occasion never arose, but the strongest shot 23 on a day-to-day basis was the negative adjudication 24 published prominently in the newspaper.</p> <p>25 Now, do you want me to carry on or shall I just stop</p> <p style="text-align: center;">Page 6</p>	<p>1 the press' status as an exponent of that? The short 2 answer is: yes.</p> <p>3 Q. Yes. Thank you. Elsewhere in your witness statement, 4 page 00087, and the internal numbering is the third 5 page --</p> <p>6 A. Where is this? How does the paragraph begin?</p> <p>7 Q. 00087.</p> <p>8 A. Oh, I'm sorry, I'm looking at the wrong numbers. I'm 9 there.</p> <p>10 Q. You refer to the PCC mission statement, which we've 11 seen: 12 "The PCC, in my experience ..." 13 Do you see that? You brought five beliefs to the 14 job.</p> <p>15 A. Yes.</p> <p>16 Q. "A free press is fundamental to a health democracy." 17 We'd all agree with that. 18 "Despite the cringing of politicians to the press, 19 the government has significant in-built advantages over 20 the press through its control over the flow of official 21 information to the public." 22 Very many people would agree with that. 23 "... that any state regulation of the press was, in 24 principle, offensive." 25 I think you've explained, Sir Christopher, why you</p> <p style="text-align: center;">Page 8</p>

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<p>1 believe that.</p> <p>2 A. Yes.</p> <p>3 Q. Is there anything else you would like to say on the</p> <p>4 issue of state regulation?</p> <p>5 A. No, except that -- I suppose this is in the witness</p> <p>6 statement, really -- I draw very heavily on my</p> <p>7 experience as a press secretary to make that statement</p> <p>8 emphatically.</p> <p>9 Q. We need to come back to your experience as a press</p> <p>10 secretary, but can I just test that proposition that any</p> <p>11 state regulation of the press is, in principle,</p> <p>12 offensive. Can we agree that if a state were to lay</p> <p>13 down the principles and standards which the press should</p> <p>14 apply, that would be or may be regarded by many as</p> <p>15 impermissible transgression by the state into an area</p> <p>16 which should be solely the province of the press in</p> <p>17 a free democracy? Are we agreed with that proposition?</p> <p>18 A. Yes, I think we're together there.</p> <p>19 Q. But if state regulation means something less than that,</p> <p>20 namely the creation of an independent structure, where</p> <p>21 an independent body, for example, chooses the members of</p> <p>22 the Commission, Code Committee, whatever, and the</p> <p>23 independent body is itself solely responsible for the</p> <p>24 standards which the press must apply, why do you</p> <p>25 continue to say, if you do, that state regulation of the</p> <p style="text-align: center;">Page 9</p>	<p>1 a kind of tremor in the land when, understandably, the</p> <p>2 last government sought to enact some fairly draconian</p> <p>3 legislation to deal with the threat of terrorism. So</p> <p>4 the temptation to go down this path is always there.</p> <p>5 The other thing I would say is as a defence against</p> <p>6 the possibility that a state, a government would come</p> <p>7 into power that had a less liberal view of such things,</p> <p>8 it is much better if there is already in place a system</p> <p>9 of regulation and a press that does not in part depend</p> <p>10 for its operations on statute. In other words, as</p> <p>11 a barrier to a more authoritarian government, it is</p> <p>12 better to have the freest possible kind of press, online</p> <p>13 and in print.</p> <p>14 LORD JUSTICE LEVESON: You might say the same about the</p> <p>15 judiciary, Sir Christopher, and as I pointed out to</p> <p>16 Mr Harding the other day, section 3(1) of the</p> <p>17 Constitution Reform Act identifies the independence of</p> <p>18 the judiciary and requires everybody to maintain it.</p> <p>19 Are we at risk in our not-so-liberal country of the 20</p> <p>20 years time to suffer at the hands of a state because of</p> <p>21 that legislation?</p> <p>22 A. You could, my Lord. You could. In principle, that is</p> <p>23 a possibility.</p> <p>24 The other thing I would say is comparing the</p> <p>25 judiciary with the press is a little bit, if I may dare</p> <p style="text-align: center;">Page 11</p>
<p>1 press is, in principle, offensive?</p> <p>2 A. I think mainly because that once you allow the state</p> <p>3 into this area, you are, whether you like it or not --</p> <p>4 whatever the best intentions may have been of those who</p> <p>5 construct the system, this piece of legislation,</p> <p>6 enabling legislation, you are, by definition, standing</p> <p>7 on the top of a slippery slope, and once you allow the</p> <p>8 state into this area, say, I don't know, 20 years later,</p> <p>9 25 years later -- things change, politics change -- it</p> <p>10 is quite conceivable that a less -- how can I put it? --</p> <p>11 permissive state, a less liberal state, a state less</p> <p>12 conscious of the essential freedoms that underpin our</p> <p>13 democracy might try to take advantage of that very piece</p> <p>14 of legislation to do things which would be offensive to</p> <p>15 freedom of expression.</p> <p>16 Q. But in the event that the United Kingdom ever were to</p> <p>17 have a less liberal state, to use your term, we would</p> <p>18 necessarily be at risk of precisely the vices you're</p> <p>19 referring to. That less liberal state could enact</p> <p>20 legislation which intruded directly into the province of</p> <p>21 the press. I'm not quite sure why, if, as we do have,</p> <p>22 we have a liberal state, the framework I've referred to</p> <p>23 creates the risks that you are so concerned about.</p> <p>24 Would you like to comment on that?</p> <p>25 A. Yes. I would say two things. First of all, one felt</p> <p style="text-align: center;">Page 10</p>	<p>1 say so -- a little bit of apples and oranges there.</p> <p>2 LORD JUSTICE LEVESON: Well, in one sense it is but I'm not</p> <p>3 sure that in another that is correct. The fact is that</p> <p>4 the press is called the fourth estate for a very good</p> <p>5 reason. It brings everybody to account, including the</p> <p>6 executive, including the legislature and including the</p> <p>7 judiciary, and I have no problem with that at all. The</p> <p>8 question is, however: who brings the press to account?</p> <p>9 To say the press does it on its own and only on its own</p> <p>10 carries with it some risk itself.</p> <p>11 A. I don't think -- if I have been understood to have said</p> <p>12 that, I did not mean that. I mean, I'm no expert on the</p> <p>13 judiciary, and I simply cannot sit here and make</p> <p>14 a comment on how the judiciary is set up and protected</p> <p>15 in statute. That is not my area of expertise.</p> <p>16 On the matter of the press, of course it has to be</p> <p>17 regulated, and this is one of the key issues which is</p> <p>18 before this Inquiry. I'm not saying this should be</p> <p>19 a wholly unregulated press, free to roar around at will.</p> <p>20 That is not my point. Actually, today, the press is</p> <p>21 quite closely hemmed in by both statute and by the code</p> <p>22 of practice. It is a situation which basically,</p> <p>23 I think, is as good as you're going to get. What</p> <p>24 I would regret to see emerging from this Inquiry is</p> <p>25 a system of regulation which is more oppressive than</p> <p style="text-align: center;">Page 12</p>

<p>1 need be because of the phone-hacking scandal, which, as 2 I say in my witness statement, I think has got very 3 little to do with press regulation. 4 MR JAY: We'll come to that. 5 A. Okay. 6 Q. I'm just exploring your five beliefs. The fourth and 7 fifth beliefs are consequential on the third belief. 8 A. Yeah, yeah. 9 Q. Can I deal with the next page and permanent evolution, 10 which was a speech you gave in May 2003, when you 11 announced a series of reforms. 12 A. Yeah. 13 Q. You identified the key reforms in your witness 14 statement. I just ask you about the fifth of them, the 15 publication of a code of practice handbook. Do you see 16 that? 17 A. Yes. 18 Q. We've heard that that is written by the secretary to the 19 Editors' Code of Practice committee. Does the PCC or 20 did the PCC have any input into the guidance contains in 21 the handbook? 22 A. Oh, frequently, yes. I can't say it was me personally, 23 but Ian Beales, who was then the secretary of the Code 24 Committee, was the main author of the commentary, and we 25 had quite frequent exchanges with him at the PCC.</p> <p style="text-align: center;">Page 13</p>	<p>1 A. I'm with you now. 2 Q. Am I right in saying that at that point you'd been in 3 office, as it were, for five or six weeks? 4 A. Correct. 5 Q. So you were already in a position to announce some 6 important reforms? 7 A. Yeah. 8 Q. Might it be said, though, that this was a little bit 9 precipitant, that you'd only just warmed your seat and 10 here were you coming up with some important ideas? 11 A. Mr Jay, I do not believe in hanging around. 12 Q. Okay. Now, we're not going to run through all the 13 speech; we have read it. You explain at page 37951, 14 which is the second page of the speech -- 15 A. Yeah. 16 Q. -- your experiences elsewhere, reading Pravda and the 17 Frankfurter Allgemeine, if I pronounce it rightly, which 18 I probably don't, which -- 19 A. Yes. 20 Q. Not quite the same free-spirited approach always applied 21 there in comparison with the British press. You say at 22 the bottom of the page: 23 "Liberty and self-regulation are inextricably 24 linked. Any infringement on self-regulation would not 25 just erode the freedoms of press; far more importantly,</p> <p style="text-align: center;">Page 15</p>
<p>1 I can't give you chapter and verse, but he wasn't 2 sitting like a monk in a cell writing this stuff and 3 suddenly it popped out at the other end. I think he 4 consulted very widely. 5 In fact -- maybe I'm going beyond what you want, but 6 can I say something about the background to why this 7 ever happened, why I ever thought up this reform, or am 8 I going too far? 9 Q. We can probably work that out from the speech itself. 10 If you go to bundle B1. 11 A. My speech? 12 Q. Yes, you'll find your speech. 13 A. Did I mention Mark Dickinson and the Liverpool 14 newspapers being the inspirer of this in that speech? 15 Sorry, what's it called? 1B? 16 Q. I think it's going to -- yes, I think it's that one 17 there, under tab 16. 18 A. Ah, here's one. File 1. Tab 16? Okay. I apologise 19 for my lack of familiarity with some of these -- the way 20 they're organised, but they did come to me quite late. 21 Yes, I've found it. 22 Q. Are we in the right place? 23 A. No, I have found building on -- "Permanent evolution", 24 yes, this is it. 25 Q. A speech you gave on 6 May 2003.</p> <p style="text-align: center;">Page 14</p>	<p>1 it would curtail the freedoms of a citizen, who, in 2 a democratic society, will always depend on an 3 uninhibited media [I paraphrase]." 4 So you're setting your credo there very high, aren't 5 you? 6 A. Yes. 7 Q. On the next page, you make it clear that in your view 8 the term "self-regulation" doesn't quite capture what's 9 involved and you use the term "self-regulation plus", 10 because the PCC does some more, in your opinion; is that 11 right? 12 A. Yes. All through my six years at the PCC I agonised 13 over what the type of regulation ought to be called, 14 because "self-regulation" didn't capture it because it 15 wasn't journalists sitting in judgment on journalists; 16 it was some journalists sitting in judgment on 17 journalists but always in the minority. It was the lay 18 majority who were, if you like, the beating heart of the 19 judgments made every week about complaints and so forth. 20 I thought for a while of calling it "independent 21 regulation", but that didn't quite capture it either, 22 and I think the fact that there's been a debate in this 23 the Inquiry about whether it is regulation or not is 24 actually a kind of tributary of this problem with 25 definition.</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 Q. If you look level with the upper hole punch on this 2 page, you'll see this: 3 "The last five weeks have been something of 4 a personal odyssey of discovery. I would never in the 5 first place have wished to join the PCC had I not 6 believed in its value and the central importance of 7 self-regulation. What I had not appreciated in full was 8 how good it is. It has a tremendous story of success to 9 tell. It is often unfairly criticised, sometimes by 10 those who should know better." 11 Now, that, I respectfully suggest, was a somewhat 12 flamboyant remark. You'd only been there for five weeks 13 and you were telling everybody how good it was. Was 14 that entirely wise, do you think, Sir Christopher? 15 A. I hate to call myself wise, but I think it was very 16 wise. I think it was very wise to place the standard 17 visibly in the field for an organisation which, from its 18 very birth, had been at the centre of controversy and 19 was attacked from all sides. So I wouldn't call it 20 flamboyant, but it was a statement of belief and it was 21 a statement of intent, and that was where I was going to 22 move out from. 23 Q. I could quite see, Sir Christopher, why you would have 24 certain ideas, perhaps embryonic ideas, when you started 25 out, and you'd certainly have certain credos, as I've Page 17</p>	<p>1 be sure that they would meet as least resistance -- as 2 little resistance as possible from the newspaper 3 industry. So it was important, the one hand, to make 4 a powerful statement on behalf of self-regulation, and 5 then to say -- and to say it was good -- and it was 6 good. That it is the point, Mr Jay. It was good. It 7 wasn't perfect, and it needed improving. 8 So, on the one hand, it is good, and then say over 9 here that it will be even better here if we do the eight 10 things that I set out. 11 Q. You also said in the speech, page 37954, at the bottom 12 of that page: 13 "I do want to make one thing clear. I retain 14 a pretty open mind on how we can grow in the future. 15 Only on those things that would fundamentally change for 16 the worse the nature of the system is my mind closed. 17 In that I include four heresies." 18 So you set your stall out very clearly here. The 19 first is: 20 "Any suggestion that the PCC should have the power 21 to levy fines or award compensation." 22 Then you explain why. I paraphrase: it would cause 23 delay and it would result in the colonisation of the 24 system by lawyers. So you were sticking your neck out 25 very far, weren't you? Page 19</p>
<p>1 said and you have identified, but to go so far as to say 2 after five weeks that this is an extremely good body, 3 perhaps in all respects, is somewhat putting yourself 4 out on a limb, isn't it? 5 A. I don't think so at all, and in fact if it were on 6 a limb, it was a limb I was happy to be out on. 7 Q. Okay. 8 A. I was not a virgin to these matters of the press, having 9 been a press secretary twice, having -- the more senior 10 I became in the diplomatic service, the more I had to 11 appear in front of cameras and microphones and talking 12 to journalists. I did know something about this, and 13 had prepared for the job. 14 Q. If you were starting from the position that this was 15 a body which was functioning well, both in terms of its 16 system and its operation, it might be said that your 17 approach would necessarily be conservative throughout 18 your time at the PCC, because by definition there would 19 be little which would require change. Would you accept 20 that? 21 A. You could make that deduction, that I would be 22 conservative in my approach, but there was a little bit 23 of politics also, as well as belief in what I had to 24 say. I had some quite significant changes to make to 25 the way in which the organisation operated. I wanted to Page 18</p>	<p>1 A. Yeah, and I still believe that. 2 Q. This was in the face, for example, of the DCMS Select 3 Committee saying that's precisely the power which the 4 PCC should have in order to improve public confidence in 5 it. That's true, isn't it? 6 A. It is true. I can't remember all the DCMS 7 recommendations in 2003. A very large number of them we 8 had either anticipated or we followed up, but there were 9 some where we disagreed, and I think it has been 10 a feature of several DCMS committee reports that raise 11 the -- who recommend some system of fines. I just don't 12 believe it's practical or will work. 13 Q. But you're making it absolutely clear that this is 14 a heresy. 15 A. Yeah. 16 Q. Namely, the power to impose a fine. It doesn't matter 17 what anybody says; it's going to be over your dead body. 18 That's the truth, isn't it? 19 A. Yes, that's about it. I do think it is very important 20 when you have a job which has a public profile like this 21 one to be very clear as soon as possible about where you 22 stand. The worst thing is to take on a job like this 23 and to just have mush around the place. So I was 24 chancing my arm, going out on a limb, but I believe very 25 firmly that this is the kind of thing that needs to be Page 20</p>

5 (Pages 17 to 20)

<p>1 said.</p> <p>2 Q. Yes.</p> <p>3 A. Also, it's impossible to sack you if you say it very</p> <p>4 early on, you know.</p> <p>5 Q. Fair enough, but you slap those down who express</p> <p>6 a contrary view because you say:</p> <p>7 "Those who believe that fines mean sharper teeth</p> <p>8 fail to understand that no editor wants the blemish of</p> <p>9 a negative adjudication on his or her record."</p> <p>10 That's pretty peremptory, isn't it?</p> <p>11 A. It's very peremptory, and that belief strengthened as</p> <p>12 the years went by.</p> <p>13 Q. But in terms of public perception, would you agree that</p> <p>14 the public out there, the customer, the consumer, at the</p> <p>15 wrong end of press misbehaviour, if one can put it in</p> <p>16 those terms, wanted precisely that: the PCC to possess</p> <p>17 sharper teeth. Would you accept that?</p> <p>18 A. No, I would not accept that, Mr Jay, because while I was</p> <p>19 chairman, we surveyed public opinion fairly regularly.</p> <p>20 Sometimes we did it ourselves, so that might be</p> <p>21 considered a bit tainted. Sometimes we used -- what do</p> <p>22 they call it? -- Ipsos MORI, to look at the public and</p> <p>23 gauge their opinion, and there was no -- as I remember</p> <p>24 the returns, the data, there was no overwhelming demand</p> <p>25 for fines.</p> <p style="text-align: center;">Page 21</p>	<p>1 A. Well, "party line" is a little bit harsh as</p> <p>2 a characterisation of this. I had spent some time</p> <p>3 studying the PCC before taking on this job -- it would</p> <p>4 have been only prudent to do so -- and what had become</p> <p>5 clear to me was that editors just did not like having to</p> <p>6 admit in their own newspapers that they had screwed up,</p> <p>7 in terms over which they had no control. That is to say</p> <p>8 the text of the adjudication, as agreed by the</p> <p>9 Commission, had to be reproduced verbatim, under a PCC</p> <p>10 rubric in the newspaper. Now, there was always an</p> <p>11 argument about where, and I have views on that, but</p> <p>12 that's, I think, for a later stage.</p> <p>13 So it wasn't as if the statement "no editor wants</p> <p>14 the blemish of a negative adjudication on his or her</p> <p>15 record" was some rash thing that I pulled from the sky.</p> <p>16 It was based on my experience, from what I'd read, from</p> <p>17 the experience of others in the PCC, Lord Black, who had</p> <p>18 been director for some time, and I have to say to you,</p> <p>19 Mr Jay, after six years, it was an impression, again,</p> <p>20 that was strongly reinforced from my own experience.</p> <p>21 Q. Because a cynic would say that it is the party line,</p> <p>22 that the editors put that out, that they don't want the</p> <p>23 blemish of a negative adjudication, because it saves</p> <p>24 them from proper regulation, namely a regulatory body</p> <p>25 with sharp teeth which might really hit them. Do you</p> <p style="text-align: center;">Page 23</p>
<p>1 And when you said to people -- and I think we have</p> <p>2 to define who the public is here. When we went out in</p> <p>3 the country beyond the London bubble and said to people:</p> <p>4 "What do you want: fast, free and fair? Or do you want</p> <p>5 everything bogged down with quibbling over fines ..."</p> <p>6 LORD JUSTICE LEVESON: That's a very square way of putting</p> <p>7 it, isn't it?</p> <p>8 A. Square?</p> <p>9 LORD JUSTICE LEVESON: Yes. I'm going slightly rhetorical.</p> <p>10 A. Well, I think that when these questions were put, they</p> <p>11 were put with more sophistication and subtly than I have</p> <p>12 just expressed.</p> <p>13 LORD JUSTICE LEVESON: But you say it here. You could throw</p> <p>14 "free" and "fast" out of the window. I'm not so sure</p> <p>15 that's necessarily right after all.</p> <p>16 A. It's what I believe, my Lord.</p> <p>17 LORD JUSTICE LEVESON: Well, that may be so. I understand</p> <p>18 that.</p> <p>19 MR JAY: It always depends on how the question is put to the</p> <p>20 public.</p> <p>21 A. Of course.</p> <p>22 Q. But I think you've made your point on that. Can I just</p> <p>23 ask you, though: you say no editor wants the blemish of</p> <p>24 a negative adjudication. That's, of course, the party</p> <p>25 line. Who told that you?</p> <p style="text-align: center;">Page 22</p>	<p>1 see that point?</p> <p>2 A. Of course I see that point, but I think there's a --</p> <p>3 almost -- and I've noticed this in previous discussions</p> <p>4 during the Inquiry. There is almost a cultural gulf</p> <p>5 between us on this kind of thing. I may have the</p> <p>6 chronology wrong, but I think it was put towards the end</p> <p>7 of 2003 that we ruled against the Guardian on the matter</p> <p>8 of payments to a prisoner who was publishing his diary</p> <p>9 in the newspaper, and the newspaper was so shocked by</p> <p>10 this that they threatened to leave the PCC system</p> <p>11 altogether, and I think even wrote it in a leader.</p> <p>12 Now, that, I think, is one example only. I agree.</p> <p>13 That does give substance to my point.</p> <p>14 Q. Okay. Returning to your lecture -- I'm not going to</p> <p>15 deal with the second point because it's one you've</p> <p>16 already really developed for us. The third point, you</p> <p>17 say:</p> <p>18 "The third is any measure that would turn the PCC</p> <p>19 into a directive body -- initiating complaints at</p> <p>20 random, intervening in issues which are nothing to do</p> <p>21 with the code, or establishing any superior service for</p> <p>22 the rich and famous."</p> <p>23 By "directive body", do you mean general regulator?</p> <p>24 A. It's a very good question. I am now looking at this</p> <p>25 paragraph again. I think it was -- it was this: at the</p> <p style="text-align: center;">Page 24</p>

<p>1 time, there was a very strong party line, if I may say 2 so, in the Commission that you did not initiate 3 complaints, if you like. That changed during my 4 chairmanship, and we did. So I have to admit to you 5 that that, stated rather categorically, was amended 6 through experience and the learning process, and we did 7 actually -- not very often -- we would initiate 8 investigations.</p> <p>9 Intervening in issues not to do with the code 10 I think is, among other things, not getting embroiled in 11 the enforcement of the law where there was already 12 a body which existed to do that, and establishing any 13 superior service for the rich and famous -- I think 14 I threw that in. I think it was like that, I threw that 15 in, if I remember rightly, because I had at the back of 16 my mind -- at the front of my mind that my mission was 17 to get this service better known and better understood 18 in the general population at large. Because the ethos 19 around the PCC back in 2003 was: "Oh yes, this is 20 a privacy service for celebs."</p> <p>21 Well, it wasn't, and it isn't, and it shouldn't be.</p> <p>22 Q. The fourth point you make -- I'll come back to one of 23 the points you've made in a moment: 24 "The fourth is the notion that in some way the PCC 25 should act as a general control on the press."</p> <p style="text-align: center;">Page 25</p>	<p>1 the reactions of some firms of lawyers to the PCC, the 2 reactions of some -- how can I put it? -- think-tanks 3 that are located inside the Beltway, and even some 4 editors. And university media departments which I refer 5 to here, which aren't necessarily inside the Beltway -- 6 I mean, I used to go out a lot and preach the word in 7 universities, and whereas I always found the students 8 very receptive, I would get a lot of stick, very often, 9 from the teaching staff.</p> <p>10 And again, this Question Time/Any Questions? 11 point -- I would go on Question Time or go on 12 Any Questions? and I would be billed as chairman of the 13 Press Complaints Commission, and every time I did this 14 I was waiting for a furious audience member to have 15 a crack at me, and in all six years and, I think, six 16 appearances or whatever it was altogether -- it might 17 have been more -- I never ever got a question about the 18 press.</p> <p>19 LORD JUSTICE LEVESON: That might mean that the audience at 20 Question Time didn't have a clue what it was.</p> <p>21 A. My Lord, it could be that, but when I put six 22 appearances together, if I may venture to suggest, it is 23 stretching credulity a bit that all of them didn't know 24 what it was.</p> <p>25 MR JAY: That indeed was going to be my observation, that it</p> <p style="text-align: center;">Page 27</p>
<p>1 I think the point you're making there is that the 2 press is free to comment and be partisan and it's not 3 the role of the PCC in a democracy to seek to curb that 4 democratic activity?</p> <p>5 A. Yeah, that's fair enough.</p> <p>6 Q. And then you make some proposals for the future, which 7 we have seen summarised in your witness statement, to 8 which, if I may, I will now return.</p> <p>9 A. You're going back to the witness statement?</p> <p>10 Q. Please. Page 00088, you deal with the issue of raising 11 profile.</p> <p>12 A. Yes.</p> <p>13 Q. Which has been noted. Can I deal with 00089, however, 14 the paragraph beginning: 15 "This gulf applied in spades to perceptions of the 16 PCC." 17 Are you with me, Sir Christopher?</p> <p>18 A. I am getting there. Yeah, okay.</p> <p>19 Q. You say: 20 "... high levels of satisfaction in polling. The 21 Commission has always faced unrelenting hostility inside 22 the Beltway." 23 A. Yeah.</p> <p>24 Q. What's your evidence for that?</p> <p>25 A. My evidence is the reactions of politicians to the PCC,</p> <p style="text-align: center;">Page 26</p>	<p>1 might be said: well, those who know more about what the 2 PCC does or did were critical, and those perhaps who 3 didn't know were less critical. What conclusions might 4 we draw from that?</p> <p>5 A. If I may throw something back at you, Mr Jay, what is 6 the evidence for that? We did poll people. I mean, 7 I find it really -- it's quite difficult to get this 8 point over. There was repeated polling, either by us or 9 by independent organisations, of attitudes to the PCC 10 and of knowledge of the PCC. I think only -- and here 11 I know I'm on oath and I may have this wrong. Only the 12 Advertising Standards Authority was better known than 13 the PCC, I think, in successive polls.</p> <p>14 So it's not as if people didn't know who we were, 15 but I did recognise that it was necessary to get out 16 there. That's why we went round the country, went all 17 over the United Kingdom, if I can put it like this, 18 preaching the word.</p> <p>19 Q. Okay. May I deal now, please, with the report on 20 subterfuge and news gathering. 00090.</p> <p>21 A. Yes.</p> <p>22 Q. You recognise that clause 10 of the code covers all 23 forms of subterfuge, including phone hacking, which is 24 an offence under RIPA 2000, and blagging offences under 25 Section 55 of the Data Protection Act?</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 A. I do.</p> <p>2 Q. So by definition, therefore, there's an overlap between</p> <p>3 the general law, the criminal law, which is contained in</p> <p>4 statute, and the domestic law of the PCC, which, for</p> <p>5 these purposes, is contained in clause 10 of the code;</p> <p>6 is that correct?</p> <p>7 A. Yes. I make the point explicitly in the third</p> <p>8 paragraph on this page.</p> <p>9 Q. Yes. That's the point, really, I wanted to explore,</p> <p>10 because you say in possibly the fourth paragraph -- it</p> <p>11 depends on how you number these:</p> <p>12 "A further complication is that the code of practice</p> <p>13 overlaps with the law: that is to say that offences</p> <p>14 under the code can also be offences under the law."</p> <p>15 Well, we can agree with that. Then you say:</p> <p>16 "Where this happens, and a matter becomes sub</p> <p>17 judice, the PCC must always yield to the law."</p> <p>18 Are you saying that if the criminal law is carrying</p> <p>19 out an investigation, the PCC must wait until the end of</p> <p>20 the investigation, on the one hand, or are you saying</p> <p>21 that as a matter of principle, if a matter falls within</p> <p>22 the domain of the criminal law or the domain of the ICO,</p> <p>23 then philosophically, the PCC shouldn't intervene at</p> <p>24 all?</p> <p>25 A. No, I'm not making the latter point. I'm making the</p> <p style="text-align: center;">Page 29</p>	<p>1 Q. Is this right: that the articles of association of the</p> <p>2 PCC expressly, in your opinion, permit that very</p> <p>3 exercise, namely the undertaking of an inquiry or</p> <p>4 investigation?</p> <p>5 A. Well, I was certainly confident that the inquiry that we</p> <p>6 carried out in 2007, immediately after Goodman and</p> <p>7 Mulcaire were sent to jail and Coulson resigned as</p> <p>8 editor -- that the inquiry we carried out was fully</p> <p>9 within the articles of association. I have to say to</p> <p>10 you, I didn't look at the articles of association.</p> <p>11 Q. Is it also right that the inquiry or investigation</p> <p>12 exercise which was conducted into phone hacking could</p> <p>13 also have been wide enough to have covered what happened</p> <p>14 at the News of the World at the material time, rather</p> <p>15 than trying to learn lessons for the future?</p> <p>16 A. I was strongly of the view that it would not be a useful</p> <p>17 or possible objective for the PCC to try to duplicate</p> <p>18 the police inquiry. Two men had gone to jail, an editor</p> <p>19 had lost his job, and at the time -- and let's not cover</p> <p>20 this with too much hindsight -- that seemed pretty</p> <p>21 draconian. So I wasn't going to say let's use the PCC's</p> <p>22 resources to try to duplicate still further what the</p> <p>23 police had done --</p> <p>24 Q. But --</p> <p>25 A. No, I'm sorry, if I can just finish this point.</p> <p style="text-align: center;">Page 31</p>
<p>1 former point.</p> <p>2 That is to say that when it became clear, I think</p> <p>3 in August of 2006, that the police were looking into the</p> <p>4 hacking of voicemails on the two royal princes' phones,</p> <p>5 it was not possible for us then to conduct some kind of</p> <p>6 parallel inquiry, and I'm pretty sure that had we tried</p> <p>7 to do this -- which I don't think we should have done,</p> <p>8 and I was firmly of the belief we shouldn't do this, but</p> <p>9 I think if we had try I'd to do it, we would have had</p> <p>10 a complaint immediately from the police not to get in</p> <p>11 the way of their investigation.</p> <p>12 For that reason, I say it was not -- we could make</p> <p>13 statements, and I made several statements from August</p> <p>14 until the verdicts were delivered in the end of January</p> <p>15 or February, whenever it was, in 2007, against phone</p> <p>16 hacking, but beyond exhortation, I did not believe there</p> <p>17 was more that could be done during a police</p> <p>18 investigation, a court -- a trial, until after the</p> <p>19 verdicts were rendered.</p> <p>20 Q. It follows from that, Sir Christopher, that once the</p> <p>21 criminal process had ended and the investigation had</p> <p>22 concluded, there was nothing to stop the PCC, is this</p> <p>23 right, from carrying out whatever inquiry or</p> <p>24 investigation that it wished?</p> <p>25 A. None whatsoever, and this is exactly what we did.</p> <p style="text-align: center;">Page 30</p>	<p>1 Q. Yes, of course.</p> <p>2 A. What I did think was very important was that the new</p> <p>3 editor should tell us what, in his view, had gone wrong</p> <p>4 at the News of the World, and that we, in</p> <p>5 a lessons-learned exercise, which also involved asking</p> <p>6 every single editor and management of every newspaper in</p> <p>7 the United Kingdom about their protocols for hiring</p> <p>8 inquiry agents and subterfuge -- that as a result of</p> <p>9 that, we could produce a report which would offer</p> <p>10 guidance to the industry and show -- shed a little more</p> <p>11 light on what had gone wrong at the News of the World.</p> <p>12 That's what we did and it was welcomed.</p> <p>13 Q. But as a matter of principle, you would accept that</p> <p>14 there was nothing to stop the PCC in terms of its powers</p> <p>15 from carrying out an investigation into what happened,</p> <p>16 particularly the dimensions of what happened and whether</p> <p>17 it extended beyond Messrs Goodman and Mulcaire? I think</p> <p>18 you'd agreed with that?</p> <p>19 A. No, I wouldn't agree with that. I think what we would</p> <p>20 have run up against there is the inability of the PCC,</p> <p>21 for example, to take statements on oath.</p> <p>22 Q. Well, that may be right but there wasn't a lack of power</p> <p>23 in the PCC to interview people, to call for documents.</p> <p>24 Whether or not a request for individual documents would</p> <p>25 have been met by a "yes" or "no" is another matter, but</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 the PCC had power to go down that road, didn't it?</p> <p>2 A. No, I think now we part company here, if we're talking</p> <p>3 about the articles of association. The idea that we</p> <p>4 should work on the assumption -- because this is what</p> <p>5 you're saying -- that the police inquiry was inadequate</p> <p>6 and we needed to add to the efforts that they had made</p> <p>7 by sending some kind of quasi-police investigative force</p> <p>8 into the News of the World, I have to say, Mr Jay, is</p> <p>9 entirely fanciful.</p> <p>10 Q. You say in terms that presentationally -- this is later</p> <p>11 in your statement, at 00093 -- it would have been better</p> <p>12 to have interviewed Andy Coulson, which implies that in</p> <p>13 your view there was a power to do so, presentationally</p> <p>14 it might have been better to do so, but as a matter of</p> <p>15 practice, it would not have been desirable to do so.</p> <p>16 That's what you're saying, isn't it?</p> <p>17 A. I think we're splitting hairs a bit here. Maybe what</p> <p>18 I should have written here was that -- instead of using</p> <p>19 the word "interviewed", "asked him to come in for</p> <p>20 interview".</p> <p>21 Q. Mm.</p> <p>22 A. I believed at the time -- I do now -- that the decision</p> <p>23 not to interview Coulson, who by that time was no longer</p> <p>24 editor of the News of the World, and actually we had no</p> <p>25 powers over him at all -- was exactly the right one to</p> <p style="text-align: center;">Page 33</p>	<p>1 was able to dig out of the system. And we produced</p> <p>2 a report -- let me remind you -- which was widely</p> <p>3 welcomed for what it had to say about how newspapers</p> <p>4 from now on should conduct themselves, both with regard</p> <p>5 to subterfuge and the Data Protection Act. Let us not</p> <p>6 forget that. It was widely welcomed.</p> <p>7 Of course it wasn't adequate, because the police and</p> <p>8 newspapers, God bless them, dug out far more from the</p> <p>9 News of the World than at that time was available,</p> <p>10 but --</p> <p>11 Q. You describe the investigation as a monumental task,</p> <p>12 don't you, in 00092?</p> <p>13 A. Yes.</p> <p>14 Q. It's your language. But a monumental task which, if</p> <p>15 I may say so, was limited to getting an explanation from</p> <p>16 Mr Myler, not seeking any documents from him and writing</p> <p>17 to other editors to find out what they were doing. The</p> <p>18 epithet "monumental" is possibly an overstatement, isn't</p> <p>19 it?</p> <p>20 A. No, no, Mr Jay. No, you should have been there when we</p> <p>21 were doing it. It was monumental and it was done</p> <p>22 swiftly and people recognised it as being of real value</p> <p>23 at the time. So I think you're being a little</p> <p>24 mean-spirited about this.</p> <p>25 Q. Okay. What, out of interest, is the sanction under the</p> <p style="text-align: center;">Page 35</p>
<p>1 take, although presentationally it has -- it's made</p> <p>2 things difficult for me. You asking me the question</p> <p>3 right now, for example.</p> <p>4 LORD JUSTICE LEVESON: But why do you think it was the right</p> <p>5 decision to make?</p> <p>6 A. Well, I'm going to explain that, my Lord, if I may.</p> <p>7 The main reason is I don't think he would have had</p> <p>8 anything of value to add to the reports that we</p> <p>9 published.</p> <p>10 MR JAY: That's speculation, isn't it?</p> <p>11 A. Well, it's --</p> <p>12 Q. There are a number of possibilities, and I don't think</p> <p>13 it's right for me to go through them, given the present</p> <p>14 circumstances, but we do know that he was about to be</p> <p>15 appointed as director of communications to the then</p> <p>16 leader of the opposition. It might have played out</p> <p>17 rather oddly if it had come out into the public domain</p> <p>18 that he had refused to cooperate with the PCC, pursuant</p> <p>19 to the PCC's reasonable request for an interview. Don't</p> <p>20 you agree with that?</p> <p>21 A. I do agree with that, and you can certainly argue the</p> <p>22 opposite case. I accept that. But I believe -- if</p> <p>23 I may also use the advantage of hindsight. Now that he</p> <p>24 has been arrested, it seems to me wholly improbable that</p> <p>25 at that time he would have told us more than Colin Myler</p> <p style="text-align: center;">Page 34</p>	<p>1 code for failing on co-operate with or, still worse,</p> <p>2 misleading the PCC?</p> <p>3 A. Well, in the core business of the PCC, when we were</p> <p>4 dealing with complaints, when there would be a complaint</p> <p>5 from somebody, and the editor would reply in what we</p> <p>6 were able to ascertain was a misleading way, of course</p> <p>7 there would weigh the scales of justice against that</p> <p>8 editor, and the ruling would so reflect it.</p> <p>9 Q. That would be, on my understanding, therefore, evidence</p> <p>10 which you take into account in ruling or adjudicating on</p> <p>11 a particular complaint. I think my question was more</p> <p>12 directed to whether there's a separate article of the</p> <p>13 code which says that if you fail to co-operate with the</p> <p>14 PCC or you mislead the PCC, that in itself is a breach</p> <p>15 of the code. That's not the position, is it?</p> <p>16 A. Well, there's no such article in there, but the system</p> <p>17 is flexible enough, in most circumstances, to be able to</p> <p>18 absorb and draw the appropriate conclusion from an</p> <p>19 editor who is not effectively telling the truth.</p> <p>20 Q. But if you're carrying out an investigation, as you were</p> <p>21 here in relation to phone hacking, which wasn't directly</p> <p>22 targeted to a particular complaint but was more</p> <p>23 wide-ranging under your powers, which we see in article</p> <p>24 53(a)(1) of the articles of association, and an editor</p> <p>25 misleads you -- I'm speaking hypothetically now --</p> <p style="text-align: center;">Page 36</p>

<p>1 there's no sanction, is there, no comeback against the 2 editor?</p> <p>3 A. Well, I hate hypothetical questions because I don't 4 think they're fair. They're not fair in this 5 circumstance. If what you're actually saying to me, 6 Mr Jay, is that we should have known at the time that 7 either wittingly or unwittingly Mr Myler was not telling 8 the truth --</p> <p>9 Q. No, that wasn't my question.</p> <p>10 A. -- how could we possibly know?</p> <p>11 Q. That wasn't my question at all. I was not directing the 12 question to the PCC. I was directing the question to 13 the hypothetical editor, but you're right that I was 14 seeking to wrap it up hypothetically and not target the 15 question directly in the context Mr Myler for obvious 16 reasons, not least that the Inquiry hasn't formed 17 a conclusion as to whether or not he misled the PCC. 18 I put it to him that he had, but it's for Lord Justice 19 Leveson to decide.</p> <p>20 LORD JUSTICE LEVESON: In any event, he'd just arrived in 21 the job and therefore he was entirely dependent on what 22 others might say to him.</p> <p>23 A. I mean, he also was no virgin, my Lord. He'd been an 24 editor before. He knew his way around. And the virtue 25 for us in Colin Myler was that he was a fresh pair of</p> <p style="text-align: center;">Page 37</p>	<p>1 go to law, then it necessary follows that the PCC has no 2 role?</p> <p>3 A. In a word, yes.</p> <p>4 Q. Even if, does this follow, there is an overlapping 5 offence or breach under the code, maybe an extremely 6 serious and egregious breach under the code, which the 7 PCC should have an interest in seeking to address, and, 8 if necessary, comment on? Would you accept?</p> <p>9 A. Put like that, hypothetically, possibly so. But our 10 rule of thumb was that people who decided to go to law 11 could not also go to the PCC. They had to make 12 a decision.</p> <p>13 Now, it may be -- I cannot think of an instance but 14 there may be, lurking in the archives of the PCC or in 15 Mr Abell's witness statement, a case where something was 16 heard in court and there were ramifications, some kind 17 of fallout from the court hearing, which it would be 18 right and proper for the PCC to address, but I can give 19 you no hard example.</p> <p>20 Q. But this puts the PCC in a different position from any 21 other regulator, because all other regulators, to my 22 knowledge, would say, "Well, if there is an aspect of 23 the criminal law which is engaged or an aspect of the 24 civil law, we'll usually wait and see what happens, but 25 that doesn't mean we don't have jurisdiction; we will</p> <p style="text-align: center;">Page 39</p>
<p>1 eyes who knew his industry extremely well.</p> <p>2 And again -- there's so much hindsight in this -- at 3 the time people said, "We are quite surprised by the 4 amount of detail that the PCC has been able to dig out 5 of the News of the World on what went wrong", and it 6 informed the set of -- I think it was, yes, six 7 recommendations that we made to ensure, we thought at 8 the time, this would not happen again.</p> <p>9 The fact that there may have been -- we'll have to 10 await the police enquiries -- a giant criminal 11 conspiracy in the belly of the beast is another matter.</p> <p>12 MR JAY: May I go back, please, to 00090, Sir Christopher, 13 and a point you make after your sub judice point, five 14 lines into that self-same paragraph.</p> <p>15 A. Oh yeah.</p> <p>16 Q. "Furthermore, on matters of reputation and accuracy ..." 17 You'd also include within that privacy, I imagine. 18 "... a complainant will often have a choice between 19 going to law and going to the PCC." 20 Then you say Max Mosley chose the court, while the 21 McCanns used both the courts and the PCC: 22 "This leads to a wider point of very great 23 importance." 24 Can I seek to capture the point in this way. Are 25 you saying that if a complainant exercises the choice to</p> <p style="text-align: center;">Page 38</p>	<p>1 weigh in once the courts have ruled and carry out our 2 own investigation pursuant to our regulatory function." 3 The position of the PCC is, therefore, fundamentally 4 different, isn't it?</p> <p>5 A. Yes, it is fundamentally different, first of all from 6 a philosophical point of view. I made the point at the 7 very beginning that it is a regulator unlike any other, 8 of necessity, and also, Mr Jay, you forget the wishes of 9 the first party. Now, Max Mosley had a choice of either 10 coming to the PCC or going to law. He went to the law. 11 He never showed the slightest inclination in coming to 12 the PCC.</p> <p>13 Q. But if --</p> <p>14 A. So we can hardly start launching an investigation into 15 the sort of -- I won't go into lurid detail. We can 16 hardly do that if he doesn't want it, for Pete's sake.</p> <p>17 Q. As was his right, he chose to go to the courts for the 18 obvious reason that he needed to try and get an 19 injunction. We know that he failed, and then there was 20 a full-blown High Court action. But had he come to the 21 PCC after Mr Justice Eady had ruled and it was known 22 there was going to be no appeal, would the PCC have said 23 to him: "It's too late"?</p> <p>24 A. Quite possibly so, but again you've got me on 25 a hypothetical here. I would judge -- I mean, this is</p> <p style="text-align: center;">Page 40</p>

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<p>1 so improbable, that Mr Mosley, having gone to court and 2 got the decision he got, would then turn up at the PCC 3 and say, "By the way, there's some sweepings I want you 4 to address." It's not realistic, this. It's not -- 5 this is not real life, Mr are Jay. 6 Q. Maybe -- 7 A. In fact, he was extremely -- I interrupt to say 8 Mr Mosley -- although I've never met Mr Mosley in my 9 life and I hate Formula 1 racing, he was extremely rude 10 about the PCC. So, well, he was never going to come to 11 the PCC. 12 Q. Maybe one could turn that around and say: well, he has 13 the basis for being rude about the PCC because the PCC 14 could and would have done nothing for him. You have 15 told me in answer to my last question that had he come 16 to you, even after his success before Mr Justice Eady, 17 you would probably have told him to go away, wouldn't 18 you? 19 A. If he had come to the PCC -- if he had decided not to go 20 to law and had come to the PCC, I think -- and this is 21 another hypothetical thing -- we, around the table, 22 the commissioners, would have had a very interesting 23 debate. 24 Q. No doubt you would, but -- 25 A. And we might have found for him.</p> <p style="text-align: center;">Page 41</p>	<p>1 a personal view. This is not Christopher Meyer, 2 chairman of the Press Complaints Commission; it's just 3 me. I thought that the judgment was correct. Of 4 course, most of the newspapers thought to the contrary, 5 and I had some quite vigorous exchanges with editors on 6 an informal basis about whether this was right or wrong, 7 but I found it very difficult to see how the public 8 interest was engaged. 9 Q. Yes. But it's not just clause 3; it's the blackmail 10 point. If the PCC has any sort of regulatory function, 11 it would surely have been concerned by the findings of 12 a High Court judge that a senior journalist was arguably 13 guilty of blackmail and the then editor was giving 14 evidence which Mr Justice Eady spoke somewhat 15 disapprovingly of. Weren't these matters which you 16 perhaps should have taken up with Mr Thurlbeck and with 17 Mr Myler directly? 18 A. I think no. I'll say to you no. It's something to take 19 account of, to be aware of, but, as I say time and time 20 again, there is a time for the law and there is a time 21 for the PCC, and that has been one of my credos. 22 Q. Another structural weakness in the PCC -- and this does 23 go to its -- 24 A. What's the first structural weakness, Mr Jay? 25 Q. Well, fair enough. We'll address those in a moment.</p> <p style="text-align: center;">Page 43</p>
<p>1 Q. Of course you might, and you might not have done, but 2 that wasn't really the question either. 3 A. I'm not sure where you're going with this. 4 Q. It is quite important, because Mr Justice Eady rules 5 against the News of the World. 6 A. Yes. 7 Q. There is a breach of clause 3 of the code. Would you 8 agree? 9 A. Mm-hm. 10 Q. And there's also a finding by Mr Justice Eady that at 11 least one journalist, the chief news reporter, had been 12 guilty of behaviour close to blackmail. He put it 13 arguably even higher than that. Wouldn't those matters 14 have been of concern to the PCC? 15 A. Yeah, they would have been of concern to the PCC, but 16 I do think we have to try and get ourselves a little bit 17 anchored here. If somebody choose to go to law and 18 chooses explicitly not to go to the PCC, I do not think 19 the PCC's competence is engaged, although we will take 20 note of what has emerged from court. I think this is 21 the only thing I can say to you. 22 Q. Did you read Mr Justice Eady's judgment? 23 A. Bits of it, to be honest. 24 Q. Mm. What was your reaction to it? 25 A. I thought he rendered the correct judgment. And this is</p> <p style="text-align: center;">Page 42</p>	<p>1 But one structural weakness I'd like to deal with now 2 really goes to what it can do in terms of restraining 3 action. Had Mr Mosley come to you just before the 4 article was going to be published and sought some sort 5 of desist notice, the PCC wouldn't have been able to 6 help him, would it? 7 A. We might have been able to help him because it would all 8 depend -- my memory is weak on this for obvious reasons, 9 but one of the areas which has been a growth industry 10 for the PCC, certainly in my time as chairman, has been 11 the pre-publication help that we have given to people, 12 sometimes as advice to the editors, sometimes it's 13 advice to people in the firing line, sometimes as advice 14 to both, and it could be that we might have been able to 15 do something. 16 Q. Given that we know that the News of the World fought the 17 injunction application strenuously, and, as it happens, 18 succeeded, it isn't very plausible, is it, that the PCC 19 would have been able to persuade the News of the World, 20 had Mr Mosley come to the PCC for help, not to have 21 published? 22 A. This is the advantage of the PCC, which, as far as I can 23 see, has gone wholly unrecognised through weeks of 24 hearings here. Once you flash an injunction, nothing 25 puts up editors' backs more than that. They may be</p> <p style="text-align: center;">Page 44</p>

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<p>1 wrong to have their backs put up by that. I'm not 2 saying this is the right thing or the wrong thing, but 3 once you go to law, the game changes. It is possible 4 that had he come to us, hypothetically -- you look 5 terribly sceptical about what I'm saying. It is 6 possible that the whole thing might have taken 7 a different course. Possible.</p> <p>8 Q. But the News of the World had the video. They had 9 evidence which they thought was good evidence. They 10 were absolutely intent on publishing this story. We 11 know that they didn't go to Mr Mosley for comment; they 12 were going to publish regardless. Is it really 13 plausible that had Mr Mosley come to you for help, you 14 would have been able to persuade the News of the World 15 not to publish?</p> <p>16 A. Had it come that way, I think -- and we have discussed 17 it in the PCC -- I think I would have said to my 18 director: "The one thing to say to the News of the World 19 is: are you sure you've got the public interest argument 20 right? Are you sure?" Because that's where they went 21 down in court, effectively. And had it come to the PCC 22 and we'd had a discussion and we had ruled in favour of 23 Max Mosley, it would almost certainly have pivoted on 24 the issue of public interest. That's what I would have 25 said.</p> <p style="text-align: center;">Page 45</p>	<p>1 definition, as a thing you have to do, is actually they 2 respond in a different way. And I have in my -- 3 personally -- I'm not going to give any names, I don't 4 think it would be right to do so, but in my time as 5 chairman, I have stopped big stories from being 6 published, either on grounds of unwarranted intrusion 7 into privacy or on the public interest ground. So 8 believe me, this can happen.</p> <p>9 Q. So is this right: your powers of persuasion might have 10 been such that the News of the World, armed with this, 11 what they thought was a glorious story which they were 12 about to emblazon all over their front pages and put 13 videos all over their website, would have listened to 14 Sir Christopher Meyer and have held their hand? Is that 15 right?</p> <p>16 A. I'm not trying to create a cult of personality around 17 myself, but I'm just saying if someone at the PCC had 18 said it to them this in all seriousness they might have 19 done so.</p> <p>20 Because, you see, if you look at the parallelism 21 between court decisions and PCC decisions, there's not 22 a great deal of disparity. By and large, the courts -- 23 this is as it should be. By and large, the courts and 24 the PCC in my experience may not have sung in unison, 25 but they certainly sang in harmony. So if</p> <p style="text-align: center;">Page 47</p>
<p>1 We've said it to lots of other newspapers sitting on 2 all kinds of gruesome stuff, and have said in the past: 3 "Are you sure you've got this right?" We don't say to 4 them "don't publish" or "green light to publish". We 5 don't do that.</p> <p>6 Q. But you would have solemnly asked the question, "Are you 7 sure?" The News of the World would have said, "Of 8 course we're sure", and they would have published.</p> <p>9 A. How do you know they would have said, "Of course we're 10 sure?" How do you know?</p> <p>11 Q. Because we --</p> <p>12 A. You don't know.</p> <p>13 Q. We can't be 100 per cent sure, but what we do know is 14 that they defended the injunction application, which 15 suggests that unless they did it in bad faith, they 16 believed that they had public interest grounds for going 17 ahead and publishing.</p> <p>18 A. With respect, it didn't -- the game is different when 19 lawyers -- forgive me. The game is different when 20 lawyers and judges come in. It is a different thing 21 with the PCC. We are -- I speak as if I'm still 22 chairman; I'm not. We were always charged with acting 23 in the interests of the press and not of the public, 24 being too close to the editors and all of that, but one 25 of the advantages of being close to editors, by</p> <p style="text-align: center;">Page 46</p>	<p>1 Mr Justice Eady was prepared to rule in favour of 2 Max Mosley, then -- and we, hypothetically, might have 3 said, "What's the public interest?", it is quite 4 possible this would have begin the News of the World 5 pause. It's possible.</p> <p>6 Q. How would it have played out in front of the PCC to this 7 extent? That the News of the World were saying there 8 was a Nazi theme, which is a matter of fact based on, 9 they would say, a reasonable inference to be drawn from 10 the video. How would the PCC have resolved that issue, 11 do you think?</p> <p>12 A. We're wading through hypothesis now.</p> <p>13 LORD JUSTICE LEVESON: But this isn't a hypothetical 14 question, actually, Sir Christopher. This is a very 15 real question because one could postulate it this way: 16 to what extent, when this type of issue arises, does the 17 PCC get into the facts?</p> <p>18 A. Oh, right, okay. Put like that, I'm very happy to --</p> <p>19 LORD JUSTICE LEVESON: That's the question.</p> <p>20 A. Mr Mosley would have presented a complaint, or he would 21 have said to us: "This thing is coming down." Is this 22 a question about post-publication or pre-publication?</p> <p>23 MR JAY: Pre-publication.</p> <p>24 A. Okay, pre-publication. Let's say Mr Mosley would have 25 rung us up and said, "This thing is coming down the</p> <p style="text-align: center;">Page 48</p>

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<p>1 track", and we would have asked him: "What do you know? 2 What are the facts as you know them?" He would have told 3 us. We would have taken judgment on whether or not to 4 speak to the editor. Let's say we took a judgment to 5 speak to the editor. We ring the editor and say, "What 6 have you got? What are the facts?" And he would -- he 7 may or may not have told us everything. I think we 8 would have then said to the editor: "Hang on", go back 9 to Mosley and say, "This is what the editor says." Then 10 we go back to the editor. 11 And maybe in that exchange, based on the facts as we 12 knew them, as we'd got them from News of the World and 13 we'd got them from Max Mosley, we might have said to the 14 editor: "This looks dodgy", or we might not have done. 15 But we would have taken a judgment on the facts as we 16 knew them. 17 I don't see what more I can say to you. 18 MR JAY: Mm. 19 A. This is what we would do regularly. People would rung 20 up and say, "We're worried about this, we're worried 21 about that." 22 Q. The editor probably would have said to you -- of course, 23 one can only speculate: "We've got it all on video and 24 the video demonstrates that there was a Nazi theme and 25 there's a public interest, therefore, in publication." Page 49</p>	<p>1 you could judge its validity? 2 A. Well, we may have done. We -- no, we -- yes, we used to 3 do that, because we would often ask whether there was 4 independent corroboration for a story, which 5 a journalist had acquired, because this is part of the 6 mix in deciding whether a newspaper should run a story 7 or not. 8 Sorry, my Lord, the short answer to your last 9 question is: yes. 10 MR JAY: I don't think, though, that you ever asked to see 11 the underlying material. What you might have done on 12 occasion is test with the editor whether the editor had 13 independent corroboration or had, for example, a video, 14 but you wouldn't get involved -- 15 A. You might do. You might do. 16 Q. Can you remember circumstances in which you did, though? 17 A. Well, on the whole -- I did one or two of these things 18 personally myself. On the whole, this was a matter for 19 the director and his staff to do, and it was case by 20 case. Horses for courses. The only normal, natural, 21 pragmatic thing to do. I am just worried about what 22 you're driving at with this line of hypothetical 23 questions which you keep on telling me are factual. But 24 they aren't; they're hypotheses. 25 Q. I think the likely true position is this: that you would Page 51</p>
<p>1 You might have had to accept that, mightn't you? 2 A. There would have been a big debate about it. I think 3 that is the only clear -- just as there was a big debate 4 in court, I believe, there would have been a big debate 5 about whether the Nazi stuff, if it were Nazi, affected 6 the central argument. 7 Q. I'm not sure how big the debate could have been, because 8 the hypothesis here is you're having this conversation 9 before publication, it's all being done in a hurry, not 10 in the relative luxury of a courtroom where the 11 matters -- 12 A. We wouldn't have been moving luxuriously on this; we 13 would have been moving extremely fast. 14 Q. That's right, but why would -- 15 A. And we have to make a very quick judgment about what it 16 is necessary or not to say. I mean, really, it didn't 17 happen. 18 LORD JUSTICE LEVESON: Let me move it from the theoretical. 19 Would you have said, "Will you let us see the video?" 20 A. Might have done. 21 LORD JUSTICE LEVESON: Have you ever done that? 22 A. Look at a video? We may have done. I can't remember 23 it. 24 LORD JUSTICE LEVESON: Have you ever asked a newspaper 25 editor to provide the source material of a story so that Page 50</p>	<p>1 have tested the editor -- we're going back to the 2 Max Mosley hypothesis. You'd have asked him, "Are you 3 sure of your public interest justification?" He would 4 have said, "Yes", and that would have been the end of 5 it, wouldn't it? 6 A. Not necessarily so. I can't imagine anybody at the PCC 7 being satisfied by "yes". Of course there would have 8 been more discussion. Of course there would. 9 Q. Was any consideration given, during your six years as 10 chairman, to amending the code to have a general 11 requirement, not an absolute requirement, of 12 pre-notification in this sort of situation? 13 A. No. Let me look at the -- I have to -- I think 14 Mr Mosley has been asking, has he not, for blanket 15 pre-notification for -- 16 Q. Sorry, that wasn't my question. 17 A. Not your question? 18 Q. It's not an answer to my question. 19 A. I thought we were still on Mr Mosley. 20 Q. The question was: was any consideration given within the 21 PCC to amending the code, or advising the Code Committee 22 to amend the code, so as to include a general 23 requirement of pre-notification in this sort of 24 situation? 25 A. No, because there were cases, often of a public interest Page 52</p>

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<p>1 nature, where -- if this is your question -- where 2 warning somebody that a story was coming could have 3 resulted in action not to publish the story. 4 Q. That, again, isn't an answer to the question, because -- 5 A. The short answer to your question is: yes, there was 6 consideration, and we dismissed it. 7 Q. What your answer demonstrates is that you were concerned 8 that there might be exceptional cases where there would 9 be a public interest reason for not notifying the 10 subject of the story. 11 A. Quite so. 12 Q. But the point of the general requirement of 13 pre-notification is that that would be the ordinary 14 situation, the norm, but if the editor could demonstrate 15 a reason for departing from the norm -- and you've given 16 such an example -- that would be fine. But why not have 17 that as the basic standard to which newspapers should 18 operate? 19 A. Well, I think we had already established that as a basic 20 standard through a series of rulings over the years, and 21 that newspapers understood this. It is not in the code. 22 Q. But you're looking, then, to a fragmented group of 23 cases, some of which point in different directions. 24 We've looked at the Burrell case. There's also the 25 Livingstone case. Why not have it clearly stated in the</p> <p style="text-align: center;">Page 53</p>	<p>1 only two members who were not editors. If we were to 2 turn up at the Code Committee with a proper proposal for 3 a change to the code which had the full backing of 4 the Board of Commissioners, the PCC commissioners, the 5 Code Committee would find it extremely difficult to 6 resist. 7 Now, you're going to ask me for an example, and 8 I can't think of one, but -- 9 Q. Did you think, Sir Christopher, that it would have been 10 a good idea to have a provision in the code which said 11 that pre-notification as a general rule should be 12 followed? 13 A. I wasn't persuaded of that. I was not persuaded of 14 that. I thought the jurisprudence had this -- and it's 15 not so fragmented as you think, which is one of the 16 reasons why all this is set out in the code of practice 17 handbook. I did not, at the time, think that this was 18 an urgent matter that needed to be addressed. 19 Q. Is that because editors on the PCC were telling that you 20 it was a bad idea, such as Mr Dacre? 21 A. No, no, absolutely no not. The thing about the editors 22 on the PCC, all ten of them, was they were a completely 23 disunited group. There's a few out there that -- they 24 sit there like the old Bulgarian politburo, trying to 25 dictate things on the Commission.</p> <p style="text-align: center;">Page 55</p>
<p>1 code that there is a general requirement to pre-notify 2 individuals in Mr Mosley's position, but he's only one 3 example? 4 A. All I can say to you is when I was chairman, we did 5 consider this, the point was made to us, we did not go 6 down this path, the Code Committee didn't go down this 7 path. If you still think it's important, then I think 8 it's a question for Lord Hunt this afternoon. 9 Q. There would be considerable resistance in the Code 10 Committee to amending the code to include that 11 requirement because after all, they're full of newspaper 12 editors and proprietors, aren't they? 13 A. Which is why I recommend in my witness statement that 14 they be leavened by the presence of independent 15 commissioners from the PCC and perhaps even give the 16 chair to the chairman of the PCC. 17 Q. But when you were chairman of the PCC between 2003 and 18 2009, you, presumably, were fully aware of the make-up 19 of the Code Committee, of the limitations in your 20 ability to persuade the Code Committee to make a change 21 in the rules such as the one I'm discussing, and 22 therefore perhaps there was little or no point in 23 pursuing it any harder. Is that right? 24 A. No, that's not right, because I and the director were 25 members ex officio of the Code Committee, so we were the</p> <p style="text-align: center;">Page 54</p>	<p>1 Q. But I bet on this issue they weren't a disunited group. 2 I bet they spoke as one group -- 3 A. Well, I can't remember. 4 Q. -- telling you that pre-notification would be 5 a disaster? 6 A. You keep on putting words into my mouth, Mr Jay. You 7 haven't the faintest idea what they said to me, and 8 I don't have the faintest idea what they said to me 9 because I can't remember. But the fact of the matter is 10 that three national editors, one magazine editor and the 11 rest from the regions -- you had a huge variation in 12 views among the editors. There was usually more harmony 13 among the ten independent commissioners than there was 14 among the editors. 15 Q. Can I move to another issue and see how it played out. 16 There was certainly a public perception that when it 17 came to the publication of adverse adjudications made by 18 the PCC and apologies, there was inadequate due 19 prominence given, both in terms of position within the 20 newspaper and often, equally importantly, the size. Do 21 you accept that there is certainly a perception to that 22 effect? 23 A. There still is, and it was a problem. I make no bones 24 about that. When I became chairman, it was a problem, 25 and we worked very hard in my time to get the editors to</p> <p style="text-align: center;">Page 56</p>

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<p>1 put corrections, apologies, and the adjudications 2 themselves, far more prominently than had been the case. 3 We had some success, but had I stayed as chairman, 4 I would have had to have continued the campaign. 5 Q. The system which you left in 2009 was still dependent on 6 the consent of the editor as to where to publish and the 7 size of the publication; would you accept? 8 A. I would accept that. It became a matter of negotiation 9 between the PCC and the editor as to where it went, and 10 I have to say that the editor had the final say, but if 11 something appeared ludicrously hidden, then we would 12 have made a fuss. Again, I make a recommendation that 13 in a new regulatory system, the PCC, whatever you're 14 going to call it, must have the power to direct where 15 these things go. 16 Q. Why didn't you agitate for that, Sir Christopher, while 17 you were you chairman? You could have made it clear 18 that it was PCC policy, which, if necessary, you were 19 going to impose on the Code of Practice Committee, that 20 if the PCC said that an adjudication had to be published 21 in a particular way, in a particular place, in 22 a particular font size, that that was the end of it; the 23 editors had to accept the PCC ruling? Why didn't you 24 agitate for that? 25 A. Because I was agitating for so much else at the same</p> <p style="text-align: center;">Page 57</p>	<p>1 the protection of the vulnerable, to provide a service 2 to the people. We pushed and cajoled on this. Had 3 I done another three years, that would have been the 4 next thing. I concede your point, but at the time 5 I decided other things were more important. 6 Q. Maybe the answer is in part that that sort of approach 7 would have placed you in confrontation with powerful 8 individuals, self-evidently. There would have been 9 considerable resistance to that and it would have broken 10 down the -- I won't use the word "collusion" but almost 11 the sense of consent and collaboration, which was the 12 basis on which you wanted to work with the people you 13 were quasi-regulating; is that fair? 14 A. I think when you mention the word "collusion", even to 15 dismiss it, there is the whiff of poodle or lapdog here, 16 which I don't like at all. 17 Q. Okay. 18 A. God knows I had my conflicts with the editors on all 19 kinds of things. If you think that I was sitting in 20 their pocket not daring to do things that they disliked, 21 think again, Mr Jay. 22 Q. Okay. 23 LORD JUSTICE LEVESON: One of the things you did say, 24 Sir Christopher, was you spoke of the advantages of 25 being close to editors.</p> <p style="text-align: center;">Page 59</p>
<p>1 time. It was not as though I was sitting in my office 2 twiddling my thumbs. There was a massive agenda. There 3 were a huge number of things that had to be done. So in 4 the end you have to prioritise, and at the time what we 5 were doing was cajoling, persuading editors to bring 6 these things far further forward, and there are 7 statistics, which I know is in Stephen Abell's witness 8 statement -- 9 Q. Yes, we've seen those. 10 A. Then you see it's much less of a problem than it was in 11 2003. 12 Q. It's a matter of perception. It's a real matter of 13 concern to the public that the PCC, even when they 14 publish an adverse adjudication, have to enter into some 15 sort of negotiation with the newspaper as to where the 16 adjudication is going to be published, when really, as 17 regulator, the PCC should be saying, "We're not 18 listening to you, editor; you're going to do exactly as 19 we say. You're going to publish it where we want, on 20 a particular date, in a particular size, end of story." 21 Why didn't you insist that that should be the position? 22 A. That was not what I was doing at the time. I had to 23 make judgments. I was already trying to get a charter 24 commissioner up, a charter compliance panel going, 25 travel around the country, look out -- my priority was</p> <p style="text-align: center;">Page 58</p>	<p>1 A. Well, of course. You can't -- you can't run -- it's 2 like the BMA is close to doctors. I assume that you 3 guys are regulated by something and they keep fairly 4 close to your profession. What do you expect, to keep 5 distant from the industry? The point here is whether 6 unwarranted influence was exercised over my 7 responsibility by overweening editors. I can tell you 8 here, on oath, that that was not the case. 9 MR JAY: Okay. I understand your answer, but can I ask you: 10 how often did you go out to lunch or dinner or whatever 11 with editors? Particularly editors who were involved 12 with the PCC. 13 A. I tried to take out to lunch once a year every national 14 editor. I more or less did that. Most of the time, 15 I did not -- it was I who gave the hospitality, rather 16 than accepting it from them, and when I was on the road, 17 which was a lot, we would obviously see the regional 18 editors or any local editor who came to town. But 19 I tried to keep a distance between myself and the editor 20 and make the main point of contact for all operational 21 purposes the director and his staff. 22 So my policy was actually personal distance, but 23 institutionally, obviously, the PCC had to be close to 24 the industry. 25 Q. Can we test that in relation to a particular issue? We</p> <p style="text-align: center;">Page 60</p>

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<p>1 know that the Information Commissioner was agitating for 2 a change of the law. 3 A. Yeah. 4 Q. Section 55, bring in a custodial sanction. We know that 5 the PCC was dead against that and spoke of the chilling 6 effect. We also know that that was the position -- 7 A. Yeah, we've said that in one of our annual reviews, 8 I remember that. 9 Q. It's the position which every national newspaper editor 10 took. Were there discussions between you and editors on 11 the PCC on that particular topic? 12 A. None that I remember. 13 Q. Are you sure about that? 14 A. None that I remember. 15 Q. Can you remember any discussions with Mr Dacre, for 16 example, on that topic? 17 A. None that I can remember. 18 Q. Mm-hm. 19 A. If you're saying that we sort of -- that we put together 20 a kind of joint united front on Section 55, it's 21 absolutely untrue. 22 Q. Why did the PCC adopt any position on Section 55? It's 23 not a campaigning body, is it? 24 A. No, it's not a campaigning body, but it was something 25 that we thought would be pretty chilling to freedom of Page 61</p>	<p>1 of being too dogmatic too early on about my enthusiasm 2 for freedom of expression and so forth, you will see 3 there is a clear line of thinking that runs from 2003 4 through. So maybe I was going beyond my powers in 5 saying it, but I thought it needed to be said. 6 Q. Maybe it's the inaction of a philosophical position 7 which sides with the press, because emotionally, 8 temperamentally and philosophically, that's where you 9 stand. 10 A. Mr Jay, please. Forget the amateur psychology here. It 11 was something I believed in. It was something 12 I believed in, and if you think Mr Dacre picked up the 13 phone one day and said, you know, as he does -- 14 I believe -- he picked up the phone one day and he says, 15 "Very helpful if you stick in the annual review 16 something about Section 55" -- forget it. Even 17 Jack Straw was on his side as well, for Peter's sake, 18 and the Information Commissioner was rebuffed by the 19 then Lord Chancellor. 20 So it was not as if I was expressing some 21 astonishing view. There was a very wide public debate 22 about this, and we decided to take part in it and why 23 the hell not? 24 Q. One can be entirely neutral and agnostic as to whether 25 you were right or wrong. That wasn't the point of my Page 63</p>
<p>1 expression. 2 Q. Well, maybe you did, but why was it necessary, if you 3 thought you were a regulator, or even if you weren't 4 a regulator, to have adopted a position on an issue of 5 that sort? 6 A. But why not? I mean, we're damned if we do and we're 7 damned if we don't. If we don't express a view, you say 8 to me: "As a regulator, you jolly well should have 9 done." Then we do, and you ask me, "Why did you do it?" 10 I mean, there are issues out there -- 11 Q. Isn't there a difference -- sorry to cut across you, 12 Sir Christopher. 13 A. No, that's all right. 14 Q. If you express a view about breaches of the Data 15 Protection Act and about lapses in standards by 16 newspapers, that's clearly within your province. Let's 17 agree about that. And it's your role, some might say, 18 to lay down general standards, but that's rather 19 different from expressing a view as to what the criminal 20 law should say in relation to breaches of the Data 21 Protection Act which you've already told us are outside 22 your domain altogether. 23 A. Yes, but there is an effect -- there is a consequence 24 there which goes strictly beyond the law, and if you go 25 back to the speech I made in 2003, where you accuse me Page 62</p>	<p>1 question. 2 A. I know what the point of your question was. 3 Q. It's whether it was right for you to express any view, 4 because you were acting ex cathedra, weren't you, 5 really? 6 A. Yes, I go with that, but it's a separate point from the 7 enforcement of the criminal law and doing the 8 Information Commissioner's job for him. 9 Q. Yes. I think we're going to pause there for a few 10 moments. 11 A. Okay. 12 MR JAY: After our break, we'll no doubt resume. 13 (11.33 am) 14 (A short break) 15 (11.40 am) 16 MR JAY: Ask you about a different topic now, 17 Sir Christopher, the issue of inaccurate and misleading 18 headlines. 19 A. Yes. 20 Q. Was that an issue which troubled the PCC during your 21 chairmanship? 22 A. Absolutely. I made a speech in March of 2005 -- I think 23 I have that right -- in which I said to the industry 24 that the old doctrine, which was if the headline is 25 slightly wonky, so long as the story's got it right, Page 64</p>

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<p>1 then you have to take the thing as a whole and there's 2 no grounds for complaint -- and I said, "You can't go on 3 like this because it's not working, because you have 4 a headline which is completely misleading and the story 5 may correct it but the whole thing is completely 6 disproportionate." 7 I remember we had a case of a Scottish newspaper 8 which led with the headline "Assassination plot against 9 Tony Blair", and in the body of the story the police 10 said, "There is no assassination plot against 11 Tony Blair." That was one of the worst examples. 12 But yes, there was a concern, and yes, we sought to 13 crack down on it. 14 Q. Did you crack down on it by issuing any general 15 statements or guidance which the industry as a whole 16 should follow? 17 A. We did not, to the best of my knowledge, issue a formal 18 guidance note. The industry knew perfectly well that we 19 were after them on this, first of all because the speech 20 is sent around to all the industry -- it doesn't quite 21 have the force of a guidance note but they read the 22 thing and they see what the points are -- and secondly, 23 it started to appear in our adjudications. 24 Q. Did you give consideration to causing or recommending 25 that the code of practice should be amended, clause 1, Page 65</p>	<p>1 this is hardly reactive. This is proactive, but maybe 2 not proactive in the sense that you mean. But I mean 3 I was out there all the time, not only enjoining people 4 not to break the law and to respect the Data Protection 5 Act, but saying, "Just watch it on the headlines because 6 we're not going to let this kind of stuff go through any 7 more. You can't do this." 8 Q. You say that, but there's been quite a lot of evidence 9 to the Inquiry of inaccurate headlines in the sense you 10 would agree were inaccurate -- if you don't read them in 11 conjunction with the story, you look at them within 12 their own terms -- which demonstrates that newspapers 13 still are not getting the message. Do you accept that? 14 A. This is inevitable. You're never going to get a perfect 15 situation. The issue is: is the problem reducing or is 16 it not? Or is it increasing? Our view was, in my time, 17 that having come down pretty hard against this, the 18 strike rate of bad headlines to stories was improving. 19 I can't give you figures, I don't have a sort of slide 20 rule for this, but you can't load up the code of 21 practice with too much detail. 22 You may disagree with me on this, but the 23 jurisprudence is immensely important. That is another 24 reason why we repeatedly said to the industry: "You must 25 write into every journalist's contract the need to abide Page 67</p>
<p>1 to make specific reference to inaccuracy in headlines? 2 A. No, we did not, because I think our judgment there was 3 you have the statement of principle in the code of 4 practice and then you implement the clauses of the code. 5 You have the jurisprudence then around the principles, 6 and if anybody is still too thick to understand what 7 we're trying to say, you then have the code of practice 8 handbook, which has been revised, which explains the 9 jurisprudence. 10 So, no, we didn't go for a change in its code 11 itself. 12 Q. Does this demonstrate the philosophical approach which 13 you were adopting, namely to build up standards through 14 jurisprudence and hope that the industry would 15 understand what the standards were by reading the 16 jurisprudence, rather than by acting more proactively 17 and laying down general statements of principle in the 18 code itself and/or in the code book? 19 A. The answer to that is a combination of the two things. 20 Matters we've taken to the Code Committee for amendment 21 take account of developments. If, for example, you look 22 at the subterfuge clause 10 and look at its development 23 between 2003 and 2009, you will see that. 24 So it became a balance between statements of 25 principle and the way in which they were applied, and Page 66</p>	<p>1 by the code of practice", which means that the 2 journalist must read the code of practice to see what is 3 in it. 4 This is why we did endless seminars around the 5 country, not just in London, explaining to people how 6 the code of practice works, because if you don't 7 understand the jurisprudence, you're in real trouble. 8 Q. Did you cause the Commission to monitor headlines in 9 either individual newspapers or a range of newspapers to 10 see whether they were following your advice that they 11 should be accurate? 12 A. I can't remember, I'm sorry. 13 Q. Because without doing that, you wouldn't know whether 14 newspapers were behaving themselves or not? 15 A. Well, first of all, we had a very small staff. There 16 were limits to what you could do to monitor the entire 17 United Kingdom output of newspapers. Online, don't 18 forget, as well as in print. So this would, in any 19 event, have been a highly limited exercise. But in 20 answer to your specific question, I do not remember. 21 Q. Doesn't your approach put too much weight on the 22 jurisprudence as it builds up, too much weight on the 23 ability and willingness of journalist to read and 24 understand the jurisprudence, and not enough weight on 25 making general statements of principle, preferably Page 68</p>

17 (Pages 65 to 68)

<p>1 within the code of practice itself?</p> <p>2 A. Well, I would beg to differ with you there, Mr Jay,</p> <p>3 because if you think that statements of principle would</p> <p>4 attract more attention than, say, major developments in</p> <p>5 jurisprudence, I would argue with you about that. It's</p> <p>6 a matter for debate, but jurisprudence is unbelievably</p> <p>7 important, and my view was that editors understood this</p> <p>8 because it described the way in which the regulatory</p> <p>9 system was developing, and that is why there was more</p> <p>10 and more time in my time on occasion.</p> <p>11 Q. Another issue here with headlines is that a misleading</p> <p>12 headline, an inaccurate headline, unless it is directed</p> <p>13 to an individual, which may be rare, would be unlikely</p> <p>14 to elicit a complaint. Wouldn't you agree?</p> <p>15 A. Well, I remember a lot of complaints about headlines.</p> <p>16 Q. But are those complaints which you would deal with,</p> <p>17 given your reluctance to address third-party complaints?</p> <p>18 A. Third-party complaints -- there's a kind of myth out</p> <p>19 there. Can we move sideways to third-party complaints</p> <p>20 or are we still on headlines? On headlines, I remember</p> <p>21 adjudications in which newspapers were struck down for</p> <p>22 the disparity between the headline and the content,</p> <p>23 and -- there was no doctrinal objection to third-party</p> <p>24 complaints, but they were rare compared with first-party</p> <p>25 complaints. It's not true that we never entertained</p> <p style="text-align: center;">Page 69</p>	<p>1 done, so we did not proceed.</p> <p>2 Q. Even though, as you say, large numbers of people were</p> <p>3 concerned about the intrusive nature of the photograph;</p> <p>4 is that right?</p> <p>5 A. Even though.</p> <p>6 LORD JUSTICE LEVESON: Would there be a possibility that you</p> <p>7 could look at that issue from the point of view of</p> <p>8 a regulator but only do so respecting the wishes of the</p> <p>9 family, in private? In other words, there are some very</p> <p>10 important lessons to be learned from this particular</p> <p>11 exercise, but we're not going to do this publicly, we're</p> <p>12 not going to require adjudications to be published, but</p> <p>13 we are going to add to the jurisprudence by identifying</p> <p>14 what the rules should be in these circumstances?</p> <p>15 A. Well, I haven't considered that before, but I must say</p> <p>16 it sounds like a good idea. I'd be -- if I was still</p> <p>17 chairman, I would think this is something we ought to</p> <p>18 think about.</p> <p>19 LORD JUSTICE LEVESON: I'm pleased that the Inquiry has</p> <p>20 contributed something with which you agree,</p> <p>21 Sir Christopher.</p> <p>22 A. Oh, perish the thought.</p> <p>23 LORD JUSTICE LEVESON: But the point I'm making is slightly</p> <p>24 different, that if you have an over-arching</p> <p>25 responsibility in relation to your duties, then it might</p> <p style="text-align: center;">Page 71</p>
<p>1 a third-party complaint. That is false. It would</p> <p>2 depend on the circumstances. As I say, case by case.</p> <p>3 Q. So is your position then that even if there was a first</p> <p>4 party who might have complained but didn't, the</p> <p>5 Commission did consider complaints from third parties?</p> <p>6 A. First party was king. On the whole, if a first party</p> <p>7 did not wish to proceed, we would not entertain a third</p> <p>8 party.</p> <p>9 Q. That's right. So you would entertain a third-party</p> <p>10 complaint only in circumstances where, by definition,</p> <p>11 there wasn't a first party; is that correct?</p> <p>12 A. Indeed, and why not?</p> <p>13 Q. I think the concern which some have expressed is that</p> <p>14 there should be power to consider complaints from third</p> <p>15 parties even if a first party could have complained but</p> <p>16 did not. Do you see that?</p> <p>17 A. Let me put it like this: I cannot say that forever and</p> <p>18 a day a case would not come up just as you have</p> <p>19 described. What I do remember is this: if I can give</p> <p>20 you an example of a footballer who dropped dead in the</p> <p>21 middle of a match, and there were some rather</p> <p>22 unfortunate photographs of him, I don't think people</p> <p>23 realised, dead on the pitch. Loads of third-party</p> <p>24 complaints about this, but the family, the first party</p> <p>25 of the dead footballers, did not want anything further</p> <p style="text-align: center;">Page 70</p>	<p>1 be that there is more than one way of achieving that</p> <p>2 end.</p> <p>3 A. Yes. My Lord, I'm with you on that. I think it's</p> <p>4 a good idea.</p> <p>5 MR JAY: I ask you a different question now: did you feel,</p> <p>6 while you were chair of the PCC, that there was</p> <p>7 a structural or lack of independence problem, given the</p> <p>8 interrelationship between the Commission, on the one</p> <p>9 hand, PressBoF on the other hand and its Code of</p> <p>10 Practice Committee on the yet other hand?</p> <p>11 A. Well, as I went through the six years, I thought the</p> <p>12 balance was not right between those three bodies, that</p> <p>13 although there was a majority of independent</p> <p>14 commissioners on the Commission itself, which was very,</p> <p>15 very important point, the industry did monopolise both</p> <p>16 PressBoF and the Code Committee, and I do think that</p> <p>17 that needs to change. But in the time that I was there,</p> <p>18 there was -- there wasn't time to start thinking about</p> <p>19 these things. If I'd done another term, for example,</p> <p>20 then maybe -- in fact almost certainly I think I would</p> <p>21 have wished to address that.</p> <p>22 Q. Because certainly on wider issues of regulation, which</p> <p>23 I know the PCC didn't necessarily get particularly</p> <p>24 involved in, as opposed to complaints, there would be,</p> <p>25 would there not, a concordance of view amongst editors,</p> <p style="text-align: center;">Page 72</p>

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<p>1 because editors would tend to support the principles of 2 freedom of expression, independence of the press and 3 everything else? 4 A. Mm. 5 Q. Whereas the position of the lay members might be more 6 fractured; is that correct? 7 A. No, that's -- that was not my experience. Lay 8 members -- I found the editors -- on the Commission, 9 I found the editors fractured. This was why I made the 10 facetious reference to the Bulgarian politburo before. 11 When I chaired my first view meetings I was waiting for 12 this sort of lump to act as a lump, but they never did. 13 Q. Can I test that in this way: let's accept you're right 14 in terms of the adjudication of individual complaints, 15 that there would not necessarily, you've told us, be an 16 editorial block. 17 A. Mm. 18 Q. Fine. But if one's talking about general issues of 19 principle -- for example, the issue of pre-notification, 20 the issue of prominence of adjudications and apologies 21 and their publication -- you would expect to see 22 a consistent approach amongst editors because they're 23 all speaking from the same position, the position of 24 freedom of the express, the importance of the press in 25 a democratic society --</p> <p style="text-align: center;">Page 73</p>	<p>1 perhaps it's the strongest example -- pre-notification, 2 you would expect to see a consistency of view amongst 3 editors. 4 A. Ah, no, you wouldn't necessarily expect to see 5 a consistency of view among editors. I actually was 6 going to try and illustrate that, but I'll go back to 7 the general point. Because if you look at national 8 newspapers, one of whom is going to be a Sunday paper, 9 a magazine, regional and local newspapers, actually they 10 don't come to the table with the kind of monolithic 11 attitude that you're suggesting. 12 Q. Okay. Would you agree that there is, at the very least, 13 a perception that the interweaving of personnel, money, 14 and to some extent power, between the PCC, PressBoF and 15 the Code Committee creates a situation where there is 16 lack of independence? 17 A. Yes, I agree with that. 18 Q. Okay. I move off that topic to another topic. The 19 recommendation which the DCMS committee made in 2003, 20 they made two relevant recommendations. One of them was 21 that the code should explicitly ban payments to the 22 police for information, and there should also be a ban 23 on the use and payment of intermediaries, such as 24 private detectives, to extract or otherwise obtain 25 private information about individuals. You'll recall</p> <p style="text-align: center;">Page 75</p>
<p>1 A. Yeah. 2 Q. -- and they wouldn't particularly want the PCC to have 3 control over the publication of adjudications. Would 4 you agree with that? 5 A. Well, in my time we certainly hadn't reached a point in 6 the Commission where -- because we hadn't discussed 7 it -- where there was a move to, as it were, take 8 control of where adjudications, et cetera, went. But 9 toward the end of my time -- it must have been the 10 latter half of 2008 -- we happened to have a Commission 11 meeting in Manchester, because it's all part of the away 12 day thing, and it was at that meeting where I was quite 13 forceful about how we absolutely had to, again, address 14 the question of advertising for the PCC. I'm not 15 talking about the prominence of adjudications. 16 One of the other things -- it's linked but -- 17 Q. You're going off on a bit of a tangent. 18 A. Am I? 19 Q. I fear you are. I was addressing a general point and 20 I just wonder whether the answer is yes or no. 21 A. Can you remind me of the general point again? I'm very 22 sorry about this. 23 Q. On points of principle, such as prominence of 24 adjudications and apologies and their publication, 25 inaccurate headlines and I think my other example -- and</p> <p style="text-align: center;">Page 74</p>	<p>1 that recommendation? 2 A. Yeah, I do remember that, yeah. 3 Q. Was that recommendation ever implemented? 4 A. We thought -- I really have to dredge my memory here. 5 I think that the view we came to on that was if we were 6 talking about bribery, this is a matter for the criminal 7 law. If we're talking about payments to informants, 8 that is not necessarily wrong, either in the law or 9 under the code, and -- sorry, I can't remember the last 10 point there. Paying policemen? 11 LORD JUSTICE LEVESON: Private detectives. 12 A. Oh, yes, can I come back -- 13 LORD JUSTICE LEVESON: To extract or otherwise obtain 14 private information. 15 MR JAY: Have a look at the recommendation itself. If you 16 go to file B1, tab 19, you'll see it. Page 37975. 17 A. Yes, I'll try to find it. 18 Q. Paragraph 11. 19 A. I remember the recommendation. 20 Q. To be fair to you, it's the exact way in which it's 21 couched. 22 A. Here we are. Sorry, what was the page number again? 23 Q. 37975. 24 A. Yes, I'm with you. 25 Q. "The code should explicitly ban payments to the police</p> <p style="text-align: center;">Page 76</p>

<p>1 for information." 2 Pausing there, paying the police for information was 3 a breach of the criminal law back in 2003? 4 A. Mm. 5 Q. It was an offence under the Prevention of Corruption Act 6 of 1906, but the recommendation from the DCMS committee 7 is that that should be explicitly banned in the code. 8 So pausing there, did that ever happen? 9 A. No, it didn't, because there was already a draconian 10 sanction in law, and secondly, we couldn't get into the 11 business -- and you may disagree with me here -- of 12 constantly duplicating the law in the code. 13 Q. But why not, Sir Christopher? That's what regulators 14 do. The criminal law is there for one purpose; the 15 regulatory law is there for another purpose. Shouldn't 16 there be, in the relevant code, an explicit statement, 17 as the DCMS committee are precisely recommending, that 18 payments to the police for information is completely 19 unethical? 20 A. Well -- 21 Q. Aside from it being illegal? 22 A. I mean, where does one begin? I repeat what I've said 23 just now. I rest on that, and by God, it was known. It 24 was widely known. Journalists didn't have to be told 25 that they were breaking the law by doing this.</p> <p style="text-align: center;">Page 77</p>	<p>1 If you'd implemented that, that would in fact have 2 covered phone hacking, wouldn't it? 3 A. Yes. Well, there you have clause 10 of the PCC code -- 4 Q. Which you say -- 5 A. -- which deals with subterfuge. 6 Q. This makes it absolutely clear, though, that you don't 7 have a get-out clause if you employ an intermediary. 8 Would you agree? 9 A. Well, the trouble with this -- no, hang on. The trouble 10 with this paragraph 11 is it's a muddle, and it's 11 a muddle where inquiry agents are concerned. This has 12 been something which has afflicted the whole debate 13 about inquiry agents. Payment by newspapers to enquiry 14 agents, full stop, is not in and of itself illegal, nor 15 is it illegal under the code. It is the question of 16 what the inquiry agents then do or are procured to do 17 which then offends the law, if I'm right here, and 18 certainly offends clause 10 of the code of practice. 19 So 11, as drafted, I think is a muddle on that 20 point, on that point, and I think is fully taken care of 21 in the latest iteration of clause 10. 22 Q. I think the thinking behind clause 11 is actually quite 23 clear: that you shouldn't be employing private 24 detectives to obtain private information because 25 although they might be doing it legally, there's a high</p> <p style="text-align: center;">Page 79</p>
<p>1 Q. It's also a breach of the code. That's what the DCMS 2 committee want you to make clear -- 3 A. I know that. 4 Q. -- and which you weren't making clear, were you? 5 A. Well, there are whole swathes of the criminal law which 6 are of application to journalists which might be 7 imported into the code of practice. There has to be 8 a limit on that. We already have a number of clauses 9 where there is overlap. 10 Q. This isn't a recommendation from some pressure group or 11 whatever, not that I'm diminishing pressure groups; it's 12 a recommendation from a parliamentary committee. 13 I think your response to it is: we didn't do it because 14 the criminal law is adequate. Is that fair? 15 A. I would say so, yes, and we didn't feel under an 16 obligation to put into the code everything that the 17 Select Committee recommended. You'll find other 18 recommendations in other Select Committee reports where 19 we haven't necessarily adopted what they recommended. 20 Q. If you look at the next one: 21 "There should also be a ban on the use and payment 22 of intermediaries, such as private detectives, to 23 extract or otherwise obtain private information about 24 individuals from public and private source, again, 25 especially police."</p> <p style="text-align: center;">Page 78</p>	<p>1 enough risk that they might be doing it illegally, and 2 therefore, to avoid that risk, ban them. 3 A. Ban all inquiry agents? 4 Q. For this particular purpose. Do you see that? 5 A. Yes, I do see that, and in 2003 I did not think that was 6 a reasonable position to take. 7 Q. Was this recommendation discussed within the Commission? 8 A. God knows. I can't remember. I have no recollection -- 9 I mean, we're going back now nine years. I have no -- 10 we must have discussed the recommendations, because we 11 always do discuss the recommendations of Select 12 Committees, but I can't remember when the discussion was 13 in 2003. It must have been at the first Commission 14 meeting after the publication after the report. 15 Q. Another recommendation me made -- this is paragraph 10: 16 "Journalists should be able to refuse an assignment 17 on the ground that it breaches the code, and if 18 necessary, refer the matter to the Commission without 19 prejudice." 20 That was never implemented, was it? 21 A. Well, it was and it wasn't. This is -- I'm going to 22 have to be a bit -- kind of a bit slippery on this. The 23 fact of the matter was we were constantly being asked by 24 the National Union of Journalists to get into, 25 effectively, contractual disputes between their members</p> <p style="text-align: center;">Page 80</p>

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<p>1 and their managements, or their editors. This we 2 considered not to be the way to proceed, which is why 3 10, the recommendation at clause 10, was not implemented 4 as it is there, but -- and I agreed this with the then 5 Secretary General -- he may still be Secretary General 6 of the NUJ, Jeremy Dear -- it may have been the 7 following year, may have been two years afterwards -- 8 that by insisting that journalists' contracts should 9 contain a clause specifically enjoining them to respect 10 the code also put obligations on their editors, and that 11 therefore, if there was, in their work contracts, 12 a requirement to respect the code of practice, it would 13 be a breach of their contract if they were asked by the 14 editor to do something which prima facie was a breach of 15 the code of practice. That is the way we did it and 16 that is what I agreed with Jeremy Dear and Austin 17 Mitchell MP in an informal meeting we had. 18 Q. I think the answer to my question was: the PCC did 19 not -- 20 A. Not as it was, no. We did a lot of other things. But 21 we did not take -- agree these things by rote, even if 22 it was a Select Committee. 23 Q. Okay. In 2007 there was another Select Committee 24 report, as we all know. 25 A. Where is that?</p> <p style="text-align: center;">Page 81</p>	<p>1 "This would be a major step, which we would not 2 recommend without a broader examination of the subject." 3 So they weren't making an unequivocal 4 recommendation. 5 A. No, that is correct. 6 Q. In 2009, another Select Committee. You gave evidence to 7 that Select Committee, of course. I think this was the 8 third time -- 9 A. Yes. 10 Q. -- you gave evidence to a Select Committee. I'm going 11 to ask you a couple of specific points. I don't know 12 whether your version is paginated in the same way. Mine 13 isn't. But if you go to tab 55 and look at the internal 14 numbering of the report itself, it's page EV113. 15 A. EV113. All right, oh yes, I see how it works. Getting 16 there. Yes, I'm there. 17 Q. Just one point, which arises from what you told the 18 Select Committee on 24 March 2009. You see in the 19 left-hand column, you give quite a lengthy answer in 20 relation to the McCann case. 21 A. Yes. 22 Q. You say, amongst other things -- and it's repeated in 23 your witness statement: 24 "There's a time for the courts and there's a time 25 for the PCC."</p> <p style="text-align: center;">Page 83</p>
<p>1 Q. That's this in the same B bundle 1, but I have it in 2 a continuation file. It's tab 53. 3 A. Yes, I think I do too. Yes. 4 Q. Maybe I can take this point more shortly, because I'm 5 sure you remember it. The recommendation by the DCMS 6 committee then -- and this is at our page 45405, 7 paragraph 72 -- is that -- 8 A. 45 what? 9 Q. 45405. Paragraph 72. There should be a financial 10 sanction. 11 A. Oh yeah. 12 Q. Although it was recognised that the introduction of such 13 sanctions might need statutory backing to make the power 14 enforceable. Do you see that, Sir Christopher? 15 A. Yeah. 16 Q. That, of course, was another recommendation which you 17 rejected? 18 A. Yeah. 19 Q. Was it discussed in the Commission? 20 A. Yes. I think it was, and we were all of a mind, 21 independent commissioners and editorial commissioners, 22 that fines were not the way to go. So, yes, he we 23 rejected that. 24 Q. It is fair to say, I should read on, that the DCMS 25 committee said:</p> <p style="text-align: center;">Page 82</p>	<p>1 Then you say: 2 "The PCC is never going to eliminate the courts, and 3 I sure as hell hope that the judges do not eliminate the 4 PCC." 5 Of course, the judges would never have had power to 6 do that. 7 "We act in a complementary way. What I said to 8 Gerry McCann when I first saw him was that this is what 9 the PCC can do for you, this is how we can help. 'If 10 you want damages, if it comes to that, we do not do 11 money. The courts do money, so you're going to have to 12 make a choice.'" 13 To be clear about that, when did you say that to 14 Dr McCann? 15 A. In July of 2007. 16 Q. And the circumstances were what? Was it a meeting? 17 A. At my house. 18 Q. Did you make it clear to him that it was, as it were, 19 dichotomous: courts on the one hand, PCC on the other 20 hand, but you can't do both? 21 A. I made it perfectly plain. Indeed, I handed over some 22 PCC literature, and we had a fair discussion, I would 23 say, and I left him, in my view, absolutely clear about 24 the different ways that he could proceed. And indeed, 25 I think shortly after that, briefly, when</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 Ms Justine McGuinness was his press secretary, 2 a complaint was lodged with the PCC against a newspaper 3 but the complaint was not proceeded with. 4 LORD JUSTICE LEVESON: The tense of this answer is accurate. 5 is it? If you want money, damages, you go to the court, 6 but there is a whole range of other things that "we 7 could have done". In other words, if they didn't go to 8 the court, we could do things, but if they do go to the 9 court, we can't do things. Is that the correct sense -- 10 A. Yes, this was done in -- when is this? 11 MR JAY: March 2009. 12 A. Yeah, March 2009, so we had already had, in March 2008, 13 the upshot of the libel action against Northern & Shell, 14 and so we knew what had happened. 15 Q. But I think the question is directed to what you were 16 saying to Dr McCann in July 2007. 17 A. In July 2007, I was explaining to him and his press 18 handler what the options were should they believe that 19 they needed to take action against a newspaper, which 20 was quite early days then, because it was before the 21 McCanns were declared arguidos by the Portuguese 22 authorities, which changed the tempo and the rhythm of 23 everything. This was July. 24 Q. Yes. 25 A. And she wasn't there. This was Dr McCann, and he left</p> <p style="text-align: center;">Page 85</p>	<p>1 which caused concern to the McCanns. Did the PCC do 2 anything at all during that period? 3 A. We did a lot. We were in pretty close contact with the 4 press handlers of the McCanns. By that time, it was as 5 gentleman called Clarence Mitchell, who I think may have 6 appeared before you, and we stood ready to intervene if 7 they wanted it. We come again to the question of the 8 first party. 9 You see, you can't be more royalist than the king on 10 these matters. You cannot wish to stop something more 11 ardently than the first party. But by that time, 12 I think they had chosen to go to law. I can't say 13 exactly, because it's not for me to say, when they first 14 hired Carter Ruck. So it's not as if we were sitting 15 there -- 16 Q. What are you suggesting by that, "when they first hired 17 Carter Ruck"? 18 A. I don't know, you see, because I don't know when they 19 took the decision to go to law. I think -- I'm morally 20 certain it had to be in February when I saw Dr McCann, 21 because it was so near to the judgment, but that's only 22 a supposition on my part and I stand to be corrected on 23 that. 24 Q. Presumably, though, when you were reading these pieces 25 as they came out -- and it wasn't just in one newspaper</p> <p style="text-align: center;">Page 87</p>
<p>1 with Justine McGuinness in a noncommittal way. He 2 didn't say to me: "Bingo, I'm going to go to the PCC", 3 or: "I'm going to go to law." He just kept his counsel. 4 Q. But to be clear, you were making it clear to him it was 5 his choice, that there were two positions he could take 6 which were inconsistent with each other. 7 A. Yes. 8 Q. Either go to law or go to the PCC; is that right? 9 A. That's absolutely right. And then, if I may say this, 10 I saw him again -- 11 Q. Yes. 12 A. -- more briefly -- I don't know whether you have a note 13 of this -- in February of 2008, by which time they had 14 taken -- I think I'm right, it must have been then -- by 15 which time I think they'd taken a firm decision to go to 16 law, they were with Carter Ruck, and given the nature of 17 what they said was libel, I said to him at the time: "In 18 the circumstances, I think you're doing the right 19 thing." And then I said it in public, that, on 20 19 March, when I was interviewed by the PM programme. 21 Q. Can we just come to that. Between September 2007 22 and January 2008, there were 38 defamatory articles in 23 the Express newspaper group's publications, weren't 24 there, and there were other articles which were referred 25 to in the witness statement provided to the Inquiry</p> <p style="text-align: center;">Page 86</p>	<p>1 group -- you were, at the very least, concerned by the 2 tone and substance of what you were reading, weren't 3 you? 4 A. Well, it was -- yes, of course I was. It was pretty 5 violent. It was being briefed out of the Portuguese 6 police, as far as I could tell, and it was not pleasant 7 to read. But I have to say to you -- this is so 8 important -- we'd made particular efforts with the 9 McCanns to make ourselves available. Within 48 hours of 10 Madeleine McCann disappearing, we informed them through 11 the British embassy in Lisbon that we stood ready. You 12 know all this. I'm just repeating stuff that you know. 13 Q. Yes. We don't need to hear it again. 14 A. I thought that we made exceptional efforts to say that 15 we can help you, and indeed, when they came back to 16 England, we did. That was publicly recognised by 17 Clarence Mitchell, in protecting the children from media 18 scrums and so on and so forth. 19 I go back to this again: you can't wish for 20 something more than the first party themselves, and 21 I think Dr McCann has expressed rather well the 22 complexity of the situation in which he found himself. 23 He needed the press, but he didn't need those articles. 24 He had professional handlers and I can't say more than 25 that.</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 LORD JUSTICE LEVESON: He actually went further, because, as 2 Mr Davies says in the Select Committee: 3 "Gerry McCann said his beef with the PCC was that 4 the editor of the paper which had so flagrantly libelled 5 us with the most devastating stories would hold 6 a position on the board of the PCC. That was his beef." 7 And you responded: 8 "Where the McCanns are concerned, the editor of the 9 Daily Express, after settlement was announced 10 on 19 March, played no further part in the proceedings 11 of the PCC and it was in May that he was replaced by 12 Peter Wright." 13 Was that because he was required to resign or did 14 resign or just lost his place on the board or what was 15 that? 16 A. Well, I thought that after he'd paid £550,000 damages 17 and had four front page apologies on the Daily and 18 Sunday titles that his position on the Commission was 19 untenable, and I said what I said to the BBC PM 20 programme on 19 March. It was the day the settlement 21 was announced -- I don't know if you want me to quote 22 myself on the PM programme, I have a text here and I'm 23 sure you have the text there -- and the following day 24 I rang Mr Hill and I said, in effect: "You need to 25 resign." He said something to this effect: "I suppose Page 89</p>	<p>1 because I can't remember which Commission meeting it 2 was. It was an informal conversation before we sat down 3 around the table to do business, and I basically said to 4 him what you have just said to me: "Are you sure you've 5 got this right?" And my recollection is he said 6 something about Portuguese police sources. 7 I'm saying this rather tentatively because I can't 8 give you a date, I can't give you a Commission meeting 9 and nobody else was present in the conversation. 10 Q. It might be said that you tear him off a strip on the 11 radio after the libel settlement, £550,000, but it's all 12 a bit late to do that, given that the PCC, through you, 13 did nothing apart from this private word for four 14 months, while all of this was raging. Is that fair or 15 not? 16 A. No, that's extremely unfair. It's extremely unfair. 17 After all, a man is innocent until proven guilty, and he 18 had been found guilty of libelling the McCanns, and the 19 judgment was published on 19 March. Am I to sit in my 20 office saying nothing? Am I to go out there and say, 21 "Poor old Peter, he's taken a knock, but onwards and 22 upwards, chaps"? Of course not. 23 I actually was in bed with flu, and let me say this: 24 the first thing I knew about the judgment was waking up 25 in a kind of stupor at 8 o'clock in the morning and Page 91</p>
<p>1 I have to, but I want to consult friends and 2 colleagues", and I said, "The sooner this is done, the 3 better, the better for you and the better for the PCC", 4 and he said to me: "I'll call you back", and that was 5 the last conversation I've ever had with him. 6 And it took a while for him to leave the Commission. 7 He was due to go anyway, because he'd been there quite 8 a long time. Desmond -- Mr Desmond, his proprietor, was 9 not making his contribution to the National Publishers 10 Association, so they were making no contribution to the 11 PCC levy, and then there was the matter of the McCanns. 12 So there were a good three reasons, my Lord, for his 13 leaving the Commission. But it look longer for him to 14 be replaced than it should have done. 15 MR JAY: Here was a fellow commissioner, obviously wearing 16 his different hat as newspaper editor -- and I'm asking 17 you to think back to September 2007, to January 2008, 18 a whole series of pieces, which you described as 19 "violent", I think, but others would describe in 20 a different way. At the least, why not get on the phone 21 to him and say, "Are you sure about this? Because on 22 the face of it, these articles are outrageously 23 defamatory"? 24 A. I spoke to him, but not on a phone, at a Commission 25 meeting. I'm very much aware that I'm on oath here, Page 90</p>	<p>1 hearing it as the lead item on the Today programme. 2 The PCC, so far as I know and certainly for me 3 personally -- I speak for myself -- had received no 4 warning whatsoever from a fellow commissioner that this 5 was coming. So I was angry. 6 Q. The other point that Northern & Shell made -- I want to 7 ask you to comment on it -- is that it's an example both 8 of hypocrisy and of inconsistent treatment, since after 9 all they weren't the only ones who were defaming the 10 McCanns. So in order to be consistent, you should have 11 torn everybody off a strip. Would you accept that? 12 A. No, I wouldn't accept that. The thing that was 13 different here was that Peter Hill was a longstanding 14 member of the Commission. I think he'd been on since 15 late 2003, maybe early 2004. He knew his 16 responsibilities very well and he was the first to pay 17 damages to the McCanns and to publish -- it wasn't him 18 personally; you had different editors, but the group's 19 newspapers, national titles, were publishing 20 front-page apologies. 21 This was without precedent. I know of no such case 22 where such a powerful -- what's the word? -- punishment 23 has been exacted from editors for publishing stories 24 that are wrong. In those circumstances, it is 25 inconceivable, in my view -- it was inconceivable, in my Page 92</p>

23 (Pages 89 to 92)

<p>1 view, that he could stay on the Commission. 2 May I say that when we then had a Commission 3 meeting -- and may I remind, you with seven editors on 4 the Commission -- we came to a conclusion very rapidly 5 that he had to be replaced as fast as possible, and the 6 Commission sent that message that very afternoon to the 7 Press Standards Board of Finance to get the National 8 Publishers Association to propose a replacement. 9 I think what worried a number of editors was that 10 this would set a precedent, meaning that if you ever 11 lost a libel action, you couldn't stay on the 12 Commission, to which the answer is: it's a matter of 13 scale, it's a matter of degree, and it wasn't 14 necessarily a precedent for all time for all editors who 15 fall foul of the libel law. 16 Q. Of course, the PCC's inaction in relation to the McCanns 17 was duplicated in relation to Mr Robert Murat as well, 18 wasn't it? 19 A. What do you mean by "inaction"? 20 Q. You adopted the same position, which was one of doing 21 nothing. 22 A. It was absolutely not one of doing nothing. I don't 23 know how many times I have to repeat this. We put 24 ourselves at the disposal of the McCanns. We offered 25 them our services. We say this is what we can do. We</p> <p style="text-align: center;">Page 93</p>	<p>1 should not use court proceedings as a reason not to 2 launch its own inquiry. If ever there were a case which 3 cried out for such an inquiry, it was this case, wasn't 4 it? 5 A. No, I think it was not a case which called for an 6 inquiry. If ever there was a case which was obvious in 7 the way in which newspapers had got it wrong, it was the 8 McCanns' case. I have to say -- and you may think this 9 is feeble excuse -- I never read the recommendations of 10 that report because I had already left the PCC a year 11 previously. 12 Q. That's true. 13 A. So you're actually telling me something of which I was 14 unaware. But it was screamingly obvious what had gone 15 wrong. I could go through it again, but you don't like 16 me repeating these things. 17 Q. I'm not sure. What had gone wrong? Not from the point 18 of view of what the PCC did or did not do, but from the 19 point of view of the culture, practice and ethics of the 20 press, what had gone wrong in relation to the McCann 21 saga if I can so describe it? 22 A. I think there were a number of component parts that 23 created a kind of toxic brew. The poor McCanns -- 24 I cannot think of a worse position to find yourself in. 25 If it had happened to me, I don't know what I would have</p> <p style="text-align: center;">Page 95</p>
<p>1 start this within 48 hours of Madeleine being kidnapped. 2 We carry on doing this all the way through. We protect 3 their children and the family from being harassed by 4 media scrums when they come back to the United Kingdom. 5 I speak twice to Dr McCann, something I never did with 6 anybody else, but that's -- 7 Q. I think you're just repeating, Sir Christopher, what 8 you've told us already. 9 A. I am repeating, because it doesn't seem to be sinking 10 in, Mr Jay. That's why. 11 Q. Did the PCC carry out an inquiry after all of this to 12 see whether there were clear and systematic failings by 13 the press in their handling of the whole McCann story, 14 by which I'm including not just the McCanns but 15 Mr Robert Murat and the eight friends of the McCanns who 16 also secured substantial libel damages? 17 A. No, that wasn't necessary, because it had become wholly 18 clear from the court proceedings exactly what had 19 happened, that they had in fact, under pressure, maybe 20 commercial pressure, taken as read information that was 21 being provided in Praia de Luz, which hadn't been 22 properly checked. It was clear as a bell. 23 Q. Because paragraph 539 of the DCMS committee's report 24 says precisely that, that in cases where there have been 25 clear and systematic failings by the press, the PCC</p> <p style="text-align: center;">Page 94</p>	<p>1 done. They needed the press for publicity's sake, and 2 by God, I would have done exactly the same thing. 3 I really would. But in those circumstances, it was 4 a Faustian bargain and you could see why. Where the 5 press have become obsessed -- not only the press in 6 Britain, it was almost a global thing -- how do you keep 7 the story going? And then the Portuguese police were 8 leaking like sieves. There were all kinds of rumours. 9 You could see journalists under pressure out there in 10 Praia de Luz, being pressed by their news desks to 11 provide fresh copy, and so they start taking risks which 12 they shouldn't have taken. 13 It doesn't need a big inquiry or a systematic review 14 to see this. It is something that happens from time to 15 time, and in this case, it led to the McCanns being 16 accused of something which is utterly abominable. 17 Q. It was golden opportunity, though, even if you think the 18 that the answers were so obvious, for the PCC to have 19 reviewed the situation, to have considered the lessons 20 learnt and to have passed a clear message to the 21 industry as a whole as to what the problems were to 22 avoid the chance of future replication, which 23 possibility you didn't consider, did you? 24 A. No, we did not. We do not take that opportunity for the 25 reasons that I've just stated. Maybe we should have</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 done, but I have to rest on the record.</p> <p>2 Q. One other point that the committee made, the DCMS</p> <p>3 committee, paragraph 552 --</p> <p>4 A. Which one was this?</p> <p>5 Q. The February 2010 report.</p> <p>6 A. Which I haven't really looked at, yes.</p> <p>7 Q. "If there are grounds to believe that serial breaches of</p> <p>8 the code are occurring or are likely to cover [this is</p> <p>9 in the context of the McCann case], the PCC must not</p> <p>10 wait for a complaint before taking action. That action</p> <p>11 may involve making contact with those involved and</p> <p>12 issuing a public warning or initiating an inquiry."</p> <p>13 So I suppose you disagree with that?</p> <p>14 A. It sounds good, and in principle it's absolutely right,</p> <p>15 but if Dr and Mrs McCann don't want it, you can't do it.</p> <p>16 It's as simple as that, Mr Jay.</p> <p>17 Q. Logically, there's nothing to prevent you from doing it.</p> <p>18 You're just saying the PCC, as a matter of policy, won't</p> <p>19 do it. That's what it boils down to.</p> <p>20 A. No, it's a matter -- you must respect the complainant's,</p> <p>21 the first party's wishes. You may disagree with me.</p> <p>22 That was the position we took. But nonetheless, we made</p> <p>23 it our business -- I am going to repeat this now for the</p> <p>24 third time -- from the very beginning to say, "We're</p> <p>25 here to help", and that offer was taken up but only in</p> <p style="text-align: center;">Page 97</p>	<p>1 that --</p> <p>2 Q. It's splitting hairs a bit, Sir Christopher, because it</p> <p>3 might be said that what Dr McCann was saying was that it</p> <p>4 was a choice, really: either you sue for defamation,</p> <p>5 which they did follow, or you use the PCC.</p> <p>6 Here you're putting on record your denial of that</p> <p>7 claim that you advised Dr McCann to sue Express rather</p> <p>8 than to use the PCC.</p> <p>9 A. Well, it's not splitting hairs, is it? They are two</p> <p>10 completely different statements. When I saw him</p> <p>11 in July, I said, "These are the choices." When I saw</p> <p>12 him in February of the next year, he'd taken the</p> <p>13 decision. So what I'm denying -- it fits perfectly</p> <p>14 squarely.</p> <p>15 Q. In February, therefore, is this the position -- because</p> <p>16 you told us earlier: you effectively agreed with him</p> <p>17 that it was the right thing to do?</p> <p>18 A. Yes, and I repeated that in public in my interview on</p> <p>19 the PM programme on 19 March. So it's not splitting</p> <p>20 hairs.</p> <p>21 Q. It may be the answer is it's a misunderstanding between</p> <p>22 the two of you as to precisely what was said and</p> <p>23 precisely what was --</p> <p>24 A. Yeah, I think that is right, actually. Yes, I would</p> <p>25 agree with that.</p> <p style="text-align: center;">Page 99</p>
<p>1 a subsidiary way.</p> <p>2 Q. Well, the committee made other recommendations,</p> <p>3 including more strongly, this time, a recommendation for</p> <p>4 the ability to impose a financial sanction, and</p> <p>5 I suppose your answer to that would be the same as the</p> <p>6 answer you've given previously?</p> <p>7 A. Absolutely. I don't believe in money, if you see what</p> <p>8 I mean. I don't think it is the answer.</p> <p>9 Q. I just raise one final point in relation to the McCanns.</p> <p>10 Can I ask you to look at file B7 under tab 2.</p> <p>11 A. B7?</p> <p>12 Q. Yes. It's page 35734. It's a very small point, so</p> <p>13 maybe I can just read out.</p> <p>14 A. 4 -- 2 -- 1 -- yeah, do.</p> <p>15 Q. It's a meeting of the PCC which took place on 11 March</p> <p>16 2009. At page 35734, you said:</p> <p>17 "The chairman wished to put on record his denial of</p> <p>18 a claim made by Gerry McCann that Sir Christopher had</p> <p>19 advised him to sue Express newspaper titles rather than</p> <p>20 use the PCC."</p> <p>21 A. Yeah.</p> <p>22 Q. Do you stand by that?</p> <p>23 A. Yes, I -- I did not advise him to do that when I saw him</p> <p>24 in July. When I saw him in February of the next year,</p> <p>25 he had already told me that they were going to law. Is</p> <p style="text-align: center;">Page 98</p>	<p>1 Q. In terms of failing to set in train an investigation</p> <p>2 into the lessons learnt from the McCann episode --</p> <p>3 A. Failing?</p> <p>4 Q. Failing, I would suggest, is what happened but it's for</p> <p>5 others to --</p> <p>6 LORD JUSTICE LEVESON: Or deciding not to set in train.</p> <p>7 Q. Deciding not to set in train.</p> <p>8 A. My Lord, I prefer your version.</p> <p>9 LORD JUSTICE LEVESON: Yes, well, I'm trying to move on.</p> <p>10 MR JAY: Of course, we see after your time, arguably at</p> <p>11 least, another manifestation of what happens in</p> <p>12 a frenzied situation with the Jefferies case. You would</p> <p>13 agree with that, would you?</p> <p>14 A. It looked like it, yeah.</p> <p>15 Q. But had the PCC adopted a more proactive position in</p> <p>16 relation to the McCanns, it is possible -- one can't put</p> <p>17 it higher than that -- that the press might have acted</p> <p>18 with more restraint in the Jefferies case. Would you</p> <p>19 agree?</p> <p>20 A. No. I wouldn't agree.</p> <p>21 Q. Is that because the press will just do what they like</p> <p>22 anyway, or --</p> <p>23 A. No, Mr Jay, you're not going to lead me down that path.</p> <p>24 Q. Okay.</p> <p>25 A. Let me explain that one of the successes, if you will</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 entertain the notion of success in relation to the 2 PCC -- 3 Q. Yes. 4 A. -- which seems difficult at the moment. 5 Q. Okay? 6 A. One of the successes of the PCC was in containing media 7 scrums. Now, if you don't believe me, you can go and 8 ask Lady Newlove, who is sitting in the Lords now, widow 9 of Garry Newlove, who was beaten to death by yobs. She 10 precisely wished to avoid media scrums and we succeeded 11 in doing that and I think her appreciation is a matter 12 of record. 13 I don't know what happened in the Jefferies case. 14 I was long gone from the PCC, but what I would refute 15 absolutely is your -- I'm looking for the right 16 adjective -- I'll just say "connection" between the 17 McCanns and Jefferies because of a -- 18 Q. I think what you really mean is my tendentious and 19 unfair attempts to link the two in any way? That's what 20 you really want to say, isn't it? 21 A. You have stolen the words from my mouth, Mr Jay. 22 Q. It does cut both ways, though, doesn't it, because the 23 PCC adopting a more prominent position, cajoling the 24 press better to behave might have had a causal impact on 25 what happened in December 2010/January 2011, mightn't</p> <p style="text-align: center;">Page 101</p>	<p>1 actually too difficult to answer. In -- you cannot 2 generalise for the whole of the British press in that 3 way. Some do their job of reporting well, some do it 4 poorly. 5 Q. I wasn't intending to. 6 A. No, well, you sounded like that. That's my only point. 7 If what you're saying is that every time there's a big 8 story like that, the chairman of the Press Complaints 9 Commission must go out on the media or issue a press 10 release invoking -- exhorting the press to report this 11 responsible, I can tell you straight off, after three 12 months of this, it would have no traction whatsoever. 13 This is not the thing to do. This is not the thing 14 to do. The fact of the matter -- this is what -- this 15 is what people so fail to understand. It's as if you 16 would say to the police: "You're a useless organisation 17 because you can't stop crime", or you would say to the 18 bishops: "We still have sin after all these years. 19 You'd better give up and go." 20 It's ridiculous. It's a ridiculous set of 21 arguments. As long as there are human beings involved, 22 there will be fallibility, and the Press Complaints 23 Commission doesn't always get it right and it needs 24 strengthening, but it is a service to the public, and 25 a vast increase in the number of people who use it over</p> <p style="text-align: center;">Page 103</p>
<p>1 it? 2 A. I respectfully decline to answer questions on 3 a situation where I have no control and no knowledge 4 over and of the circumstances. All I'm saying to you is 5 that if you look at the record over the years, you will 6 see that one area where the PCC has shown remarkable 7 success, including with the McCanns when they returned 8 to England, is in dealing with scrums and stories based, 9 according to Mr Jefferies, on police sources. That's 10 all I can say about the case. I just don't know any 11 more. 12 Q. But a different analysis of the position -- I'm just 13 putting this forward as a possibility -- is perhaps 14 a common theme between the McCann case and the Jefferies 15 case is that the press fails to analyse evidence 16 objectively and clearly and tends to come up with a line 17 which it either believes is probably true or believes 18 chimes in some way with the beliefs and prejudices of 19 its readers, and it's that tendency which needs to be 20 resisted -- it's a tendency which we all need to 21 resist -- and requires firm leadership and direction 22 from a regulator to eschew. Do you see that as 23 a possible analysis? 24 A. I -- I'm just trying to work out in practice the meaning 25 of what you have just said. We have -- maybe it's</p> <p style="text-align: center;">Page 102</p>	<p>1 the last few years pays testament to a confidence which 2 you seem, frankly, to ignore. 3 Q. At no stage am I expressing a personal view. I am 4 testing propositions. Because the nature of the 5 exercise involves an attempt to be precise, sometimes it 6 might appear that I am going too far, but I make it 7 absolutely clear, I'm not expressing a view, 8 Sir Christopher. 9 A. You will forgive me, my Lord -- I hope you'll forgive me 10 if I do push back from time to time rather than sitting 11 here like a coconut. 12 Q. I don't think anybody would fear that that is what's 13 happening. 14 Can we turn on to a different topic, which is the 15 ICO interaction -- 16 A. Yes. 17 Q. -- which started in November 2003. I'm going to take 18 this quite economically, if I can. 19 The story starts in file B1. Sorry, B4, tab 1. 20 A. Yes, I have it here. Yes. 21 Q. We've seen this letter before. 22 A. Sorry, which one are we looking at? 23 Q. Tab 1. 24 A. Tab 1, yes. 25 Q. Mr Thomas to you, 4 November 2003. There's a manuscript</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 joke you make.</p> <p>2 A. I know. It's a terrible joke, it really is. I hope you</p> <p>3 won't repeat it, Mr Jay.</p> <p>4 Q. I won't, Sir Christopher, but what he draws to your</p> <p>5 attention is the results of Operation Motorman. He says</p> <p>6 at the bottom of the -- this is page 41975:</p> <p>7 "For some months now, my office has been</p> <p>8 investigating the activities of various inquiry agents</p> <p>9 who are able to provide a variety of personal</p> <p>10 confidential information."</p> <p>11 He says on the next page:</p> <p>12 "it is clear from the very considerable volume of</p> <p>13 information that our investigations have collected that</p> <p>14 journalists from most national newspapers and many</p> <p>15 periodicals are significant customers of the enquiry</p> <p>16 agents concerned."</p> <p>17 He's saying, I paraphrase, that this is breaches or</p> <p>18 possible breaches of the Data Protection Act. His</p> <p>19 provisional conclusion, level with the lower hole</p> <p>20 punch -- are you with me?</p> <p>21 A. Yes, I am with you, yeah.</p> <p>22 Q. -- is that:</p> <p>23 "It would be appropriate first to give the PCC and</p> <p>24 its Code Committee a prior opportunity to deal with this</p> <p>25 issue in a way which will put an end to these</p> <p style="text-align: center;">Page 105</p>	<p>1 works -- I can't remember when -- in 2005. I think it</p> <p>2 was early 2005. This gave guidance to journalists on</p> <p>3 Section 55 and particularly 32 and then I started making</p> <p>4 speech after speech after speech, exhorting journalists</p> <p>5 to obey the law and the Data Protection Act.</p> <p>6 Then we changed the code of practice to meet his</p> <p>7 demands, although not in the same words as he had</p> <p>8 wished. Then, when I -- we published the report in</p> <p>9 2007, which was principally pointed at phone hacking.</p> <p>10 We also put in Data Protection Act, although it was</p> <p>11 separate but linked.</p> <p>12 But the problem, all through this process of</p> <p>13 interaction with Mr Thomas, was he said, "I've got all</p> <p>14 these cases", I think there were 305, "of newspapers</p> <p>15 using enquiry agents, and all kinds of filth and horror</p> <p>16 is going on, procuring --" blagging, effectively, and</p> <p>17 when we had our meeting in December 2003, following on</p> <p>18 from this letter in November 2003, he said to us: "There</p> <p>19 are going to be court cases and there are going to be</p> <p>20 journalists caught up in it, you see, so please get</p> <p>21 a grip on this."</p> <p>22 So the first thing I remember saying was: "Well, you</p> <p>23 suggested in the letter of November 2003 that you would</p> <p>24 let us have some details of these cases." Cases where</p> <p>25 there was blagging as opposed to use of enquiry agents,</p> <p style="text-align: center;">Page 107</p>
<p>1 unacceptable practices across the media as a whole."</p> <p>2 A. Yes, yes, yes.</p> <p>3 Q. "This could involve, subject to suitable safeguards,</p> <p>4 providing you with some of the evidence that our</p> <p>5 investigations have revealed."</p> <p>6 Was Mr Thomas labouring under a misapprehension as</p> <p>7 to what you could do, Sir Christopher?</p> <p>8 A. He was, but it didn't stop us doing. I think he</p> <p>9 laboured under the misapprehension that the PCC had</p> <p>10 powers of enforcing the criminal law, which of course we</p> <p>11 don't and we shouldn't.</p> <p>12 Q. I don't think he was making that mistake, because --</p> <p>13 A. Sometimes it felt like that, I can tell you.</p> <p>14 Q. That would be an elementary solecism and it's not there.</p> <p>15 Mr Thomas is a lawyer. He well understands that his</p> <p>16 office is concerned with breaches of Section 55 --</p> <p>17 A. Yes.</p> <p>18 Q. -- and that your office is concerned with something</p> <p>19 else.</p> <p>20 A. Anyway, instead of bickering, let me just say that, yes,</p> <p>21 he came to us for help, and what did we do? We</p> <p>22 published guidance in 2005 on the Data Protection Act.</p> <p>23 It took forever to produce because it was lawyered --</p> <p>24 I'm sorry I have to say this. It was enormously</p> <p>25 lawyered by both sides and finally popped out of the</p> <p style="text-align: center;">Page 106</p>	<p>1 which is perfectly legal. All kinds of people use</p> <p>2 enquiry agents. And he said, "I can't provide that</p> <p>3 because there's a court case coming up and I can't give</p> <p>4 you the names."</p> <p>5 Unfortunately, when the court case did come up, it</p> <p>6 didn't involve any journalists, so when we met Mr Thomas</p> <p>7 again, which was actually before -- I think you've got</p> <p>8 a record there where you've got Mr Thomas coming to</p> <p>9 Halton House, to the new PCC headquarters --</p> <p>10 Q. Yes, that was on 13 July --</p> <p>11 A. There was a meeting in between as well when we had lunch</p> <p>12 with him, and I was sort of repeating the same message</p> <p>13 like a parrot: where's the beef? For Pete's sake -- you</p> <p>14 know, we can do general exhortation, we can do guidance,</p> <p>15 we can do this stuff, but if you really want me to home</p> <p>16 in on miscreants, I must have some evidence of who has</p> <p>17 been procuring enquiry agents -- or hiring enquiry</p> <p>18 agents to procure information illegally, and he was</p> <p>19 unwilling to do that.</p> <p>20 And the climax, if that was the right word, of all</p> <p>21 this was our joint appearance on the same day, same</p> <p>22 hours, before the 2007 Select Committee, where we were</p> <p>23 both summoned to the bar simultaneously. And I had said</p> <p>24 to Mr Whittingdale's committee: "This is as much as we</p> <p>25 can do unless we get chapter and verse on who's been</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 doing bad things." Mr Thomas came to the table and he 2 said to the committee: "I can't give you this 3 information." 4 So all through the saga and me and Mr Thomas, we 5 were without the essential features, which were: which 6 newspapers were guilty and which journalists? And 7 Mr Thomas, as he suggested in his letter of November 8 2003, could have given this information to us under any 9 kind of conditionality he wanted. I would have given it 10 whatever protection he needed. But I couldn't really do 11 what he wanted us to do without that. 12 Q. Did you ask for the information at the meeting which 13 took place on, I think, 27 November 2003? 14 A. 27 November? Was that in the restaurant or -- 15 Q. No idea where it took place. 16 A. It's important for my memory. 17 Q. There's no evidence either way. It's page 52833. 18 I think you're right. I think it was at lunch. 19 A. Yeah, that's right, it was at lunch. Mr Jay, I can 20 assure you that whenever I saw him, I said the same 21 thing: "Where is the beef, Mr Thomas? Give me names, 22 give me newspapers!" Just using enquiry agents isn't 23 good enough. 24 Q. The best evidence we have of the meeting -- and it's not 25 altogether clear. If you kindly go to file B10, tab 16. Page 109</p>	<p>1 "Not our role to enforce the law, not arm of the 2 ICO." 3 Aren't you making it clear to him that it wasn't the 4 interests of the PCC at all to see whether there had 5 been breaches of the Data Protection Act? 6 A. I was saying absolutely the contrary. I was saying, 7 "Please give me the evidence!" He was the only person, 8 Mr Jay, who could supply it. How could you possibly 9 deduce from that that I wasn't interested? This was the 10 root of all our conversations over the years. 11 Q. One possible reading of this -- and it's only a possible 12 one, it's for others to decide -- is that you were 13 telling him: "This isn't of interest to us because it 14 falls within your bailiwick and not within ours." 15 A. No. 16 Q. Isn't that what you're saying? 17 A. No, no, no, no. That's the worst possible construction 18 you could put on this. This is absolutely wrong. 19 I really wanted to know. Otherwise I couldn't have 20 gone -- do you think I would have spent good PCC money 21 on taking him out to lunch at that restaurant on 22 Wellington Street just to hear him burbling away? No, 23 I wanted beef. I wanted red meat, Mr Jay, and he didn't 24 give it to me. 25 Q. What did you mean, at the upper hole punch, by: Page 111</p>
<p>1 It's the final document in tab 16, page 52833. 2 A document we've seen before, although it's true -- 3 A. Have I seen it, do you think? 4 Q. Possibly, yes, because it's the one you told me you 5 couldn't read. 6 A. Well, that's as good as not receiving it. Which one is 7 it? 8 Q. Tab 16, the last document. The Inquiry has looked at 9 this before. 10 A. Oh yes, sorry. Last document? Yeah, I can't read this. 11 Q. It's Mr Thomas' note, not yours: 12 "Good relationship, confidential meeting. 13 Independent ..." 14 I think that is "from newspapers and politicians". 15 So you were explaining to him what your role is? 16 A. It's not a reference to the Independent newspaper, is 17 it? 18 Q. No, of course it isn't. "Independent" in inverted 19 commas is not the newspaper; it's your position. 20 A. It can't be. 21 Q. "Attorney General's requirements, contempt, fill the 22 gap. Can't enforce obligation to obey the law." 23 That's what you said; is that right? 24 A. Yeah, it's not our role to enforce the criminal law. 25 Q. Then you say: Page 110</p>	<p>1 "Code can't deal with unidentified victims." 2 What does that mean? 3 A. I haven't a clue. 4 Q. Aren't you saying that given that the victims here would 5 be unidentified, it's outside the realm of the PCC 6 altogether? 7 A. It's not outside the realm of possible action. I don't 8 know whether we were talking about the complaints system 9 or -- I mean, this is the first time -- I'm glad you're 10 deciphering this for me, because this is the first time 11 I've been able to understand what's written here, but 12 it's a bit much, this. 13 The key point is I went on and on at him about 14 detail. 15 LORD JUSTICE LEVESON: So what were you prepared to do, 16 Sir Christopher? 17 A. Well, I think we would have gone into some kind of 18 action with the newspapers in question and we would have 19 been able -- I'm not quite sure how, because it's never 20 happened -- we would have been able to sharpen and hone 21 our guidance to newspapers, and it might even have 22 informed changes to the code of practice itself. 23 MR JAY: What you said in the middle of the page: 24 "Not surprised maybe at scale." 25 One does have to read this in conjunction with a -- Page 112</p>

<p>1 A. This is a bit much, this. This is all scribbled notes 2 and one word -- 3 Q. Just be patient. There is a speaking note, which -- 4 A. What? 5 Q. A speaking note -- 6 A. A speaking note? 7 Q. -- which Mr Thomas deployed, which sets out what he said 8 to you on that occasion. It's earlier on in this file. 9 A. This is like interpreting the Rosetta Stone, this. It's 10 impossible. 11 Q. It's not quite that bad because it's not in three 12 languages, but if you look at the second document in 13 tab 10 -- 14 A. I'm sorry. 15 LORD JUSTICE LEVESON: Tab? 16 MR JAY: Tab 10, page 00373. 17 A. Sorry. Tab 10? Which page? 18 Q. 00363. This is Mr Thomas' speaking note. So it's 19 probable -- indeed, I think his evidence was that the 20 gist of this was communicated to you. It's the second 21 page of tab 10. 22 A. I'm completely -- which folder? Bundle 10? 23 Q. Yes. 24 A. Tab 10? 25 Q. Tab 16, I'm sorry.</p> <p style="text-align: center;">Page 113</p>	<p>1 Q. You say: 2 "Not surprised maybe at scale. Watershed. Scale of 3 problem endemic." 4 And then: 5 "Knowledge of proprietors." 6 A. I don't know what that means. 7 Q. Maybe you said to him words to this effect: 8 "This information is very interesting. I'm not 9 really surprised, but I am surprised at how much there 10 is." 11 Is that possible? 12 A. This is now getting into sort of Bletchley Park 13 territory. 14 LORD JUSTICE LEVESON: We don't need to go to Bletchley 15 Park, because we can look at 364, the sheet after. 16 MR JAY: With the email. 17 A. That was the Guy Black meeting, my Lord, which wasn't on 18 that date. The Guy Black meeting was at the PCC 19 headquarters at the end of 2003. 20 MR JAY: No, it's the same meeting. 21 A. Oh, you're talking about the same meeting? I thought 22 you were talking about the lunch. This is getting more 23 and more confusing. 24 LORD JUSTICE LEVESON: It's not terribly confusing. The 25 speaking note was clearly dated 26 November 2003.</p> <p style="text-align: center;">Page 115</p>
<p>1 A. Oh, tab 16. I had Mr Richard Peppiatt, not quite the 2 same thing. 3 Q. It's my fault. 4 A. PCC speaking note? 5 Q. That's right. 6 A. That's for him to say to us. 7 Q. Exactly. It's some evidence -- again, we can only draw 8 inferences, and Mr Thomas, I think, gave evidence that 9 this is what he communicated to you -- of what he told 10 you at your lunch on 27 November. You see: 11 "Results of our investigations, early suspicions, 12 documentary evidence, over 5,500 transactions, 250 plus 13 reporters." 14 A. Yeah. 15 Q. Is it possible he communicated that to you? 16 A. It is quite possible, but I don't remember -- 17 Q. No. 18 A. -- the detail, to which I now have two reactions. One 19 was: (a) where's the beef? And (b): "You're the 20 Information Commissioner; get on with it. Prosecute 21 these guys." And prosecutions came around none, ever, 22 in my time, anyway. 23 Q. Your reaction to that information is recorded by 24 Mr Thomas back at the page we were looking at, 52833. 25 A. Yeah.</p> <p style="text-align: center;">Page 114</p>	<p>1 A. Okay, I'm with you. 2 LORD JUSTICE LEVESON: On the following day -- the 3 handwritten note is dated "PCC 27 November '03". That's 4 the handwritten note. 5 A. Yeah. 6 LORD JUSTICE LEVESON: And the email is dated 5.17 on 7 27 November, and therefore would appear to be a summary 8 in manuscript, in typescript -- 9 A. Yes. 10 LORD JUSTICE LEVESON: -- of the meeting. 11 A. And the typescript, my Lord, reads pretty accurately as 12 far as my memory is concerned. 13 MR JAY: Do you see what else is said in the email? I mean, 14 the -- it may be that this wasn't over lunch -- 15 A. No, this was not over lunch. No, no, no, this was in 16 the office at Salisbury Square. We had a lunch in the 17 following year, and we had a meeting at Halton House. 18 Q. That's correct. 19 A. And I think that is it. 20 Q. The lunch meeting is December 2004. November 2003 -- 21 this is the first time you met Mr Thomas, this more 22 formal meeting. 23 A. Yes, it was, yeah, exactly. 24 Q. What his email says: 25 "The PCC would like time to consider their response.</p> <p style="text-align: center;">Page 116</p>

<p>1 They were clearly surprised by the scale and nature of 2 the material we have collected, and see this as 3 a watershed in terms of this sort of activity." 4 That may or may not tie up with the manuscript note. 5 A. No, this makes sense. 6 Q. It does make sense? 7 A. Yes, it does. 8 Q. "Although this was not suggested by us, they would be 9 resistant to taking over individual cases and taking 10 action in each case instead of us. Their starting point 11 was that statutory bodies should enforce the law, not 12 them." 13 So again, that's consistent with the interpretation 14 I was -- 15 A. Yes, absolutely, absolutely. 16 Q. But it's also consistent with all the other evidence 17 you've been giving us this morning, isn't it? 18 A. No, I think this is fair. Mm-hm. 19 Q. So I don't think you ever got to the stage, did you, of 20 discussing individual cases and what you might do, 21 because the message you were communicating to him is 22 that this was his business, not yours; isn't that right? 23 A. Yes, but we were prepared to help as far as we could, 24 and I think that's why he -- he says, "I had an 25 interesting and useful meeting". He wouldn't have said Page 117</p>	<p>1 his view these were very serious breaches on almost an 2 industrial scale of the Data Protection Act, wasn't he? 3 A. Yeah. 4 Q. Didn't you feel at the very least that these were 5 matters which you should be taking up with editors, 6 writing to them, finding out what was going on? 7 A. Well, of course we transmitted -- of course we -- the 8 director informed editors of this meeting. It's not as 9 if we kept it hermetically sealed from the industry. So 10 we certainly sent it around. 11 But, you see, I know where you're coming from, if 12 I may say so. Everything is phrased to suggest that 13 we're kind of inert, inactive organisation, sitting 14 there slackly, mouths hanging open, Richard Thomas turns 15 up with a dramatic story and we still don't leap into 16 action. We were extremely worried by this, but we were 17 also preoccupied that when the court hearing came, it 18 was nothing as advertised. Yet, that notwithstanding, 19 we get into negotiation with the ICO to come up with 20 a guidance note, and then it disappears into deep 21 underground legals. All right? 22 Q. In 2006, we have two reports from the ICO's office. The 23 second report identifies a significant number of 24 transactions in a table, you recall that, and you recall 25 the newspaper which comes top? Page 119</p>
<p>1 that if we'd said, "Bugger off, it's nothing to do with 2 us." 3 Q. That comes back to Lord Justice Leveson's question: what 4 were you prepared to do? 5 A. Well, at that time, on 27 November 2003, we didn't know. 6 How could we have known? I mean, you're asking for me 7 to have supernatural powers, and one of the problems 8 that arose out of this, as you can see, is that 9 Mr Thomas described a fairly apocalyptic situation, so 10 far as inquiry agents and the allegations were 11 concerned, so when he said, "Brace for court 12 hearings" -- which is what he said to us, not quite put 13 in this note here, in fact that's omitted from this note 14 here, I think -- he gave us a clear impression that in 15 January or February of the following year there was 16 going to be court cases and it was going to be serious 17 and it would include journalists. 18 In the end, if I remember rightly, I think an 19 inquiry agent or two inquiry agents -- 20 Q. I think it was four, on 19 April 2005 -- 21 A. Well, you've got -- 22 Q. -- but no journalists. Can I try -- 23 A. It was all a bit of an anti-climax when that happened 24 so -- you know? 25 Q. He was making it clear to you in November 2003 that in Page 118</p>	<p>1 A. Mm. 2 Q. At that stage, didn't you say to yourself, "I'd better 3 call in the editor of the newspaper who's come top, find 4 out from him what the hell has been going on"? 5 A. At the time, the only allegation was that the newspapers 6 had used inquiry agents. That is legal! 7 Q. No, it isn't what Mr Thomas was saying. He was saying 8 that there was good evidence in the cases tabulated in 9 the second report that there were breaches of the Data 10 Protection Act. 11 A. And when he was asked by the Select Committee to produce 12 that evidence, under parliamentary privilege, he 13 declined to do so, so if he's going to decline to do so 14 under parliamentary privilege to a Select Committee, he 15 sure as hell wasn't going to tell me, and that was the 16 problem, Mr Jay! 17 Q. Couldn't you trust him, at least? He was saying he had 18 good evidence. He put in this report to Parliament, 19 presumably in good faith. It at the very least 20 warranted further investigation or inquiry by you of the 21 leading editors at the top of the table. Don't you 22 think so? 23 A. It is not as if nothing was -- incidentally, the 24 representative of the -- is the leading editor of the 25 Daily Mail? Page 120</p>

<p>1 Q. Yes.</p> <p>2 A. Well, their managing editor, I think he's called</p> <p>3 Robin Esser, appeared before the Select Committee and</p> <p>4 denied that there was any wrongdoing.</p> <p>5 Q. Mm.</p> <p>6 A. I mean, what does one say in those circumstances except</p> <p>7 that what we enabled Mr Thomas to do was to get a change</p> <p>8 to the code, to get a firm recommendation about this</p> <p>9 being put into contracts, as per the report of 2007, but</p> <p>10 I come back to the same thing: of course you would</p> <p>11 assume he wouldn't have made these allegations without</p> <p>12 some substance, but we never saw the substance, Mr Jay.</p> <p>13 Q. Your response to the first report was to say, "Thank you</p> <p>14 very much, this was an interesting read."</p> <p>15 A. Yeah, I did. That's absolutely right.</p> <p>16 Q. You weren't being sneering, were you, but --</p> <p>17 A. Yeah, a bit.</p> <p>18 LORD JUSTICE LEVESON: I think that's probably a convenient</p> <p>19 moment and we'll carry on at 2 o'clock.</p> <p>20 (1.02 pm)</p> <p>21 (The luncheon adjournment)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 121</p>	

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