

<p>1 2 (2.00 pm) 3 Directions Hearing for Module 3 4 LORD JUSTICE LEVESON: Right. Before I forget, might 5 I remind everybody that we are starting tomorrow morning 6 at 9.15 in order to take evidence by video-link from 7 Northern Ireland. Whether that has a corresponding 8 impact on the time we finish will remain to be seen, but 9 everybody can at least recognise that we will not be 10 sitting after tomorrow for some days. 11 Right. There are a number of things to discuss this 12 afternoon. I identified some headings at the beginning 13 of the week -- that's to say yesterday -- so I'll take 14 them in that order. 15 The first is to speak about the remaining 16 outstanding issues from Module 1. Before I do, I'm 17 pleased to see Mr Rhodri Davies. I hope you're in good 18 form. 19 Remaining outstanding issues for Module 1. The 20 first is this: on a number of occasions it has been 21 suggested to me that I have not paid sufficient 22 attention to the good work of the press. Perhaps that's 23 an inevitable consequence of the terms of reference of 24 the Inquiry, but in order that nobody can suggest that 25 I have paid insufficient attention to that aspect,</p> <p style="text-align: center;">Page 1</p>	<p>1 but we want to respond to. It's very nearly complete 2 and we will serve it shortly. 3 LORD JUSTICE LEVESON: Thank you very much, Mr White. That 4 will be helpful. 5 Right, the next item on my agenda is core 6 participant status for Module 3. Now, as I understand 7 the position, in the case of Module 1 through 8 Collyer Bristow and in the case of Module 2 through 9 Bindmans, a large number of people have been core 10 participants but their default position is that if they 11 wish to remain as core participants, they must now 12 apply. 13 In relation to the press, they are core participants 14 for Module 3 and therefore if they no longer wish to be, 15 they should apply the other way around, and they can 16 drop off. 17 So let's deal with those now. I've also received 18 a number of applications from individuals who seek core 19 participant status, and I'll hear from them shortly. 20 Right. Let's just understand where everybody is. 21 I know that, Mr Sherborne, that your solicitors have 22 submitted a letter which we'll come to in due course. 23 Let's just wait for you to -- before we start your 24 submission. I'd just like to know where everybody else 25 is.</p> <p style="text-align: center;">Page 3</p>
<p>1 I will invite any title that wishes to submit what they 2 perceive to be their top five public interest stories 3 over the last few years, merely to reflect the other 4 side of the coin. 5 The second thing that I want to say in relation to 6 Module 1 is that I intend to make the press cuttings 7 that have been provided by a cuttings service to the 8 Inquiry, which identify the reporting of the Inquiry, 9 part of the record. In other words, I will include 10 within the evidence all that everybody has said about 11 what the Inquiry has done. 12 The third remaining outstanding issue concerns 13 Milly Dowler. Mr Jay, I understand that we heard from 14 Surrey only the other day that there was still some work 15 that has to be done. I'm content that be done, but 16 I think that the time is coming when we simply have to 17 draw a line under that story, so I make it clear that 18 I will hear the rest of that story in the week 19 commencing 8 May. 20 Does anybody have any other issues outstanding from 21 Module 1? I'll deal with submissions and all the rest 22 of it later. Yes, Mr White? 23 MR WHITE: We are very nearly finished compiling 24 a corrections statement responding to certain pieces of 25 evidence that we didn't formally challenge at the time</p> <p style="text-align: center;">Page 2</p>	<p>1 MR SHERBORNE: Sir, of course. 2 LORD JUSTICE LEVESON: Right. Let me ask the question of -- 3 Mr Garnham isn't here. What's the position of the 4 Metropolitan Police? 5 MS MICHALOS: Our understand, sir, is that you ruled that we 6 were going to be core participants for the entire 7 Inquiry and we wish to remain a core participant for 8 Module 3. 9 LORD JUSTICE LEVESON: If I've already ruled that, so be it. 10 Mr Phillips? 11 MR PHILLIPS: I have spoken to Mr Jay and we don't make an 12 application to be core participants for Module 3. 13 LORD JUSTICE LEVESON: Thank you very much indeed. Does any 14 representative of the press core participants wish to 15 drop out? (Pause) What was the position with the NUJ? 16 MR HARRIS: Sir, our understanding was that we were core 17 participants for the whole of the Inquiry and we would 18 wish to remain so. 19 LORD JUSTICE LEVESON: All right. Well, I'm touched by 20 everybody's enthusiasm. 21 All right, Mr Sherborne? 22 MR SHERBORNE: Sir, I hope you're touched by the fact that 23 there are a number, albeit a very much limited number, 24 of core participate victims who wish to continue to 25 participate in Module 3, as they have done in modules 1</p> <p style="text-align: center;">Page 4</p>

<p>1 and 2.</p> <p>2 LORD JUSTICE LEVESON: Yes, but there is a slight difference</p> <p>3 here, isn't there? It's perhaps worth saying it, and</p> <p>4 I'll say it to you because it's also relevant to all the</p> <p>5 others who seek core participant status. Module 1 was</p> <p>6 concerned, in short form, with the press and the public,</p> <p>7 and in particular concerned the way in which the press</p> <p>8 investigated, collected and reported stories concerning</p> <p>9 members of the public, whatever their background, and</p> <p>10 the regulatory framework which dealt with allegations of</p> <p>11 illegal, unethical or other behaviour breaching</p> <p>12 acceptable standards.</p> <p>13 Module 2, relating to the police, dealt with the</p> <p>14 interreaction between the press and the police, and was</p> <p>15 relevant to those for whom you appeared during that</p> <p>16 module and still do, because we're doing it, because, of</p> <p>17 course, they had a legitimate complaint that the police</p> <p>18 had not investigated sufficiently the allegation of</p> <p>19 mobile phone hacking, of which Module 1 was the central</p> <p>20 but not the only feature.</p> <p>21 So that works in those two, but Module 3 isn't quite</p> <p>22 the same, because Module 3 is really directed, it seems</p> <p>23 to me, to the relationship between national newspapers</p> <p>24 this time -- and the word "national" appears in the</p> <p>25 terms of reference -- and politicians, along with its</p> <p style="text-align: center;">Page 5</p>	<p>1 politicians whose names have already been identified to</p> <p>2 the Inquiry -- and I can now mention them, namely Tom</p> <p>3 Watson and Evan Harris -- they are seeking what I might</p> <p>4 call fresh participation in Module 3. That's the first</p> <p>5 category.</p> <p>6 Sir, as you say, the remit set out in the terms of</p> <p>7 reference for Module 3 is to enquire into the culture,</p> <p>8 practices and ethics of the press, including contacts</p> <p>9 and relationships between national newspapers and</p> <p>10 politicians, and one particular aspect of that Inquiry,</p> <p>11 as I understand it, will be the influence which the</p> <p>12 press have had over Members of Parliament and those</p> <p>13 connected with them. Whether that influence is</p> <p>14 exercised through direct intimidation, we would say,</p> <p>15 through the publication of articles designed to ensure</p> <p>16 that those who oppose the interests of the press are</p> <p>17 either deterred from doing so or vilified, or through</p> <p>18 intrusion into their private lives, either to find out</p> <p>19 the sort of person that the politician is or to pressure</p> <p>20 them into taking a certain course, we say that to that</p> <p>21 extent, those individuals whom you're aware of, sir --</p> <p>22 and I can name them: Chris Bryant, Simon Hughes,</p> <p>23 Denis MacShane, John Prescott, Clare Ward and Tessa</p> <p>24 Jowell, in addition to Mr Watson and Mr Harris -- we say</p> <p>25 they have played a direct and significant role in</p> <p style="text-align: center;">Page 7</p>
<p>1 impact on media policy, cross-media ownership. So it's</p> <p>2 the consequences of the relationship on the creation and</p> <p>3 implementation of policy at the highest level, including</p> <p>4 obviously the nature and function of the press in</p> <p>5 a democracy as a vehicle for public debate.</p> <p>6 Now, one of the features that concerns me, and which</p> <p>7 I'd be particularly pleased to hear you deal with and</p> <p>8 all those others who seek core participant status need</p> <p>9 to think about, is the extent to which, within that</p> <p>10 remit, it is truly to be argued that they play not</p> <p>11 merely a direct but a significant role in relation to</p> <p>12 those particular issues.</p> <p>13 So it strikes me that this module -- and I'm happy</p> <p>14 to hear argument on it -- is much more policy-focused</p> <p>15 than individual impact-focused, if I could put it that</p> <p>16 way.</p> <p>17 MR SHERBORNE: Sir, I understand that and I do understand</p> <p>18 that there is a difference between modules 1 and 2 of</p> <p>19 part 1, and Module 3, and it is for that reason that the</p> <p>20 number of core participant victims who seek to</p> <p>21 participate in Module 3 is, as I say, very much reduced.</p> <p>22 Can I explain that they fall into two categories?</p> <p>23 The first category are what I might call the politicians</p> <p>24 who have either originally been core participant victims</p> <p>25 through modules 1 and 2, or, in the case of two further</p> <p style="text-align: center;">Page 6</p>	<p>1 relation to those matters.</p> <p>2 Or, to use the other words of rule 5, they have</p> <p>3 a significant interest in an important aspect of the</p> <p>4 matters to which this module relates.</p> <p>5 LORD JUSTICE LEVESON: Do you think that this module does</p> <p>6 include an investigation of the extent to which the</p> <p>7 press have intruded into private life? Why wouldn't</p> <p>8 that have been Module 1?</p> <p>9 MR SHERBORNE: Well, it may be Module 1, but to the extent</p> <p>10 that that has been commissioned or intended to influence</p> <p>11 policy decisions by Members of Parliament, it falls</p> <p>12 squarely within the terms of remit of Module 3.</p> <p>13 Examples of that, sir -- you've had a letter from</p> <p>14 Ms Allen and I can't improve on it, but what I can do is</p> <p>15 summarise it.</p> <p>16 LORD JUSTICE LEVESON: You'd better, because nobody else</p> <p>17 has.</p> <p>18 MR SHERBORNE: For everyone's benefit, I will summarise what</p> <p>19 we've said, and the particular interest, for example, of</p> <p>20 Mr Watson and Dr Harris, because they do exemplify the</p> <p>21 point that I'm making.</p> <p>22 Mr Watson, if you'll recall, was put under</p> <p>23 surveillance by the News of the World. That was</p> <p>24 confirmed by James Murdoch, who has apologised. He was</p> <p>25 put under that surveillance in order to influence what</p> <p style="text-align: center;">Page 8</p>

<p>1 the Select Committee was doing in 2009 and since in 2 relation to investigating the role of the press. Now, 3 that, in my submission, falls squarely within the 4 contacts and relationship between the press and 5 politicians and the extent to which the conduct of each 6 might influence the other.</p> <p>7 Mr Watson, of course, as you'll recall -- there are 8 other ways, if you have the email in front of you --</p> <p>9 LORD JUSTICE LEVESON: Yes.</p> <p>10 MR SHERBORNE: He was libelled after he'd resigned as 11 a defence minister, having been targeted by the Sun, and 12 he was told by, as you know, a well-known politician 13 that he'd been forced to call off the attack dogs in 14 relation to News International.</p> <p>15 In relation to Dr Harris, of course, he was vilified 16 by a particular newspaper organisation. He can give 17 evidence in relation to the passage, for example, of the 18 2008 criminal justice and immigration bill and the 19 amendments, amendments which you'll recall evidence was 20 given by the Information Commissioner about in relation 21 to Section 55 --</p> <p>22 LORD JUSTICE LEVESON: But he can give that evidence anyway, 23 can't he, Mr Sherborne?</p> <p>24 MR SHERBORNE: It's not simply a question of giving 25 evidence, in my submission. It's the assistance which</p> <p style="text-align: center;">Page 9</p>	<p>1 people who are not politicians by trade but they remain 2 victims of the culture, practices and ethics of the 3 press that has been displayed throughout modules 1 and 2 4 and we say carries on through Module 3. You have 5 a list. They are a very much reduced list. I think 6 there are three individuals on that list who would like 7 to continue in their role as core participants through 8 Module 3, and we say that this is that unified voice 9 that they provide in terms of participation, not just in 10 the questions that they can help the Inquiry with in 11 terms of the witnesses that come to give evidence in 12 this module, but also in terms of closing submissions, 13 sir, which you will require, which will deal not only 14 with modules 1 and 2, but with 3 as well.</p> <p>15 LORD JUSTICE LEVESON: Yes, but they don't need to be core 16 participants in relation to Module 3 to make closing 17 submissions on modules 1 and 2.</p> <p>18 MR SHERBORNE: Sir, they don't, and I appreciate that their 19 request to be core participants in relation to Module 3 20 is not as forceful as the first category, namely the 21 politicians, who I do say have a direct and significant 22 role to play.</p> <p>23 LORD JUSTICE LEVESON: Yes.</p> <p>24 MR SHERBORNE: Unless I can assist any further, sir -- as 25 I say, you have the emails from Ms Allen which set out</p> <p style="text-align: center;">Page 11</p>
<p>1 these individuals, as a group, can provide, because 2 without the ability to see the evidence in advance that 3 others are giving in relation to these precise topics, 4 they can't, for example, feed in the type of questions 5 that they've managed to feed in to the Inquiry, 6 hopefully to great assistance, over both modules 1 and 7 2, and they can't provide assistance in the form of 8 closing submissions or submissions in relation to 9 a number of matters which have arisen throughout the 10 modules; for example, warnings under Rule 13, 11 credibility submissions and so on.</p> <p>12 So we say it is the unified voice which is given to 13 these particular core participant victims -- and I do 14 use the word "victim" advisedly, given that each of them 15 has suffered at the hands of the press in order that, as 16 I say, these organisations can exert influence over 17 politicians and the policies which they put forward.</p> <p>18 So we say it's only through being core participants 19 that these particular individuals can provide the 20 assistance that is necessary, in my submission, so that 21 the Inquiry can carry out its terms of reference in the 22 fullest possible respects. It is only through being 23 core participants that this can be done.</p> <p>24 When one talks of a unified voice, that does bring 25 me to the second category of individual, and those are</p> <p style="text-align: center;">Page 10</p>	<p>1 in detail, for example in relation to Dr Harris and Tom 2 Watson, both of whom are new participants.</p> <p>3 LORD JUSTICE LEVESON: Thank you.</p> <p>4 MR SHERBORNE: I'm grateful.</p> <p>5 LORD JUSTICE LEVESON: Right. Is Mrs Blood here? Well, 6 I've received a submission from Mrs Blood, which I shall 7 deal with in writing.</p> <p>8 Mr Jackson has told me that he's not going to be 9 here, so I'll deal with that in writing.</p> <p>10 Ms Decoulos? I think it's probably easier because 11 then it can be recorded. (Pause) Ms Decoulos, before 12 you make your submission, I do want to underline that 13 this module is not concerned with individual acts 14 perpetrated by newspapers on you or indeed on anybody 15 else, or indeed the police investigation of those acts. 16 This is very much a political focus, and I am, at the 17 moment, struggling to see -- I know that you applied in 18 each of the other two modules and the Divisional Court 19 have twice been the subject of applications that you've 20 made against refusal and I think the Court of Appeal 21 once, so what I'd be very keen for you to do is to 22 explain to me why your experience should bring you into 23 Module 3.</p> <p>24 MS DECOULOUS: Well, I know it may seem a bit unusual, but 25 I actually have a good reason. But before I say that,</p> <p style="text-align: center;">Page 12</p>

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<p>1 I did submit a letter as well, as you know.</p> <p>2 LORD JUSTICE LEVESON: I've got the letter.</p> <p>3 MS DECOULOUS: And I hope you will put it on the website.</p> <p>4 LORD JUSTICE LEVESON: No, I won't put it on the website.</p> <p>5 I don't put the correspondence on the website. I'm not</p> <p>6 prepared to have the conduct of the Inquiry dictated by</p> <p>7 anybody else.</p> <p>8 MS DECOULOUS: Well, I'm terribly sorry. I'm not trying to</p> <p>9 dictate, but this is -- as you know, Mr Sherborne just</p> <p>10 made his submission, and when he made the submission for</p> <p>11 Module 2, I don't really know what your judgment was, as</p> <p>12 I said in my letter. It's not a reasoned judgment. He</p> <p>13 wrote a letter giving his reasons for his clients to</p> <p>14 continue as core participants and that is -- to me,</p> <p>15 whoever has applied to become a core participant, this</p> <p>16 should be a transparent process.</p> <p>17 It is not a transparent process, and considering</p> <p>18 I've been trying to become a core participant for a long</p> <p>19 time, as you know, and -- I have been libelled by nearly</p> <p>20 everyone in this room. I have dealings with everyone in</p> <p>21 this room, including Mr Sherborne, as you know, and the</p> <p>22 process so far has been unfair, is my submission --</p> <p>23 LORD JUSTICE LEVESON: Yes, Ms Decoulos, there's no point in</p> <p>24 repeating the submissions that you've made twice to the</p> <p>25 Divisional Court and once to the Court of Appeal civil</p> <p style="text-align: center;">Page 13</p>	<p>1 Divisional Court rejected your application in relation</p> <p>2 to, and it's what the Court of Appeal civil division</p> <p>3 dealt with.</p> <p>4 MS DECOULOUS: Okay. Obviously you don't want to talk about</p> <p>5 that.</p> <p>6 LORD JUSTICE LEVESON: No, I don't want to talk about it</p> <p>7 because it's simply not relevant. What I am keen to</p> <p>8 know is why you come within rule 5 in relation to</p> <p>9 Module 3 of part 1.</p> <p>10 MS DECOULOUS: Okay, I just want to summarise from my</p> <p>11 letter, as Mr Sherborne did, just that in the Divisional</p> <p>12 Court judgment made on 4 November, Lord Justice Moses</p> <p>13 and Mr Justice Singh said in their judgment,</p> <p>14 paragraph 4, that "Ms Decoulos has a lot to say in</p> <p>15 matters of public concern, which are the subject matter</p> <p>16 of the Inquiry."</p> <p>17 Now, the rest of his judgment, he went against me,</p> <p>18 which I think is obviously contradictory, but I won't go</p> <p>19 into that because you don't want to go into the appeal</p> <p>20 process. Nevertheless, Lord Justice Moses saw I had at</p> <p>21 least 300 pages' worth of documentation that he read, or</p> <p>22 at least glanced through, and that was his judgment.</p> <p>23 So first, I'm coming on the basis of that, that</p> <p>24 I have a lot to contribute. I did have a lot to</p> <p>25 contribute in Module 1. I did have a lot to contribute</p> <p style="text-align: center;">Page 15</p>
<p>1 decision. I have made a ruling, you challenged the</p> <p>2 ruling, the court has decided, and I'm not going to</p> <p>3 revisit them.</p> <p>4 MS DECOULOUS: Okay, the Court of Appeal made a mistake,</p> <p>5 actually. They said that part 1 is over. There are</p> <p>6 serious errors in the judgment of the Court of Appeal,</p> <p>7 which I am going to write to them and deal with, so just</p> <p>8 for the record --</p> <p>9 LORD JUSTICE LEVESON: The Court of Appeal, for the record,</p> <p>10 identified that your appeal was totally without merit,</p> <p>11 and that's why you didn't get an oral hearing of your</p> <p>12 appeal, as I understand it.</p> <p>13 MS DECOULOUS: Right. No, no, it says that, but it says</p> <p>14 that part 1 is over.</p> <p>15 LORD JUSTICE LEVESON: Part 1 actually is over. All that is</p> <p>16 left of part 1 is the two features that I've identified.</p> <p>17 I've received closing submissions in relation to part 1</p> <p>18 from the core participants, and there may be further</p> <p>19 submissions to come at the very end, because in relation</p> <p>20 to regulation -- I'm talking about Module 1 is over.</p> <p>21 MS DECOULOUS: Exactly. The Court of Appeal said part 1.</p> <p>22 LORD JUSTICE LEVESON: I think you'll find that that's an</p> <p>23 error. Module 1 is over. You were seeking from the</p> <p>24 Court of Appeal core participant status in relation to</p> <p>25 Module 1. That's what I refused, it's what the</p> <p style="text-align: center;">Page 14</p>	<p>1 in this module. As I said in my letter to you on</p> <p>2 Friday, when I went before the divisional court</p> <p>3 recently, I had 53 pages of correspondence with the</p> <p>4 Metropolitan Police, who failed to investigate my</p> <p>5 allegations about Mr Sherborne's clients, unfortunately,</p> <p>6 and I still submit I am being frozen out of this Inquiry</p> <p>7 because Mr Sherborne is sitting there.</p> <p>8 LORD JUSTICE LEVESON: You're not being frozen out of the</p> <p>9 Inquiry because of Mr Sherborne. Indeed, Mr Sherborne</p> <p>10 didn't appear as counsel in relation to Module 2. So</p> <p>11 it's simply not the case.</p> <p>12 In relation to the observations made by</p> <p>13 Lord Justice Moses, I think he said, as I said, that you</p> <p>14 were perfectly entitled to submit a statement. You've</p> <p>15 explained that having delivered bundles in relation to</p> <p>16 judicial review proceedings, you've identified what you</p> <p>17 want to say. With great respect, that isn't</p> <p>18 a statement, and neither I nor the team that is</p> <p>19 assisting me can be expected to prepare a statement.</p> <p>20 That's why Lord Justice Moses made the point that he</p> <p>21 felt that there was material which you did have to</p> <p>22 submit, but you haven't done it.</p> <p>23 MS DECOULOUS: Well, I haven't done it because I have to</p> <p>24 criticise quite a lot of people and apparently I can't.</p> <p>25 So am I going to spend hours -- and obviously I have</p> <p style="text-align: center;">Page 16</p>

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<p>1 written something -- that's going to be rejected? And 2 then do I have to make an appeal to get my statement 3 accepted? Which to me seems completely absurd. 4 LORD JUSTICE LEVESON: Right. 5 MS DECOULOUS: Because actually when I put forward questions 6 in Module 1 -- and as you know, I put forward several 7 questions for several of the witnesses because members 8 of the public were allowed to do that even if they 9 weren't core participants, and only one was asked. 10 Shockingly, when I made an application for judicial 11 review, I was told by your team that I needed to appeal 12 that my questions weren't being asked. So I'm supposed 13 to make a judicial review application to get my 14 questions asked. 15 LORD JUSTICE LEVESON: There's no prospect of judicially 16 reviewing the exercise of discretion of counsel to the 17 Inquiry to ask questions. He asked the questions that 18 he thinks are appropriate. That's my immediate 19 reaction. 20 I want to know why you come within Module 3 as 21 a core participant and that's all I want to know. 22 MS DECOULOUS: I come here to apply under Module 3 because 23 I submitted evidence to the Culture, Media and Sports 24 Select Committee, which they accepted and they 25 published. I said in that evidence, for their press</p> <p style="text-align: center;">Page 17</p>	<p>1 concern that the newspaper industry was facing a number 2 of serious threats to its freedoms." 3 First he mentions Freedom of Information Act, 4 second, access to the courts, which -- I will just touch 5 on that for a minute. He was worried about private 6 inquests. And considering his legal team, which is 7 a very aggressive legal team -- and this has not been 8 discussed in this Inquiry either -- they were against 9 private inquests, and at the moment, they're currently 10 lobbying Parliament against private hearings under the 11 justice and security green paper. 12 Now, mind you, they're lobbying Parliament at the 13 same time that they're consenting to me having a private 14 hearing in my libel claims. This is hypocritical and 15 it's not the first part of their lobbying that's 16 hypocritical, but when they lobby Parliament, they bully 17 them. It's a type of bullying -- I've never seen 18 anything like it. They just bully. They bully 19 Parliament, it seems. So at the moment, as I said, even 20 though they succeeded in getting rid of the secret 21 inquests, which actually he says in his speech -- he 22 says: 23 "Secondly, access to the courts and the very 24 principle of open justice ..." 25 Those are the words of Paul Dacre, and my libel</p> <p style="text-align: center;">Page 19</p>
<p>1 standards inquiry, which has been discussed in this room 2 for months now, that my hearings were stayed for 3 costs -- sorry, my claims -- my libel claim was stayed 4 for costs and they were in private. 5 I thought this was shocking. I think I said it's 6 reminiscent of a totalitarian state. It was just -- you 7 know, this is England, or the United Kingdom. I just 8 couldn't believe it. So I submitted that and nothing 9 happened, and I wasn't in the report, but they did 10 publish my evidence. 11 Now, in the meantime, or just before that, rather, 12 Associated Newspapers and Mr Sherborne together sought 13 to stay my claim for costs, the rest of my claim, and 14 again seeking to have it in private. And while they're 15 doing this, Mr Dacre is lobbying Parliament to change 16 the law on CFAs. He gave a speech to the Society of 17 Editors, which everyone knows about, I'm sure, 18 in November 2008, and it reads like a political 19 thriller, really. 20 He says -- I'm sorry, if I just get my ... (Pause) 21 He says: 22 "About 18 months ago [I remind you this is November 23 2008] I, Les Hinton of News International and Murdoch 24 MacLennan of the Telegraph had dinner with the Prime 25 Minister, Gordon Brown. On the agenda was our deep</p> <p style="text-align: center;">Page 18</p>	<p>1 claim against him is in private. 2 He says: 3 "Thirdly, there were very serious financial 4 implications for newspapers of the conditional fee 5 arrangement, the no win, no fee." 6 So he goes on about this and he gives an example of 7 an MP who sued for libel and he was only -- Martin 8 Jones, he was only awarded £5,000, and their costs -- 9 Associated's costs were £136,000, making a total of 10 £520,000 in costs in a case that awarded damages of just 11 £5,000. 12 He has a point there, you know, a small amount of 13 damages. Nevertheless, what has also not been discussed 14 in this room is that Associated Newspapers, when they 15 fight a libel claim, they nearly always lose. So it's 16 their own fault if they have to pay these massive damage 17 awards, because -- and I've sat in court quite a few 18 times when they've had libel trials against other 19 people, and it's just obvious they're going to lose. 20 Why don't they just pull out, settle the case? Then 21 they wouldn't have to pay these massive costs. But they 22 don't. 23 LORD JUSTICE LEVESON: I'm struggling to see why this is 24 sufficient to justify core participant status under 25 rule 5 of the inquiries rules for you.</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 MS DECOULOUS: Because, if I take out rule 5 -- 2 unfortunately, I have everything already photocopied: 3 "The person played or may have played a direct and 4 significant role in relation to matters which the 5 Inquiry relates and the person has a significant 6 interest." 7 Now, considering they're lobbying Parliament on 8 something that directly affects my ability to get 9 redress in justice in this very building is relevant to 10 Module 3. 11 LORD JUSTICE LEVESON: But, with respect, whatever they 12 lobby Parliament for, whatever rights you presently have 13 you won't lose. 14 MS DECOULOUS: Well, I've already lost. Stay for costs, in 15 private. 16 LORD JUSTICE LEVESON: Yes, but then -- 17 MS DECOULOUS: You know, unless I do numerous other 18 hearings. You know, I am sick of having hearings in 19 this building. You can imagine. I'm just at my wits' 20 end and that's why I'm here. Why should I have to keep 21 doing this? Everybody's here. This is costing a lot of 22 money to set up this Inquiry. This is the time to sort 23 out this mess. 24 I will add that last week Lord Prescott proposed an 25 amendment in the House of Lords to reverse what their</p> <p style="text-align: center;">Page 21</p>	<p>1 claim for costs and in private for the benefit of his 2 clients, who actually I think I should name: Bruno 3 Shroder and Suzanne von Maltzahn. 4 My point is that the Daily Mail, not only are they 5 very aggressive legally; they are in court more than any 6 other newspaper group -- 7 LORD JUSTICE LEVESON: You've made the point that you wanted 8 to make about Associated Newspapers. Is there any other 9 point you want to make about the politics element of 10 this module? 11 MS DECOULOUS: Yes, it has to look at what happened to the 12 CFAs, because this just happened last week. It's gone. 13 And I should add that some of the core participants 14 submitted a letter to David Cameron -- and actually 15 I think I'm going to write my own, while I'm at it, if 16 everyone else is going to write to him -- and published 17 in the Guardian, full text of open letter on legal aid 18 bill. They tried to convince David Cameron to drop the 19 amendment that Lord Prescott proposed. It's not law 20 yet, but it's nearly there. 21 LORD JUSTICE LEVESON: Well, I don't believe that CFAs are 22 within my terms of reference. I have read my terms of 23 reference quite carefully, and I'm not sure that I can 24 cope with that area of law within the limits of what 25 I am required to do.</p> <p style="text-align: center;">Page 23</p>
<p>1 lobbying intended to do and he failed, unfortunately. 2 It was quite a sad day, I think. He's also a core 3 participant so his amendment is actually relevant to my 4 claims. 5 And I should say that the only libel claim I won, 6 against the Express, was under a CFA, and the previous 7 arrangement of CFAs that Paul Dacre successfully got rid 8 of wasn't even that good, because you know, I tried to 9 get a CFA in my claim against Associated Newspapers but 10 I couldn't get one. It's not as easy to find 11 a solicitor to take your case on a CFA. That is a myth 12 that Paul Dacre convinced Parliament about. 13 LORD JUSTICE LEVESON: Well, the solicitor won't take it 14 unless he thinks there's a good chance of it winning, 15 will he? Because he has to work for nothing. 16 MS DECOULOUS: Not necessarily. Now, that's another myth. 17 Because sometimes -- unfortunately, because I was also 18 suing Mr Sherborne's clients, because one of them 19 provided a defamatory -- a libellous quote to the 20 Daily Mail, nobody really wanted to take on my case 21 because of him. 22 LORD JUSTICE LEVESON: Well -- 23 MS DECOULOUS: Nobody wants to take on some rich, powerful 24 man in the city. That's where Mr Sherborne came in, and 25 he actually colluded with the Daily Mail to stay my</p> <p style="text-align: center;">Page 22</p>	<p>1 MS DECOULOUS: Right, okay. I do want to say one more thing 2 about the Daily Mail and Paul Dacre's evidence. 3 LORD JUSTICE LEVESON: No, no, no, Ms Decoulos, I think 4 that's probably enough. I'm only asking you to make 5 submissions about why you come within rule 5 for 6 Module 3. I don't think that it's appropriate that you 7 use the opportunity to rehearse your complaints about 8 newspapers. 9 MS DECOULOUS: Okay, I just did want to say something about 10 the private hearings, though, because that is also 11 relevant. This Inquiry is looking at privacy, and 12 obviously privacy is under Article 8, but privacy and 13 libel are merging, as people who submitted evidence to 14 the joint committee on the draft defamation bill will 15 know. So it's very difficult, when you come to 16 Module 4, to look at the way forward without looking at 17 the whole picture. 18 LORD JUSTICE LEVESON: But the way forward in relation to 19 Module 4 is essentially -- not necessarily entirely, but 20 essentially -- concerned with regulation. 21 MS DECOULOUS: But regulation and the draft defamation bill 22 are going -- people -- most people in this room -- well, 23 the people campaigning want them to be together, and 24 there is a big argument about public interest and what's 25 in the public interest. Should there be a definition?</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 At the moment, the draft defamation bill and the joint 2 committee did not propose a definition. They did not 3 think it was necessary for public interest -- for 4 a definition of public interest, as did the privacy and 5 injunctions committee. However, the proposals being put 6 forward to you include a definition. 7 LORD JUSTICE LEVESON: All right. 8 MS DECOULOUS: And I submit there needs to be a definition. 9 LORD JUSTICE LEVESON: All right. Thank you very much. 10 Thank you. 11 Right, the next application I have is from Mr Ward. 12 I only ask you to come here again, Mr Ward, because then 13 it's picked up on the microphone. Please sit down. 14 Right. The difficulty which was apparent in 15 relation to your earlier application was the complexity 16 of the issue. You will appreciate the time available to 17 me, the ground that I have to cover and the effective 18 impossibility of being able to unpick extremely complex 19 and fact-sensitive allegations so as to provide 20 assistance for the general area that I have to consider. 21 I'd be grateful if you could tell me why you feel you 22 fall within rule 5 of the Inquiry rules in relation to 23 what is a very different issue, namely the politicians. 24 I know that you've identified the fact that you've 25 tried, through various political avenues, to have your</p> <p style="text-align: center;">Page 25</p>	<p>1 CP status? 2 What I think must be obvious to all of us is that 3 whatever our problems in life, whether it be matters of 4 complaint about unfair convictions or one has been, in 5 one's view, molested or harassed by a newspaper or 6 indeed probably any other matter, in the end, under our 7 democratic system, we find ourselves, once all other 8 remedies are exhausted, including the courts, in front 9 of a politician. One looks to a politician for two 10 essential things: one is perhaps an intervention on 11 a particular issue, and secondly, to try and ascertain 12 whether the politician could be moved to investigate 13 matters of policy, because at the end of the day, 14 politicians and only politicians are at the summit of 15 power, because they pass law. 16 Therefore, this module is extremely important 17 because it deals with the ultimate place of power, and 18 what, if anything, the press has done or not done to 19 distort what might otherwise be described as a proper 20 democratic process. 21 Now, my understanding of Module 3 is that you are 22 looking at the way in which the press has or has not 23 influenced, beneficially or with malign intent, 24 politicians, and secondly, to investigate what warnings 25 people have given politicians or serving ministers about</p> <p style="text-align: center;">Page 27</p>
<p>1 concerns addressed, but again, without unpicking all the 2 facts, it's very difficult to do other than the most 3 general analysis of what the relationship should be, 4 which may not require me to investigate the sort of 5 detail that I think you would require me to look at. 6 So there it is -- 7 MR WARD: Thank you very much indeed. As you know, your 8 Honour, I feel and have felt that I have useful and 9 insightful experience that would have lent itself to 10 modules 1 and 2, but I fully understand and respect that 11 the opinion of the Inquiry was that it was excessively 12 complicated. 13 LORD JUSTICE LEVESON: I don't think you would disagree that 14 it's complicated. 15 MR WARD: Whether I do or not is probably something that is 16 not necessarily investigated. 17 LORD JUSTICE LEVESON: All right. 18 MR WARD: But I do utterly understand. You have a limited 19 time, you have a limited budget, you need to move on 20 with the Inquiry. 21 So the question I would understand you're asking me 22 now is: what is it about Module 3, which is a different 23 module, that looks at the influence, if any, that the 24 press has imposed on politicians, that may be of help to 25 you, in the first instance, and secondly, qualify me for</p> <p style="text-align: center;">Page 26</p>	<p>1 those same practices. 2 Obviously one of the ways you can do that, which is 3 perfectly sensible, is to get the information and the 4 evidence of politicians who have, in one form or 5 another, found themselves harassed or intimidated or in 6 some way or other negatively affected by the press. 7 However, politicians, as much as we may admire them or 8 otherwise in some cases, perhaps, are themselves coming 9 to this particular module with a purpose in mind, with 10 a focus in mind, which is to give honest account of how 11 particular newspapers have lobbied them or have 12 intimidated them and so on, and that is a very natural 13 and healthy process for this Inquiry to investigate. 14 They may, either for malign intent, or more likely, 15 because they haven't really thought about it, not been 16 able to give your Inquiry chapter and verse of how they 17 have let themselves down as a consequence of the 18 intrusion into their lives of the press. They will 19 probably say -- and I've heard it said -- "Well, 20 I wasn't in any way affected by this and I got on with 21 my job", and that is a natural reaction. 22 You ask what I can bring to bear. Over 20 years, 23 leaving aside any complaints I made to the police and 24 various other people concerned with my complaints, 25 I also appealed to politicians. I visited politicians.</p> <p style="text-align: center;">Page 28</p>

<p>1 I went to their offices with documents. I went to 2 cabinet ministers with documents. I went to a whole 3 range of politicians of different stripe and with 4 different interest and responsibilities.</p> <p>5 Prior to doing so, over many years, I had experience 6 of dealing with politicians. When I was an investment 7 banking banker, I dealt a lot with politicians on 8 matters of international trade and policies of this 9 kind, and although from time to time, one recognised 10 that a particular issue was complicated, nevertheless 11 the politicians seem open and willing and generally 12 constructive to look at any matter you may be raising.</p> <p>13 However, there was an absolutely unambiguous line of 14 yellow eyes, of eyes turning to the ceiling, when 15 I raised matters with politicians about the media. It 16 is absolutely incomparably different. Every other case 17 in my life, when I have gone to a politician for one 18 reason or another -- as you will know, I ran an 19 entertainments company. I was often talking to 20 politicians about policy, licensing, drugs. I always 21 found politicians open and willing to engage on 22 a particular subject.</p> <p>23 So the experience I bring to this Inquiry is 24 absolute direct experience, over 20 years, of the way 25 politicians have in fact reacted to issues that come to</p> <p style="text-align: center;">Page 29</p>	<p>1 by you as a witness, as opposed to being a core 2 participant. I'm not saying I would want to see it, but 3 it strikes me that what you've said -- I see the point 4 and I see the thrust of what you're saying, but my 5 immediate reaction is that this doesn't justify core 6 participant status. It may justify considering what you 7 have to say as a witness.</p> <p>8 MR WARD: Well, I do understand, and indeed you may, having 9 read my statement, see that in, I think, paragraph 2 or 10 3, I'm making myself available as a witness. But the 11 reality is that rule 5 sets out a number of 12 qualifications for admission as a CP. I believe I have 13 a direct experience and I think I have a great interest 14 in the outcome, and although in no sense at all am 15 I seeking to bring into this Inquiry some sort of who 16 did what to whom or who is right and who is wrong -- 17 that is not why I'm here, I fully respect the 18 limitations of your Inquiry -- I think I should have 19 a degree of status, similarity of status, to give me the 20 authority to give vent to my experience. I mean, 21 witnesses come in all shapes and sizes across a lot of 22 subjects. Whether your Inquiry can ever be informed to 23 the degree that I can bring to bear about the experience 24 of working with politicians, complaining to politicians, 25 I doubt. You'd know more than I.</p> <p style="text-align: center;">Page 31</p>
<p>1 them about the press, and the perception -- the 2 actuality of them saying, "Well, they're a force outside 3 our capacity", and clearly a sense of unease that they 4 had no vires or no powers or there was too much risk 5 associated.</p> <p>6 I should just tell you, your Honour, that in the 7 course of this 20-year campaign, or that process, 8 I spoke to politicians who told me of the close links 9 between one political party and a particular newspaper, 10 and one politician, a House of Lords member, actually 11 told me: "Well, we might be able to help because we have 12 special friends in that newspaper."</p> <p>13 Now, as it turned out, he wasn't able to help, very 14 possibly because someone up the line felt that newspaper 15 didn't want to be embarrassed --</p> <p>16 LORD JUSTICE LEVESON: I understand the point you've made, 17 and there may be something worthwhile considering in the 18 context of a different reaction to complaints about the 19 press than complaints about other areas of public life. 20 Your statement, which you provided, touches on what 21 you've done there, but actually is in the main about 22 other matters --</p> <p>23 MR WARD: Sure.</p> <p>24 LORD JUSTICE LEVESON: I'd be grateful if you could address 25 why that issue should not be capable of being explained</p> <p style="text-align: center;">Page 30</p>	<p>1 LORD JUSTICE LEVESON: All right.</p> <p>2 MR WARD: But I believe I have a very special experience 3 that qualifies me for that, and sure, I have an interest 4 in the outcome. I'd like to see, in some respects 5 relating to me but most particularly to the nation, that 6 the press is made to explain why it had certain 7 experiences of interventions with the politicians, and 8 in particular, why politicians didn't act.</p> <p>9 I mean, I have letters to Attorney Generals, to Home 10 Secretaries, about specific aspects of the truancy, as 11 I allege it, carried out. Those all went into the 12 wastepaper basket. I do think that it is instructive to 13 you.</p> <p>14 So that would be my submission. I think I merit 15 that status because I have a bundle full of information 16 not shared by others and I think I'd like to have that 17 status. I think I would like to have it. I think 18 I deserve it.</p> <p>19 LORD JUSTICE LEVESON: Thank you very much indeed.</p> <p>20 MR WARD: Thank you very much indeed.</p> <p>21 LORD JUSTICE LEVESON: All right. Mr Parkinson?</p> <p>22 MR PARKINSON: Sir, yes. I'm making a further application 23 on behalf of Mrs Brooks. Sir, you recall that she did 24 make an application for core participant status 25 last September --</p> <p style="text-align: center;">Page 32</p>

<p>1 LORD JUSTICE LEVESON: Yes, I remember, and of course, in 2 the main -- and I'm conscious of the concern that your 3 firm have expressed on a number of occasions during the 4 course of the Inquiry about the extent to which her name 5 has been mentioned, although, as I'm sure you 6 appreciate, she hasn't been asked in any way to provide 7 any evidence on those matters in respect of which there 8 is an ongoing investigation.</p> <p>9 I do see that this module is different, but I'd like 10 you just shortly to elaborate and to identify precisely 11 what it is you seek, because it seems to me that in 12 respect of contemporary political issues, there may be 13 something more than evidence that she can bring to the 14 Inquiry, but I don't think she does that for anything 15 other than contemporary political issues.</p> <p>16 So I'd just be grateful if you would expand on how 17 you see the application being put and how you see your 18 involvement, if I were to grant core participant status 19 to Ms Brooks, evidencing itself.</p> <p>20 MR PARKINSON: Certainly, sir. I put my application on two 21 bases. My primary ground is under rule 5(2)(c), on the 22 basis that Mrs Brooks is someone who may be the subject 23 of explicit and significant criticism. My secondary 24 ground is under 5(2)(a), that she has a direct and 25 significant role.</p> <p style="text-align: center;">Page 33</p>	<p>1 previous modules.</p> <p>2 LORD JUSTICE LEVESON: Yes, that might bring her rather 3 fairly and squarely within 5(2)(a).</p> <p>4 MR PARKINSON: Certainly, sir. That's the second basis on 5 which I put my application. She has been asked by the 6 Inquiry to give evidence on a wide range of issues which 7 are within Module 3, and I say that certainly does bring 8 her within 5(2)(a).</p> <p>9 But I also say, on the basis of her experience of 10 modules 1 and 2, that that exposes her to the 11 possibility of criticism by others -- we know that such 12 criticism has been made of her in the past -- and that 13 therefore she is one of those people for whom the 14 protections of 5(2)(c) were designed.</p> <p>15 So I put my application on both bases, sir, but of 16 course either would be sufficient.</p> <p>17 LORD JUSTICE LEVESON: Yes. Obviously there's 18 a discretionary element to it as well. What role do you 19 see you or her playing, if I were to grant this 20 application? Because it is, as I think I tried to 21 explain, time-limited, isn't it? I mean, in the sense 22 of the story.</p> <p>23 MR PARKINSON: Absolutely, sir. In fact, if you were to 24 grant her that status, she would exercise it sparingly. 25 The main reason we seek the status is to enable her</p> <p style="text-align: center;">Page 35</p>
<p>1 If I can deal first with 5(2)(c), sir. She has been 2 the subject of criticism of that nature. When you 3 declined her application last September, you did raise 4 the possibility that further applications might be made.</p> <p>5 LORD JUSTICE LEVESON: Yes.</p> <p>6 MR PARKINSON: And you specifically referred to the 7 possibility that she might be subject to criticism. We 8 say that has happened in respect of a number of 9 witnesses -- I can go into it if you'd like me to --</p> <p>10 LORD JUSTICE LEVESON: No, I understand the point, which is 11 why I said what I said, but that isn't a justification 12 on itself for granting core participant status for the 13 next module, really, is it?</p> <p>14 MR PARKINSON: I completely agree, sir. All I would say is 15 that it does provide some indication that she may be 16 subject to similar criticism going forward.</p> <p>17 As you know, sir, for Module 3, she has been invited 18 by the Inquiry to give evidence --</p> <p>19 LORD JUSTICE LEVESON: Certainly.</p> <p>20 MR PARKINSON: Both written evidence and oral evidence.</p> <p>21 LORD JUSTICE LEVESON: Certainly.</p> <p>22 MR PARKINSON: And I anticipate also that a number of 23 witnesses will be giving evidence which refers to her. 24 So it does seem likely that with regard to Module 3 at 25 least, she will have a much greater role than in</p> <p style="text-align: center;">Page 34</p>	<p>1 to have advance notice of the evidence given by other 2 witnesses, which in turn would enable her to have the 3 opportunity to pose questions to the counsel to the 4 Inquiry or under Rule 10. When she gives evidence 5 herself, we hope her counsel will be here to provide her 6 with assistance --</p> <p>7 LORD JUSTICE LEVESON: Counsel can be here anyway, because 8 as a witness she's entitled to have legal 9 representation.</p> <p>10 MR PARKINSON: Absolutely, sir, but I know that time is 11 limited for the Inquiry, space in this room is limited, 12 and we wouldn't intend, in fact, to attend by counsel 13 every day.</p> <p>14 LORD JUSTICE LEVESON: Don't worry about space. If you are 15 justified for status, then the space is the last of my 16 concerns.</p> <p>17 MR PARKINSON: Thank you, sir, but it is right to say that 18 the primary way in which we would use that status is in 19 terms of having advance notification of issues and the 20 opportunity to raise points before evidence is given by 21 others.</p> <p>22 LORD JUSTICE LEVESON: All right. Thank you very much.</p> <p>23 MR PARKINSON: Thank you.</p> <p>24 LORD JUSTICE LEVESON: Is there anybody else who wants to 25 apply for core participant status who I've missed out?</p> <p style="text-align: center;">Page 36</p>

<p>1 Mr Jay, is there anything you want to say about any 2 of the applications that I've received? I will reserve 3 judgment. I won't give it this afternoon. 4 MR JAY: Sir, no. 5 LORD JUSTICE LEVESON: But I will reserve it only for a very 6 short period of time. Right, thank you very much. I'll 7 provide a decision in writing in the course, I hope, of 8 the next few days. I would certainly want to try and 9 get it out before Easter. 10 Yes, Mr Ward? 11 MR WARD: Could I raise just one point. You made a point 12 that my witness statement had not perhaps gone into 13 great detail about Module 3. Of course I can append 14 that and add additional -- 15 LORD JUSTICE LEVESON: I understand. 16 MR WARD: I want to apologise for the fact that it wasn't 17 entirely concentrated, but there is a great deal of 18 additional material. 19 LORD JUSTICE LEVESON: All right, thank you. 20 MS DECOULOUS: What's going to happen in Module 4? 21 LORD JUSTICE LEVESON: Module 4 is to do with the future. 22 As we go through the afternoon, we will discuss the 23 approach to Module 3 and the approach to Module 4, and 24 the timetable, so that it will all become clear. 25 Right. I think that takes me to an approach to Page 37</p>	<p>1 Sometimes that's been possible to deal with, but in 2 the rather more sophisticated range of issues that 3 Module 3 generates, it is going to be absolutely vital 4 that sufficient advance notice of lines of questioning, 5 which may themselves involve reference to documents, is 6 provided to Mr Jay so that he can assimilate them and 7 consider their value. I would very much like to say 8 that we'd like notice of some seven days. However, 9 I recognise that that requires the statements to be 10 online very much in advance of that seven-day period, 11 but I think that what we will do is, in relation to each 12 statement, we will mark it with a date upon which we 13 would like any lines of questioning to be provided. 14 I'm not saying there's a cut-off because there never 15 can be, but I am seeking to ensure that the preparation 16 for these witnesses is as comprehensive and as timely as 17 possible. 18 Mr Jay, do you want to say anything about that? 19 MR JAY: No. 20 LORD JUSTICE LEVESON: Right. The approach to Module 4. 21 Essentially, I apprehend there will be little evidence 22 in Module 4. There may be a question -- "What is 23 ethical journalism?" -- asked and addressed, and the 24 only other evidence is likely to be the suggested 25 regulatory models. That that's from the press and from Page 39</p>
<p>1 Module 3, which I intend should follow the same pattern 2 that we have adopted hitherto. We will not start the 3 political end of this module before the elections in 4 early May, so we will then proceed to hear this evidence 5 up to the end of June, and I'll come to the timetable in 6 a moment. 7 The next aspect of Module 3, which will undeniably 8 address the political perspectives of the terms of 9 reference, is to consider the benefit we might receive 10 from commentators. I apprehend that we're likely, 11 because of time shortages, in the main, to seek 12 statements and then to read them into the Inquiry, but 13 I will want any submissions on that as appropriate as to 14 whether that's acceptable. 15 The third point that I want to make about Module 3 16 is lines of questioning. It may be that the system has 17 put statements up for core participants to see rather 18 later than we would have wished, and sometimes with very 19 little notice at all. However much advance notice has 20 been given, however -- and in some cases it has been 21 considerable -- lines of questioning tend to have been 22 provided to counsel on the night before or the morning 23 of -- and that's sometimes 2, 3 and 4 o'clock in the 24 morning -- the day on which the witness coming to give 25 evidence. Page 38</p>	<p>1 others. The Inquiry has received a number of 2 submissions as to possible regulatory models and those 3 are what we shall address during the course of Module 4, 4 which will inevitably be very much shorter than any of 5 the other modules. 6 So that brings me to the timetable for the Inquiry. 7 During the week commencing 23 April, I apprehend that we 8 will be calling some proprietors or media owners and 9 other evidence crossing modules. So we won't be sitting 10 the week of the 16th; we'll sit next on the week of the 11 23rd. 12 We'll then, I'm afraid, have another week off, 13 because I won't start Module 3 until after the 14 elections. In the week commencing 8 May, we'll have 15 further proprietors, we'll have catch-up evidence and 16 we'll start Module 3. By "catch-up evidence", I mean 17 evidence that I have not yet received but have been 18 waiting to resolve. I have already mentioned that it is 19 during that week that I will deal with the outstanding 20 issues in relation to Milly Dowler's mobile phone. It's 21 that week that I will consider again operations Glade 22 and Reproof, and there will be some other witnesses who 23 cross or potentially cross different areas, or more 24 conveniently can be taken at that stage, whose names 25 will be identified in the usual way. Page 40</p>

<p>1 We'll also have the opening for Module 3, which 2 raises the next question. Although Mr Jay will 3 doubtless open Module 3 with customary brevity and 4 depth, does anybody else wish to open Module 3? 5 Well, that's interesting. I don't commit you to an 6 answer to that now, but if you do, I would like to know 7 in due course. Of course, it depends entirely on who's 8 granted core participant status. 9 Module 3 will go to the end of June 2012. Module 4 10 will be commenced in early July, and during the course 11 of July, we also hear any closing oral submissions. The 12 idea is to finish the formal part of the Inquiry by the 13 end of July; in other words, before the anniversary of 14 the date of the appointment of this Inquiry. 15 Which brings me to the timetable for submissions. 16 By the end of April, I'd be grateful if I could receive 17 submissions in relation to Module 2 and anything that 18 I have not already received in relation to Module 1. 19 That is, of course, an end date, not the date by which 20 I wish to receive those submissions, because I can't 21 start analysing the module until I've seen all the 22 relevant submissions. 23 Any opening submissions in writing for Module 3 I'd 24 be grateful to receive before 8 May, and by the end 25 of May, it seems to me that there are a number of</p> <p style="text-align: center;">Page 41</p>	<p>1 Right. The final item for discussion this afternoon 2 concerns the three topics I raised some little time ago 3 which have been the subject of written submissions 4 surrounding Rule 13. I'm very grateful to all those who 5 have provided written submissions, and don't consider it 6 a discourtesy in relation to those who haven't provided 7 written submissions. 8 There are a couple of issues that I would like to 9 raise based on the submissions and we'll start that now, 10 but before we do, I think it's probably appropriate to 11 give the shorthand writer a short break and allow people 12 the opportunity to think about whether there's anything 13 I've missed out, and equally, if they want it leave 14 because they're not interested in this rather 15 interesting area of Rule 13. 16 So I'll rise for just a few minutes. 17 (3.15 pm) 18 (A short break) 19 (3.21 pm) 20 LORD JUSTICE LEVESON: Right. Does anybody want to raise 21 anything in relation to any of the topics that I've 22 mentioned to date? (Pause) 23 Right. Well, the two substantive issues upon which 24 I sought assistance concerned the effect of rejecting 25 evidence and whether that offended the self-denying</p> <p style="text-align: center;">Page 43</p>
<p>1 submissions which will remain outstanding which would be 2 of value. 3 First of all, the standard of proof, which we raised 4 at the very beginning of this Inquiry and put off. 5 Second, given the terms of reference specifically 6 include cross-media ownership, any submissions on 7 competition law. Third, any preliminary submissions on 8 regulation. I say "preliminary" because they'll all 9 obviously be subject to what I hear in Module 4, but 10 I've no doubt at all that everybody who's been concerned 11 in this Inquiry has been thinking most anxiously about 12 what the future should look like. 13 Is there any other topic that any core participant 14 feels needs to be addressed? Because if there is, 15 I will want a timetable for that, too. (Pause) 16 Then, by 17 July, final written submissions, with 17 possible short oral submissions in the week commencing 18 23 July. I'm not suggesting that anybody will 19 necessarily feel it appropriate to make oral submissions 20 in addition to making submissions in writing. The 21 submissions in writing will be published on the website, 22 so they won't be in secret, and we can revisit that as 23 we proceed through the summer. 24 Does anybody want to say anything else about the 25 approach or the timetable? (Pause)</p> <p style="text-align: center;">Page 42</p>	<p>1 ordinance, and what Rule 13 meant in the context of the 2 press as a whole. In other words, if I take the view 3 that there is something in the culture, practices or 4 ethics of the press or a section of the press, does that 5 generate a requirement under Rule 13 to give notice? 6 So if we split those two issues up -- the third 7 question was what was meant by a "person". I'm quite 8 comfortable that "person" certainly incorporates 9 a company, court or unincorporate association, but 10 I ought to ask anybody if they want to press submissions 11 that "person" can mean title, whatever the structure of 12 the title, whether it's simply part of a larger company 13 or without independent status. 14 So, who would like to start on any of those? 15 Mr White? 16 MR WHITE: I'm happy to start, sir. On the first question, 17 the self-denying ordinance, News International's 18 consistent position has been to pay heed to your mantra, 19 as you've called it, that you're not going to make 20 findings about who did what to whom, but importantly, 21 you added on several occasions "or with whose 22 knowledge". 23 We submit that that mantra has been sensible. It's 24 helped us to proceed expeditiously with the evidence 25 because we haven't challenged the detail.</p> <p style="text-align: center;">Page 44</p>

<p>1 LORD JUSTICE LEVESON: Yes.</p> <p>2 MR WHITE: Our first submission is that it would be</p> <p>3 fundamentally unfair to depart from that mantra at this</p> <p>4 stage in the proceedings, when witnesses have come and</p> <p>5 gone and we've understood them to come and go on that</p> <p>6 basis.</p> <p>7 LORD JUSTICE LEVESON: Yes, I have no problem about</p> <p>8 following the mantra, but the issue that I am concerned</p> <p>9 to think about is slightly different. It's not so much</p> <p>10 "Did X intercept a mobile telephone?", which would be</p> <p>11 clearly who did what to whom. Neither is it "Did Y,</p> <p>12 a supervisor, instruct X to intercept a telephone?"</p> <p>13 Similar. It is not even "Did Y, the supervisor, know</p> <p>14 perfectly well that all sorts of stories going into his</p> <p>15 or her title were the product of intercept?" But it</p> <p>16 could very well be: it was well-known that stories were</p> <p>17 being obtained as a result of intercept, whether or not</p> <p>18 they were responsible personally for the intercept or</p> <p>19 whether or not they had authorised it or it was in their</p> <p>20 title.</p> <p>21 You can think, without my giving of the example, of</p> <p>22 at least three witnesses who have made it clear that</p> <p>23 they referred in public to this having happened. Each</p> <p>24 in their turn gave a slightly different explanation when</p> <p>25 they came to give evidence. One of them, if not two of</p> <p style="text-align: center;">Page 45</p>	<p>1 submission would be dangerous. We certainly didn't</p> <p>2 realise when the witness I have in mind came to give</p> <p>3 that evidence that this was on the agenda.</p> <p>4 LORD JUSTICE LEVESON: Without necessarily using the word</p> <p>5 "widespread", why isn't it relevant to the custom,</p> <p>6 practice and ethics of the press that people within the</p> <p>7 press know that it is happening? And if I'm not to make</p> <p>8 that sort of finding, what am I supposed to be doing</p> <p>9 with all this material?</p> <p>10 MR WHITE: Well, what we understood you were not going to do</p> <p>11 was make findings about individuals' roles in relation</p> <p>12 to it, and that is our concern, that if you don't make</p> <p>13 findings about individuals doing it, to make findings</p> <p>14 about other individuals knowing about it having been</p> <p>15 done lacks an essential building block.</p> <p>16 LORD JUSTICE LEVESON: Well, does it? I can make a finding</p> <p>17 of fact that X was happening, without making a finding</p> <p>18 of fact, not having investigated, who was responsible</p> <p>19 for X happening and without making a finding -- because</p> <p>20 I've not been able to investigate it for reasons which</p> <p>21 you very clearly understand -- as to the origin of the</p> <p>22 instruction, if there was one, for X to happen.</p> <p>23 Now, I've not gone there and I'm not going to go</p> <p>24 there, for obvious reasons, but I've certainly got to</p> <p>25 make a finding, haven't I -- or do you say I haven't --</p> <p style="text-align: center;">Page 47</p>
<p>1 them, spoke about rumour. One of them most certainly</p> <p>2 called it topspin.</p> <p>3 Now, it strikes me that if I am to make findings</p> <p>4 about the custom, practices and ethics of the press,</p> <p>5 I have to say and I have to reach a conclusion whether</p> <p>6 or not I consider that the evidence has revealed that</p> <p>7 this practice was rather more widely known than some</p> <p>8 people have suggested.</p> <p>9 Now, that might generate a Rule 13 warning to them</p> <p>10 but I don't think that offends who did what to whom, and</p> <p>11 that's the issue that I would like you to address.</p> <p>12 MR WHITE: Our concern, I would suggest, is heightened by</p> <p>13 putting it that way, particularly when you draw my</p> <p>14 attention to three witnesses whose identity I might like</p> <p>15 to think about, and our concern would be that before you</p> <p>16 could make a finding that someone knew something was</p> <p>17 widespread, you'd have to make a finding that it was</p> <p>18 widespread, and you'd have to do that on the basis of</p> <p>19 separate findings making up that widespread practice,</p> <p>20 and we simply haven't explored that.</p> <p>21 In the case of one witness with whom I'm</p> <p>22 particularly concerned, a finding of knowledge of</p> <p>23 a widespread practice without descending to an attempt</p> <p>24 to establish particular instances, with full</p> <p>25 cross-examination and full documentary surround, in our</p> <p style="text-align: center;">Page 46</p>	<p>1 about whether there was unlawful interception of mobile</p> <p>2 telephones?</p> <p>3 MR WHITE: The word "happening", absent the additional words</p> <p>4 "where and when" would be meaningless, and we haven't</p> <p>5 investigated whether it was happening where and when.</p> <p>6 LORD JUSTICE LEVESON: Why would they be meaningless?</p> <p>7 MR WHITE: It would be meaningless in terms of attaching</p> <p>8 knowledge to people, because you wouldn't know where</p> <p>9 they were at the particular location --</p> <p>10 LORD JUSTICE LEVESON: I'm not seeking to establish</p> <p>11 knowledge of any particular interception. I'm seeking</p> <p>12 to use their -- this is the issue: I'm seeking to use</p> <p>13 their acknowledgment of knowledge and to say that that</p> <p>14 itself is relevant to the extent of the practice. At</p> <p>15 least that's what I'm considering.</p> <p>16 MR WHITE: As we've said in our submission, if there was an</p> <p>17 admission, then we could see you could do that, but we</p> <p>18 don't understand, particular with the witness that</p> <p>19 I have in mind, there to be any admission of a practice</p> <p>20 occurring at any title at any point in time. Indeed,</p> <p>21 a denial.</p> <p>22 LORD JUSTICE LEVESON: Yes, I understand that, but there is</p> <p>23 undeniably evidence from which I can infer the existence</p> <p>24 of the practice. Would you agree with that?</p> <p>25 MR WHITE: You know what public statements have been made in</p> <p style="text-align: center;">Page 48</p>

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<p>1 relation to one title.</p> <p>2 LORD JUSTICE LEVESON: Yes, absolutely right, and I have</p> <p>3 received evidence -- I have to decide what I make of</p> <p>4 it -- from different people speaking of the same</p> <p>5 practice, from more than one person speaking of the same</p> <p>6 practice, and I have received evidence of people being</p> <p>7 prepared to write about the practice, albeit that their</p> <p>8 writings are now explained by their evidence, and</p> <p>9 I might have to make a decision about what I think of</p> <p>10 their present explanations.</p> <p>11 MR WHITE: The latter example relates to the title that we</p> <p>12 know about. Our particular concern is that a finding of</p> <p>13 a general practice applying across the press, in the</p> <p>14 absence of exploration of whether it actually happened</p> <p>15 at any particular time --</p> <p>16 LORD JUSTICE LEVESON: When did I say it had to be across</p> <p>17 the press? I was rather careful to say that it was</p> <p>18 within a section of the press. I mean, I've seen</p> <p>19 everybody's submissions on Module 1, and there is</p> <p>20 a plethora of: "Absolutely not me, guv", and: "There's</p> <p>21 nothing on my title." That's a submission that's</p> <p>22 entirely legitimate, I accept it, but it doesn't</p> <p>23 actually address the issue that I have to address in my</p> <p>24 terms of reference, namely: what was the culture,</p> <p>25 practice and ethics?</p> <p style="text-align: center;">Page 49</p>	<p>1 LORD JUSTICE LEVESON: Yes, well, I understand that. But if</p> <p>2 I'm to make any sense at all of the terms of reference,</p> <p>3 then it seems to me I am going to have to condescend</p> <p>4 into some finding about whether there's anything to</p> <p>5 worry about. Let me put it that way. I've used the</p> <p>6 example of intercepting phone messages. I could talk</p> <p>7 about blagging. I could talk about any of the other</p> <p>8 complaints that have been made by the various witnesses.</p> <p>9 Perhaps talking about some other complaint is less</p> <p>10 offensive, because of course they're not necessarily</p> <p>11 criminal, but unless I can identify a concern as part of</p> <p>12 the narrative to justify a regulatory change, then I am</p> <p>13 not addressing, it seems to me, the terms of reference</p> <p>14 which I've been required to do.</p> <p>15 MR WHITE: I don't want to have more than my share of the</p> <p>16 time, but in my submission, there may be a proper line</p> <p>17 to be navigated between a concern and a finding of fact,</p> <p>18 in the sense that the evidence you received about</p> <p>19 a practice within at least one title might properly give</p> <p>20 rise to a concern about whether, in reality, it was so</p> <p>21 confined. That would be different to a finding that it</p> <p>22 was more widespread.</p> <p>23 LORD JUSTICE LEVESON: Actually, what you've just talked</p> <p>24 yourself into it talking about the standard of proof,</p> <p>25 which is actually something we talked about at the very</p> <p style="text-align: center;">Page 51</p>
<p>1 Now, it doesn't have to be everybody and I don't</p> <p>2 think anybody is likely to argue that I shouldn't</p> <p>3 exclude all regional titles, because nobody's suggested</p> <p>4 anything at all about a regional title. I'm just</p> <p>5 speaking entirely hypothetically and I say that because</p> <p>6 those who watch this exchange, if anybody's sufficiently</p> <p>7 interested to watch it, ought to know that this</p> <p>8 dialogue, which is very common between bench and bar --</p> <p>9 MR WHITE: Absolutely.</p> <p>10 LORD JUSTICE LEVESON: -- proceeds upon hypothesis.</p> <p>11 I haven't made findings as yet. I am merely exploring</p> <p>12 what I can do and what I should do, in advance, in</p> <p>13 fairness, if I am minded to proceed in a certain</p> <p>14 direction. So I clarify, with some degree of care, what</p> <p>15 I am saying and nobody should misunderstand. I've not</p> <p>16 made findings of fact against anybody yet. I've a long</p> <p>17 way to go. But I'm investigating the precautionary</p> <p>18 steps I have to take. I know you know that, but those</p> <p>19 who watch this may not.</p> <p>20 So that's the issue. I'm not talking about "the</p> <p>21 press", but equally I can't say, "Well, I am sure it's</p> <p>22 not this paper, I'm not so sure about that one, and I'm</p> <p>23 sure it's this one", because that is likely to offend my</p> <p>24 mantra.</p> <p>25 MR WHITE: I would so submit.</p> <p style="text-align: center;">Page 50</p>	<p>1 beginning. Is it sufficient if I take the view there is</p> <p>2 a real risk that a particular practice has extended, or</p> <p>3 a possibility? One can use different words. If you're</p> <p>4 saying to me that that is sufficient, that it doesn't</p> <p>5 offend my mantra and is sufficient to deal with my terms</p> <p>6 of reference and couldn't be the subject of legitimate</p> <p>7 complaint, well, then, I'd be very interested to hear</p> <p>8 that.</p> <p>9 MR WHITE: I'll reflect on whether or not I'm putting my</p> <p>10 foot in an elephant trap.</p> <p>11 LORD JUSTICE LEVESON: I thought you might want to say that.</p> <p>12 I don't think it's an elephant trap, but I do think it</p> <p>13 is very important.</p> <p>14 MR WHITE: Having sat here and heard a lot of the evidence,</p> <p>15 I can see that that is a very real matter for debate,</p> <p>16 the dividing line I've just formulated.</p> <p>17 LORD JUSTICE LEVESON: All right.</p> <p>18 MR WHITE: Shall I say something about the other two</p> <p>19 matters?</p> <p>20 LORD JUSTICE LEVESON: By all means.</p> <p>21 MR WHITE: The title point. We're looking, on our side, for</p> <p>22 a practical solution with sufficient granularity.</p> <p>23 News International had, at the material time, two</p> <p>24 subsidiaries. Each published two titles. What we're</p> <p>25 concerned about is not to have a system, either under</p> <p style="text-align: center;">Page 52</p>

<p>1 Rule 13 or at later stages, which doesn't sufficiently 2 differentiate the titles and whatever practices and 3 cultures they may have been engaged in. They're run 4 editorially on an entirely different bases. 5 LORD JUSTICE LEVESON: I know, and that's been part of my 6 problem. There is undeniably a difference between the 7 News of the World and the Sun, but to start -- I mean, 8 I think the line I have taken is I've been prepared to 9 allow the News of the World to be identified, not least 10 to protect others. To say it's "a title" and then -- 11 MR WHITE: We understand that. 12 LORD JUSTICE LEVESON: Yes, and I apprehend that that's the 13 same model I would follow, which therefore would 14 distinguish your other title. I think I'd be rather 15 keen not to try otherwise to condescend to individual 16 titles. 17 MR WHITE: Yes. 18 LORD JUSTICE LEVESON: Not least because somebody suggested 19 I should be writing to editors as well, and then I have 20 to be careful about when the editorial chair changed. 21 I can tie myself up for months trying to sort all the 22 permutations and combinations out, and I have no 23 intention of doing that. 24 MR WHITE: To be entirely practical, what we have in mind is 25 that the dividing line would lie between simply naming</p> <p style="text-align: center;">Page 53</p>	<p>1 all this now is because if somebody wants to challenge 2 what I want to do, then they can get on and do it. 3 MR WHITE: Absolutely. 4 LORD JUSTICE LEVESON: Rather than wait until I've produced 5 a document and then have everybody jump up and down 6 about it. 7 The other possibility is this: that I accept the 8 broad thrust of the press that there are so few 9 potential titles that on the class libel point that 10 Mr Caplan made before Lord Justice Toulson in the 11 Divisional Court, I ought to address the issue 12 differently. One possibility is this: that I identify 13 all the possible criticisms I could make of the press, 14 with the evidential support, and ask everybody to deal 15 with the potential criticism. And so there's no mistake 16 about it, obviously, if I take my earlier example, if 17 I were going to criticise an individual, then that would 18 be separate. So I'm not talking about that; I'm talking 19 about the generic criticisms, and I say I prepare 20 a document that copes with one of the submissions that 21 I receive, namely: "Well, we may think of most of the 22 things you could criticise, but you may think of 23 something we've not thought of." 24 MR WHITE: Yes. 25 LORD JUSTICE LEVESON: I'd be amazed if that were the case,</p> <p style="text-align: center;">Page 55</p>
<p>1 NGN, which published both the Sun and the News of the 2 World, as opposed to naming NGN as the publisher of the 3 News of the World in relation to particular criticisms. 4 We don't want spillover into a separate title where it's 5 not justified. 6 LORD JUSTICE LEVESON: I understand that. 7 MR WHITE: Finally on the application of Rule 13 to the 8 press as a whole or a section of it, you've seen what we 9 say in writing. The problem here is really the small 10 class. Particularly if you were to identify, as an 11 exchange between us a moment ago suggested might be in 12 your mind, for example, the tabloid press as a recipient 13 of a particular criticism. There are so few tabloid 14 press publishers that not to send -- 15 LORD JUSTICE LEVESON: I understand the point, and I am 16 going to suggest another alternative for you to 17 consider, which I have been identifying. 18 Let me make it clear that I am very keen indeed to 19 ensure that everybody has the opportunity to make 20 whatever submissions they want to make about whatever 21 potential concerns I might wish to express. My media 22 reaction was -- and indeed it's consistent with 23 Mr Sherborne's submission -- that the press does not 24 constitute a person and is generic, but I have an 25 alternative, and the reason that I am keen to resolve</p> <p style="text-align: center;">Page 54</p>	<p>1 but I recognise the possibility. So what I should do is 2 create a document that lists all the areas of potential 3 criticism of the press, without seeking to distinguish, 4 although I suppose in the evidential material, which 5 would be cross-referenced to the transcript, somebody 6 would be able to say, "Actually, he was talking about my 7 paper or somebody else's paper." Whatever. I'm not 8 going to go there, because that would offend my mantra, 9 and I say: "Right, these are all the potential 10 criticisms, generally, where there is either a criticism 11 or a risk that this has gone beyond it", if I adopt your 12 earlier line -- and it's an interesting postulate -- so 13 that you can address that concern. 14 What I would want, of course, then is not: the Times 15 says about the Times that none of these apply to them, 16 the Sunday Times says about the Sunday Times that none 17 of them apply to them, whatever, because I'm not asking 18 for people to comment upon their own position; I'm 19 asking for submissions about whether I am entitled to 20 reach that conclusion, that either it is a legitimate 21 criticism or the risk of a criticism, to follow the 22 other suggestion, of a section of the press. 23 Now, no submission yet received, save for 24 Mr Sherborne's, which is for different reasons, has 25 sought to go beyond their own position. I understand</p> <p style="text-align: center;">Page 56</p>

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<p>1 that. It's entirely justifiable that you should make 2 submissions on credibility and on Module 1 based upon 3 the position of your titles. They're your clients. But 4 actually, to help me, which I think I'm entitled to ask, 5 I need to know what you say about the broader issue that 6 I have to address. 7 Now, that's another way of doing it. 8 MR WHITE: One immediate concern we would have, the Rule 13 9 letters are confidential under the rules. 10 LORD JUSTICE LEVESON: Yes. 11 MR WHITE: So one would want it kept to the press core 12 participants, this -- 13 LORD JUSTICE LEVESON: Of course. Actually, the real 14 question is whether they're limited to core 15 participants, because I'd have to decide -- there is one 16 national title that is not a core participant, and I'd 17 have to decide whether to give that national title the 18 opportunity to respond. I think I'd be pretty shirty if 19 I got asked to call all sorts of evidence again, but 20 that's a different point. 21 That's something to consider, but of course it would 22 be confidential. It goes without saying that 23 approaching the problem in this way, which then 24 satisfies your concern about the press, means that the 25 press would understand that this is a concern I'm</p> <p style="text-align: center;">Page 57</p>	<p>1 Rule 13, you said that the report must not include any 2 explicit or significant criticism of a person unless 3 they've been given a reasonable opportunity to respond. 4 A little later, you said in another context that you 5 were presently minded to the view that it didn't prevent 6 you, the ongoing police investigation, from criticising 7 an individual whom you did not suggest had actually 8 participated in illegal conduct. 9 My submission is really this -- 10 LORD JUSTICE LEVESON: It's rather different, isn't it? 11 What I was saying was that if I am not going to 12 criticise those who are the subject of present criminal 13 investigation, it seemed unfair to say, well, because X 14 is not presently the subject or, in my judgment, 15 foreseeably the subject of criminal investigation for 16 hacking into phones or whatever, that they can be the 17 subject of criticism when somebody who may -- whose 18 conduct may or may not be more egregious cannot. 19 MR BROWNE: I see that, and of course, the question of the 20 pending police investigation is very important and you 21 will have been assisted by the submissions from 22 Mr Garnham and Ms Michalos. But can I come back to that 23 point in just a moment. The point I'm making for the 24 moment is more fundamental, and it is really this: that 25 the indication that you might serve Rule 13 notices</p> <p style="text-align: center;">Page 59</p>
<p>1 expressing about the press, and I want responses about 2 the press, which might mean that titles that have the 3 least to concern themselves with actually have to 4 address my terms of reference and reflect upon the body 5 of the evidence which I have received, to decide what is 6 the submission they wish to make. 7 MR WHITE: It certainly meets our concern, which is to have 8 an opportunity to respond on anything which might be 9 damning of press as a class. I see that in a sense 10 we've moved together. May I reflect on whether it meets 11 all my concerns? 12 LORD JUSTICE LEVESON: You may indeed. 13 MR WHITE: Thank you very much. 14 LORD JUSTICE LEVESON: You may indeed. Right, Mr Browne? 15 MR BROWNE: Sir, my starting point is the ambit of the 16 Inquiry, because it's from that and from your terms of 17 reference that the self-denying ordinance that you've 18 described seems to flow. We've addressed this in our 19 submissions, which I'm not going to repeat -- I know 20 you'll have read them -- in paragraphs 20 onwards, 21 focusing on, if you like, the straitjacket imposed by 22 the terms of reference and section 5(v) of the Inquiries 23 Act. 24 The matter that concerned us was what you said on 25 12 March, when, in the context of warning letters under</p> <p style="text-align: center;">Page 58</p>	<p>1 because you were minded to make explicit or significant 2 criticism of a person falls foul of your own 3 self-denying ordinance. 4 LORD JUSTICE LEVESON: It depends what the criticism is. 5 MR BROWNE: If it's criticism of an individual, it is going 6 to fall foul of such statements as we set out in 7 paragraph 25(a) of our skeleton argument. You recall 8 that right from the start you said that the Inquiry was 9 not concerned with the apportionment of personal or 10 corporate responsibility. 11 LORD JUSTICE LEVESON: That's true. 12 MR BROWNE: On 7 November -- this is 25(b) of our skeleton 13 argument -- you said the questions of individual 14 responsibility clearly fall within part 2. There are 15 many other quotations that have been assembled by 16 Mr White and his team -- you will find them in 17 paragraph 3.2 of their submissions -- but you have the 18 point, I think, which is simply this: that individual 19 criticism, the impugning of responsibility for any act 20 by any individual or identified group, would seem to 21 fall foul of the self-denying ordinance, and the 22 self-denying ordinance was a necessary concomitant of 23 the way in which your terms of reference were drafted. 24 LORD JUSTICE LEVESON: In relation to the conduct of the 25 business of newspapers, that may be right, but it may</p> <p style="text-align: center;">Page 60</p>

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<p>1 not be right if I reject the evidence of witnesses who 2 have given evidence to the Inquiry. 3 MR BROWNE: Well, the rejection of evidence given to the 4 Inquiry would seem to go hand in hand with a finding 5 that there was misconduct by individuals or specific 6 groups and that the denials of knowledge were found by 7 you to be false. 8 LORD JUSTICE LEVESON: It depends what they've denied. It 9 depends what the subject matter is. Let me give you an 10 example. I have to be careful. (Pause) 11 Assume that I was to find that that the one rogue 12 reporter defence was not merely wrong, but by senior 13 personnel was known to be wrong. I'm not saying I will; 14 I'm merely asking the question. 15 Now, that doesn't implicate somebody who allowed 16 that account to proliferate in the initial wrong. In 17 other words, that doesn't mean to say for a moment that 18 the person who allowed that line to continue to run knew 19 at the time or was party at the time to any illegal 20 conduct. 21 MR BROWNE: Well, that -- 22 LORD JUSTICE LEVESON: But I would have to alert that 23 person, if I reach that conclusion, to the risk that 24 I might make that finding, and I don't believe that 25 finding would offend my self-denying ordinance.</p> <p style="text-align: center;">Page 61</p>	<p>1 You sought first of all to shut me up and then to 2 console me by saying that you were looking at the entire 3 area at a high level and not wishing to condescend to 4 detailed analysis. It's natural that you should be 5 conscious the whole time of the need to finish this 6 Inquiry before Doomsday, but nonetheless, that exchange 7 gave us the assurance that we were looking for that this 8 was going to be, as I say, conducted at a high level of 9 generality without condescending to detailed analysis. 10 The disavowal of detailed analysis goes hand in hand 11 with the non-adversarial nature of this Inquiry, which 12 means that allegations have not necessarily been put to 13 witnesses who may subsequently be the subject of 14 criticism. Nor have counsel, heeding the need to finish 15 within the year, challenged the detail. You'll recall 16 that some time ago Mr Sherborne tried to take the point 17 against me that I had not challenged some particular 18 evidence given by one of his clients and sought to 19 invite you to draw an inference from that, and you 20 rightly had no truck with that submission and pointed 21 out that it might have been a good submission in 22 adversarial litigation but it cut no ice in 23 inquisitorial. 24 Can I move on and direct the issue which I think 25 Mr White hasn't really touched on, which is the question</p> <p style="text-align: center;">Page 63</p>
<p>1 MR BROWNE: That, I fear, is where you and I part company, 2 but I think you have my submission, which is that the 3 self-denying ordinance naturally follows from the fact 4 that the terms of reference, being into the culture, 5 practices and ethics of the press, necessarily means 6 that you have to operate at a high level of generality. 7 LORD JUSTICE LEVESON: I agree with that. 8 MR BROWNE: Can I just give an example? You'll recall the 9 last time that I was here, on 20 March, you and I had 10 a discussion -- you stopped me making what you called 11 a speech about the -- 12 LORD JUSTICE LEVESON: But it was a speech, Mr Browne. 13 MR BROWNE: No, it hadn't even begun. 14 LORD JUSTICE LEVESON: I think it had, but never mind, and 15 I let you make it in the end anyway. 16 MR BROWNE: Well, I'm not easy to stop. 17 The point was this: you'll recall that what I was 18 seeking to demonstrate was that the evidence of 19 a Mr Harrison that the Sunday Mirror had employed 20 a surveillance team of ex-special forces operators to 21 follow the initial suspect in the Ipswich murder case 22 was plainly wrong, and that it could have been 23 discovered to be wrong by the simple expedient of the 24 Inquiry team getting hold of the Sunday Mirror, which 25 recorded what had happened at the interview.</p> <p style="text-align: center;">Page 62</p>	<p>1 of active participation as against mere knowledge. The 2 suggestion that you made in your remarks on 12 March was 3 that there might be a significant distinction between 4 the two. We would submit that active participation in 5 illegal activities such as phone hacking is not the only 6 possible basis for a police investigation, either in the 7 present, still less in the future, or for criminal 8 prosecution. That's paragraphs 17 to 18 of our 9 submissions. 10 LORD JUSTICE LEVESON: So you think, do I gather, that if 11 I think somebody has simply not told me the truth in 12 this Inquiry, I can't say that? 13 MR BROWNE: It depends what he's not told you the truth 14 about, of course, but can I just expatiate on that. 15 Knowledge of illegal activities such as phone hacking, 16 a failure to intervene and/or a subsequent lying denial 17 of knowledge could all too easily lead to police 18 investigation and charges. The mere fact that there was 19 not actual participation is not the end of the matter, 20 and I can understand why you may not take from 21 a non-criminal practitioner like me, but if one looks at 22 paragraph 3.2(2) of the News International submissions, 23 one sees there reviewed a range of potential offences 24 which are runners and riders in that context, including 25 conspiracy, aiding and abetting, encouraging and --</p> <p style="text-align: center;">Page 64</p>

<p>1 LORD JUSTICE LEVESON: Mr Browne, I may not be a media 2 lawyer, but a criminal lawyer I once was, some time 3 before this Inquiry, and don't I also have to have 4 regard to the reality of the position? 5 MR BROWNE: Well, the reality of the position, if you permit 6 me to say so, is contained in the submissions on behalf 7 of the Metropolitan Police. Can I just remind you of 8 what they say between paragraphs 5 and 8? They point 9 out that the risk to an individual of investigation or 10 prosecution is all the greater if the individual 11 concerned is so closely involved as to have knowledge of 12 illegal activity. 13 In paragraphs 6 and 7, they go on to develop, by 14 reference to the statutory provisions, the points that 15 have been made in the submissions on behalf of 16 News International, and finally -- and this is 17 absolutely critical, in my submission -- in paragraph 8 18 they say: 19 "Any public finding by the Inquiry that a particular 20 individual had knowledge of illegal activity and has 21 falsely denied that runs a serious risk of interfering 22 with criminal prosecutions." 23 I'll refer to just one of the reasons. It's at 24 8(2): 25 "That individual's state of knowledge may be highly</p> <p style="text-align: center;">Page 65</p>	<p>1 were to make findings about a section of the press. 2 A section of the press would obviously be 3 a circumscribed group, which would have to be 4 circumscribed by some form of definition of the group. 5 LORD JUSTICE LEVESON: Why? 6 MR BROWNE: Well, if one is talking about a group, not the 7 entirety of the press, somehow or other you have to 8 describe the nature of that group. 9 LORD JUSTICE LEVESON: Why? 10 MR BROWNE: Well, I -- 11 LORD JUSTICE LEVESON: I'm looking at the culture, practice 12 and ethics of the press. What I am seeking to do to 13 ensure, for example, in relation to the regional press, 14 that it isn't suggested for one moment by anyone that 15 any of the concerns that have been expatiated before me 16 apply to them. So I think that unless anybody wants to 17 suggest to the contrary, fairness requires me to say 18 that. 19 That's not the same -- in fact, I'm not sure whether 20 any of the other titles has had nobody speak about it. 21 I've not checked, and so don't ask some firm of 22 solicitors to beaver through pages and pages and days 23 and days as to whether it's so. I want to be fair, but 24 I also need to be clear to justify the narrative that 25 goes on to the need to consider the regulatory regime.</p> <p style="text-align: center;">Page 67</p>
<p>1 material to a conspiracy charge, but also if they're 2 called as a witness for or against others." 3 LORD JUSTICE LEVESON: Yes, I might have a view about that, 4 too. 5 MR BROWNE: Well, there's no shortage of views in this 6 Inquiry. We've been going for many days now. But the 7 police know where the investigation is going. The 8 police have a lively appreciation of what the criminal 9 offences are which they may be minded to investigate 10 and/or subsequently prosecute, and I would ask you to 11 take that warning very seriously indeed, not least 12 because it is emphasised by the reference to the 13 Ribemont v France case in Strasbourg in 1995. The 14 analogy between an adverse finding by this Inquiry and 15 what the minister and the police officer said at the 16 press conference is a very close one. 17 LORD JUSTICE LEVESON: I think it's very different, but 18 there it is. 19 MR BROWNE: Right. 20 The so-called class libel analogy. You expressed 21 a view about that. You said, I recall, on 12 March, 22 that you didn't find it very helpful. Let me see if 23 I can challenge that provisional view. 24 First of all, you've been very careful this 25 afternoon to talk about a section of the press, if you</p> <p style="text-align: center;">Page 66</p>	<p>1 MR BROWNE: That I understand, and were you merely to 2 distinguish between the national and the regional press, 3 that might not fall foul of the submission that I am 4 making. The submission I'm making is that if the 5 Inquiry were to start limiting the groups, say, by 6 reference to tabloids, popular tabloids, red tops, the 7 Sunday -- 8 LORD JUSTICE LEVESON: I was actually quite careful not to 9 do that. 10 MR BROWNE: We're looking into the future, and all I'm doing 11 is to indicate how the Inquiry should proceed, as and 12 when it comes to the question of serving warning 13 letters, because if the truth is that the groups are 14 going to be defined in a way where the members of the 15 group are so small that the allegation can be reasonably 16 understood as referring to any individual, then we say, 17 if you're against me on my main point about the terms of 18 reference, that each member of the group should be 19 served with a notice. It's in that connection that the 20 analogy with a class libel, which fits with the way in 21 which the common law, both as laid down in Nutfirm(?), 22 Lord Atkin and Lord Porter in the midst of the Second 23 World War, and in the American restatement, is most 24 helpful, that there you have the danger, if you have 25 a small group, such that what is said about them by way</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 of criticism may be understood as referring to 2 particular individuals rather than simply: all lawyers 3 are thieves.</p> <p>4 My last point is this: you suggested to Mr White 5 that one way out of this quandary might be to identify 6 all the possible criticisms that you could make, 7 together with the evidential support. That would be, in 8 my submission, out of the frying pan into the fire, 9 because what would happen then is that because the 10 evidential support is all in the public domain and can 11 be traced back because it's on the website, it would be 12 very easy for people to put two and two together. In 13 other words, it would be a jigsaw with a very small 14 number of pieces, and if you made criticisms of that 15 sort, even if qualified by saying that they were only 16 possible criticisms you could make, the moment that you 17 indicated the evidential support, the cat would be out 18 of the bag and the individuals and corporations 19 identified --</p> <p>20 LORD JUSTICE LEVESON: They wouldn't actually, because when 21 I serve the Rule 13 notice, they're entirely 22 confidential.</p> <p>23 MR BROWNE: I'm getting to the stage where the Inquiry 24 actually makes its findings --</p> <p>25 LORD JUSTICE LEVESON: So is the consequence of that that</p> <p style="text-align: center;">Page 69</p>	<p>1 would be an unfair criticism of you if you were to make 2 criticisms without tagging them to evidential support 3 which pointed to individuals, because it is the nature 4 of the Inquiry set up in two parts and the terms of 5 reference that follow. It clearly intended that part 1 6 should be the generality. Part 2, if it ever takes 7 place, should be the specifics.</p> <p>8 LORD JUSTICE LEVESON: I understand. So let me understand: 9 are you submitting that the alternative possibility that 10 I ventilated to Mr White is sufficient to satisfy 11 Rule 13 and that I thereafter only need to be concerned 12 about how much I put into the public domain when 13 I publish the report, because, of course, the Rule 13 14 notice is confidential?</p> <p>15 MR BROWNE: That's the point which you made earlier, which 16 I see the force of. The problem arises when and if 17 criticism is made in the Inquiry report. That's the 18 moment at which outsiders can start to assemble a jigsaw 19 which may just consist of two or three pieces.</p> <p>20 LORD JUSTICE LEVESON: At the moment I'm only ruling on the 21 Rule 13 issues. It may be that we'll have to return to 22 what the report should contain in the later submissions 23 that are to be addressed. I repeat that I am very keen 24 to be fair to everybody, as I've said, and that's why 25 I extended what I believe is the terms of the obligation</p> <p style="text-align: center;">Page 71</p>
<p>1 I should positively not include in the final report the 2 evidential basis for which I reach the conclusions that 3 I reach?</p> <p>4 MR BROWNE: No. Well --</p> <p>5 LORD JUSTICE LEVESON: That's the corollary.</p> <p>6 MR BROWNE: The problem is that if you do that, making what 7 the Inquiry believes to be general findings and 8 therefore findings which comply with the self-denying 9 ordinance, the moment you juxtapose or couple those 10 possible findings with the evidential support, because 11 all the evidence is on the Inquiry website, the 12 individuals can be identified.</p> <p>13 LORD JUSTICE LEVESON: I understand the point, but does that 14 mean you're encouraging me to publish a report which 15 does not provide the evidential basis for the 16 conclusions that I reach?</p> <p>17 MR BROWNE: Well, certainly --</p> <p>18 LORD JUSTICE LEVESON: If I do that, I apprehend that some 19 of those assembled in this room will write an editorial 20 to the effect that I've just plonked this report out of 21 the ether and there's no evidential basis for it at all, 22 yet I have tons of it.</p> <p>23 MR BROWNE: The public will be able to judge it for 24 themselves, those who have been following the evidence 25 given over the days and weeks of the Inquiry, but it</p> <p style="text-align: center;">Page 70</p>	<p>1 not to prejudice criminal proceedings to the 2 self-denying ordinance, as I've so described it, and 3 I am happy to consider it.</p> <p>4 But on the other hand, it seems to me critical that 5 I provide a narrative base for the conclusions that 6 I reach, in order to deal with what appears to me to be 7 the public concern arising out of what has transpired 8 during the course of these hearings.</p> <p>9 MR BROWNE: That I understand, and that is obviously why 10 anyone who receives a Rule 13 notice may, in a curious 11 way, welcome it, because it gives them the voice that 12 they may not have had up till now.</p> <p>13 Take the Sunday Mirror and the suggestion of the 14 surveillance team. Now, we would obviously want, if 15 that were to be the subject of criticism and if we 16 haven't dispatched it as an allegation already, to say 17 something about that --</p> <p>18 LORD JUSTICE LEVESON: Mr Browne, I don't believe for one 19 moment that I will be suggesting any criticism or 20 potential criticism at that level of detail. You 21 referred to several of my earlier utterances to similar 22 effect. I haven't actually considered what is the 23 general heading of the point that may or may not be made 24 about the way in which the press deal with massive 25 police investigations, but it won't be that they hire</p> <p style="text-align: center;">Page 72</p>

<p>1 surveillance teams, because even if it were so -- I'm 2 not for a moment suggesting it is, but even if it were 3 so, it's not a general problem that really does go to 4 the culture, practices and ethics of the press. It may 5 be a specific manifestation of an issue, but it would be 6 the issue that I would be concerned about, not the 7 manifestation.</p> <p>8 So there will be a level of generality in any event. 9 So I don't think you need be concerned about Ipswich.</p> <p>10 MR BROWNE: Thank you. I don't think I have anything more 11 to say at any rate until we get the notices, assuming we 12 do, or alternatively until we end up reading the report.</p> <p>13 LORD JUSTICE LEVESON: But, Mr Browne, I hope you'll take 14 part in the continuing debate that we're having, because 15 your contribution is always welcome and valued. But do 16 I gather that the alternative approach to Rule 13 that 17 I raised with Mr White does seem to you to be an 18 appropriate way of proceeding or do you need to think 19 about that?</p> <p>20 MR BROWNE: No, I don't accept that, because, first of all, 21 we suggest that it will identify individuals when 22 subsequently there is any publication, and because the 23 Inquiry should not even be considering making criticisms 24 which can be linked to individuals -- in other words, 25 it's back to the very start of my submission --</p> <p style="text-align: center;">Page 73</p>	<p>1 MR BROWNE: Well, so far as individuals are concerned, that 2 is, we say -- and this is the starting point -- the 3 necessary consequence of the terms of reference and the 4 self-denying ordinance.</p> <p>5 LORD JUSTICE LEVESON: But the evidence is always going to 6 be on an individual basis.</p> <p>7 MR BROWNE: Yes, but --</p> <p>8 LORD JUSTICE LEVESON: Once you accept that I can criticise 9 the press, I have to identify the evidential basis, and 10 in the main, people have spoken about individuals and 11 titles.</p> <p>12 MR BROWNE: Yes.</p> <p>13 LORD JUSTICE LEVESON: I've made it clear that I'm not going 14 to criticise individuals or name individuals, but how 15 otherwise can I do it? It seems to me that the effect 16 of what you're saying is that I can't do anything.</p> <p>17 MR BROWNE: That is the quandary that the terms of reference 18 have created for you, that the moment evidence was 19 permitted challenging the propriety of the conduct of 20 individuals, individual editors, individual newspapers, 21 there arose a problem which was not simply that of 22 unfairness, in that the allegations were published under 23 the protection of absolute privilege, but has prevented 24 them from, by reason of the inquisitorial nature of the 25 press, being able to refute them in the way in which</p> <p style="text-align: center;">Page 75</p>
<p>1 LORD JUSTICE LEVESON: Yes, I understand that. I understand 2 that, and it may be that the criticisms shouldn't be 3 linked to individuals and it may be I'll have to think 4 about how I deal with that in the report, but in order 5 to provide appropriate Rule 13 notice, I have to 6 identify the general concern that I have and provide the 7 evidential basis for it. So that, it seems to me, as 8 I read Rule 13, demands that I do the exercise to which 9 I have just referred.</p> <p>10 Now, it may be -- and this might be a wonderful way 11 of shortening the report -- that I can say that I did 12 provide all sorts of evidential justifications for the 13 criticisms but because I don't want to name anybody, I'm 14 not going if to give them to you, and if you want to 15 read them, then there is 70-odd days of transcript 16 available to all. They can get on with it.</p> <p>17 MR BROWNE: I'm afraid I don't accept --</p> <p>18 LORD JUSTICE LEVESON: All right.</p> <p>19 MR BROWNE: -- attractive though it may be, that what you 20 suggested to Mr White is the way out, because, first of 21 all, you shouldn't be there to begin with, and having 22 got there, it is not the way out, for the reasons that 23 I have given.</p> <p>24 LORD JUSTICE LEVESON: But then effectively you're saying 25 I shouldn't be criticising anybody for anything.</p> <p style="text-align: center;">Page 74</p>	<p>1 they would have been able if this had been an 2 adversarial process.</p> <p>3 LORD JUSTICE LEVESON: But evidence has been refuted. You 4 yourself were very keen that we call evidence dealing 5 with some of the allegations that had been made, and 6 I think we either called it or read it, in relation to 7 the film. And there's no doubt that other core 8 participants who have been concerned have indeed called 9 evidence to rebut allegations. I heard no small amount 10 of evidence about an article in one newspaper, which had 11 led to a great deal of press coverage, when the relevant 12 victim gave evidence. Anyway, I have the point.</p> <p>13 MR BROWNE: You rightly refer to Starsuckers and we were 14 grateful when, after some weeks, it was eventually 15 decided by the Inquiry team to look at the transcripts 16 themselves, but we never actually were provided with 17 copies and the reason that you refused the application 18 to allow to us see them was, precisely as you've said on 19 other occasions, because you were not intending to make 20 specific findings --</p> <p>21 LORD JUSTICE LEVESON: I think the only bits of the 22 transcripts that you did not see were those parts that 23 my team concluded were absolutely irrelevant to any 24 point you wanted to make or any point -- in other words, 25 in criminal terms, they were not disclosable under the</p> <p style="text-align: center;">Page 76</p>

<p>1 CPIA.</p> <p>2 MR BROWNE: As I said, we were grateful that I think Mr Barr</p> <p>3 finally looked at them.</p> <p>4 I see from the clock it's 4.20. I think I've made</p> <p>5 my submissions.</p> <p>6 LORD JUSTICE LEVESON: Thank you, Mr Browne. I'll ask</p> <p>7 Mr Sherborne in a moment. Does any other press core</p> <p>8 participant want to say anything on this subject? I'd</p> <p>9 be very grateful if people could give some thought to</p> <p>10 the alternative approach to Rule 13, and in particular,</p> <p>11 to the requirement that I will have that people address</p> <p>12 the conduct, the culture, practice and ethics of the</p> <p>13 press, not just their own titles.</p> <p>14 Do the police want to say anything about this?</p> <p>15 MS MICHALOS: Sir, yes. You've seen our written submissions</p> <p>16 and Mr Browne has very helpfully made a number of the</p> <p>17 points that I would like to make, but I think that there</p> <p>18 are four points that I would wish to emphasise.</p> <p>19 Before I do that, it's fair to say that the MPS here</p> <p>20 are in a similar position as Mr Garnham outlined in</p> <p>21 relation to the submissions on the approach to evidence</p> <p>22 generally prejudicing the criminal proceedings, in that</p> <p>23 anything said here may be relied on by future defendants</p> <p>24 in support of an abuse argument, so it's necessary for</p> <p>25 submissions to be circumspect and to a degree we are</p> <p style="text-align: center;">Page 77</p>	<p>1 list of paragraph 8 of our submissions on that point.</p> <p>2 The third matter that I wish to raise was that on</p> <p>3 12 March, sir, you indicated that you were considering</p> <p>4 findings that individuals falsely denied knowledge to</p> <p>5 this Inquiry. Again, we would submit that that is</p> <p>6 a highly risky area for the Inquiry to embark upon, in</p> <p>7 particular because this may lead to later arguments that</p> <p>8 there was a violation of Article 6 if those who were</p> <p>9 found in the Inquiry's judgment to have lied,</p> <p>10 effectively, on oath, are then being relied on --</p> <p>11 LORD JUSTICE LEVESON: I think there's authority for the</p> <p>12 proposition that my failure to accept evidence does not</p> <p>13 mean necessarily that they're guilty of perjury.</p> <p>14 MS MICHALOS: But it goes to the question of a risk as to</p> <p>15 a fair trial, and this leads into my fourth point, which</p> <p>16 is the de Ribemont case.</p> <p>17 LORD JUSTICE LEVESON: But hang on a minute. Are you</p> <p>18 suggesting that I cannot say anything about anybody</p> <p>19 because at some stage the police may get around to</p> <p>20 thinking about what they said in the Tribunal and may</p> <p>21 decide to prosecute them for some offence purely based</p> <p>22 upon what they've said in this Inquiry?</p> <p>23 MS MICHALOS: No. What's being submitted is that the</p> <p>24 Inquiry should strive not to make any findings that</p> <p>25 somebody falsely denied that they had knowledge of</p> <p style="text-align: center;">Page 79</p>
<p>1 walking a tightrope.</p> <p>2 The first point that I would wish to emphasise is</p> <p>3 that the investigations are ongoing and there have been</p> <p>4 48 arrests under the various operations, but that figure</p> <p>5 includes --</p> <p>6 LORD JUSTICE LEVESON: I know who's been arrested.</p> <p>7 MS MICHALOS: Sir, you said earlier:</p> <p>8 "In my judgment, those foreseeably won't be the</p> <p>9 subject of criminal investigation."</p> <p>10 And with respect, it's submitted there is a great</p> <p>11 degree of uncertainty around that.</p> <p>12 LORD JUSTICE LEVESON: In the areas that I am thinking</p> <p>13 about, I don't think there's any uncertainty at all, but</p> <p>14 I understand the position.</p> <p>15 MS MICHALOS: Secondly, the nature and breadth of the</p> <p>16 offences under consideration which are listed in our</p> <p>17 skeleton. These do involve offences in which the</p> <p>18 surrounding circumstances and the knowledge of others</p> <p>19 are highly relevant and the proof of an agreement may be</p> <p>20 made by a matter of inference in relation to relation to</p> <p>21 conspiracy, for example.</p> <p>22 So in these circumstances, it's very difficult,</p> <p>23 I would submit, for the Inquiry to be sure that any</p> <p>24 finding of knowledge isn't going to impact on any future</p> <p>25 criminal proceedings, and I would refer you, sir, to the</p> <p style="text-align: center;">Page 78</p>	<p>1 conduct because that person may be a witness in a future</p> <p>2 criminal prosecution, or they may be a defendant in</p> <p>3 a future criminal prosecution, and a public finding by</p> <p>4 a public authority as to their credibility is something</p> <p>5 that carries with it a risk -- and I put it no higher</p> <p>6 than that -- of interfering with Article 6 rights, for</p> <p>7 the reasons given in the Allenet de Ribemont case,</p> <p>8 namely that public statements by authorities on ongoing</p> <p>9 criminal investigations should be dealt with discretion</p> <p>10 and circumspection.</p> <p>11 I know, sir, that you indicated to Mr Browne that</p> <p>12 you indicated that case was irrelevant.</p> <p>13 LORD JUSTICE LEVESON: Of course it is because I'm not going</p> <p>14 to say anything about anybody who is the subject of</p> <p>15 present criminal investigation.</p> <p>16 MS MICHALOS: It may be different factually, but it's not</p> <p>17 different in principle, because the principle underlying</p> <p>18 it is that comments by public authorities of this nature</p> <p>19 can violate Article 6, and I would submit that applies</p> <p>20 equally in respect of those who may be witnesses, which</p> <p>21 is something that the Inquiry cannot be sure about at</p> <p>22 this stage.</p> <p>23 So those are the points that I would wish to</p> <p>24 emphasise, and that --</p> <p>25 LORD JUSTICE LEVESON: Did the police think about</p> <p style="text-align: center;">Page 80</p>

<p>1 challenging this Inquiry in its entirety? Because the 2 effect of what you're saying may be that I shouldn't 3 have started at all.</p> <p>4 MS MICHALOS: No, that's not the position at all, because 5 the Inquiry's been divided into part 1 and part 2, and 6 sir, you've repeatedly emphasised this is not about who 7 did what to whom. Findings of this nature strays into 8 that area, I would submit. Finding of --</p> <p>9 LORD JUSTICE LEVESON: If I find that somebody who's 10 previously said, "It's obvious there was phone hacking 11 going on", and then has come to me and said, "Well, 12 I didn't know that at all, that wasn't true" -- I'm not 13 then entitled to say, "Do you know, I didn't actually 14 believe that denial"? I can't do that? Is that the 15 effect of your submission?</p> <p>16 MS MICHALOS: I would submit it's something that the Inquiry 17 should not do because of the potential risk.</p> <p>18 LORD JUSTICE LEVESON: What is the risk that you're talking 19 about?</p> <p>20 MS MICHALOS: It's the risk that I've identified.</p> <p>21 LORD JUSTICE LEVESON: No, no, but in that particular case, 22 is it the risk that reliance will be placed upon what 23 was said in writing initially? On the fact that he 24 denied it on oath or the fact that I didn't believe his 25 denial on oath?</p> <p style="text-align: center;">Page 81</p>	<p>1 prosecution?</p> <p>2 MS MICHALOS: Sir, that's not what I've said.</p> <p>3 LORD JUSTICE LEVESON: No, I know, but it's the effect of 4 what you're saying, that I can provide no detail of any 5 sort.</p> <p>6 MS MICHALOS: It isn't, sir, with respect, what I'm saying 7 and it's not the effect of what I'm saying. It's 8 specifically limited to findings relating to knowledge 9 and credibility of witnesses that may impact on 10 a criminal investigation.</p> <p>11 LORD JUSTICE LEVESON: But --</p> <p>12 MS MICHALOS: The only other thing that I would add is that 13 if this is a course that the Inquiry is set on, one 14 possibility of a way forward is to consider publishing 15 a report where these sort of details and these kind of 16 findings are delayed for publication. So a partially 17 redacted report, so any of these sort of findings are 18 delayed until after any criminal prosecution. But 19 that's a procedural matter for you, sir.</p> <p>20 LORD JUSTICE LEVESON: Well, I understand.</p> <p>21 MS MICHALOS: The basic submission of the police is that, 22 given the self-denying ordinance and the fact this 23 Inquiry has been split into two parts, there should be 24 every effort made not to make any findings that may 25 interfere with criminal proceedings.</p> <p style="text-align: center;">Page 83</p>
<p>1 MS MICHALOS: Most importantly, it's the fact that a public 2 Inquiry did not believe the denial on oath is the most 3 important --</p> <p>4 LORD JUSTICE LEVESON: I'd rather believe what he said first 5 time around?</p> <p>6 MS MICHALOS: I submit that everything you have just said 7 indicates the problem, which is what is going on there 8 is an investigation as to which of those facts were 9 true, which may be something that falls to be decided 10 and argued about again in a criminal prosecution. That 11 is the risk here. It's obvious that there is 12 a difficulty, in that none of us here at the bar have an 13 indication as to precisely the areas that you're 14 considering making these findings about or the witnesses 15 that this relates to specifically, but the principles 16 are the same, I would submit, for all of us. It's 17 a dangerous area.</p> <p>18 LORD JUSTICE LEVESON: Well, all right.</p> <p>19 MS MICHALOS: Ultimately, I would submit there is no need 20 for these sort of findings because the Inquiry has been 21 divided into part 1 and part 2. These type of findings 22 are more appropriate to part 2, I would submit.</p> <p>23 LORD JUSTICE LEVESON: Then you have to answer the question: 24 am I supposed to say nothing at all about the evidence 25 I've heard, because it might interfere with the</p> <p style="text-align: center;">Page 82</p>	<p>1 LORD JUSTICE LEVESON: I don't intend to interfere with 2 criminal investigation. I've made that very clear. 3 Where we may differ from one another, Ms Michalos, is 4 what interferes with a criminal investigation. 5 Right, yes, Mr Sherborne?</p> <p>6 MR SHERBORNE: Sir, with the greatest of respect, the 7 submissions that you've heard belong very firmly in 8 Alice in Wonderland, we say. I'll try to keep this 9 unusually brief.</p> <p>10 It's accepted that the genesis of this Inquiry was 11 the huge outcry that the practice of accessing people's 12 voicemails generated. Whilst various individuals, for 13 example in News International, are the subject of 14 ongoing criminal investigation, the public's concern is 15 about this practice generally and what it may say about 16 the press as a whole, or certain sections of it, and not 17 simply the acts of the journalists who have been 18 arrested, let alone one particular newspaper.</p> <p>19 It's not just, sir, that you've heard evidence from 20 the three individuals you referred to. There's been 21 significant evidence within the course of this Inquiry 22 directed not just towards the widespread use of this 23 illegal technique, but also, and we say critically, the 24 knowledge or awareness of this practice within different 25 newspapers or amongst senior executives in the industry.</p> <p style="text-align: center;">Page 84</p>

<p>1 LORD JUSTICE LEVESON: I appreciate that. I gave the 2 example because it was a very, very simple manifestation 3 of the issue, which actually relied not upon my 4 preferring one witness's evidence to another witness's 5 evidence but only what I thought about the evidence of 6 one witness based upon his or her own material. 7 MR SHERBORNE: Sir, yes, exactly. Whether you accept or 8 reject that evidence is obviously a matter for you, but 9 we say this: you asked rhetorically what are you meant 10 to do with this evidence if you find there was evidence 11 of such knowledge as a matter of generality. And I say 12 "generality" because this doesn't, in my submission, 13 offend the mantra, as it's been called. With respect, 14 despite Mr White's delicate entreaties or the rather 15 heavier salvos by Mr Browne, nothing you said by way of 16 example offends this self-denying ordinance. None of 17 the examples that you posited during the course of 18 discussions offends that self-denying ordinance at all, 19 and if Mr Browne is right, for example, in the way he 20 puts it, this self-denying ordinance is more 21 a straitjacket and a blindfold as well, because in 22 effect you are not able to do anything with that 23 evidence. 24 We say that cannot be right. The position is much 25 more straightforward. If the Inquiry reaches</p> <p style="text-align: center;">Page 85</p>	<p>1 that I can't make any criticisms at all, however framed, 2 then it becomes quite difficult to see where this 3 Inquiry can go. 4 What I would therefore invite the core participants 5 to do is to consider the exchange, particularly the 6 exchange that I had with Mr White and Mr Browne, and 7 reflect upon the approach to Rule 13 in the first case, 8 because that's all I'm deciding at this moment. What 9 I can do thereafter may have to be the subject of 10 further argument. 11 It's sufficient if I say that although I will 12 reflect long and hard on all that I have heard this 13 afternoon, I will need considerable persuasion to the 14 effect that I cannot fairly do justice to the terms of 15 reference while at the same time keeping faith with my 16 wish not to impede any criminal investigation or offend 17 the approach that I took, which was to place those who 18 weren't being investigated in a worse position than 19 those who were. 20 I'll reserve the position in relation to core 21 participants and give a decision as quickly as I can. 22 I wonder if I could ask core participants who wish to 23 make further short submissions on the exchange. In 24 particular, I'm conscious that I have created a new idea 25 for Rule 13, which generated as a result of reading the</p> <p style="text-align: center;">Page 87</p>
<p>1 conclusions that it was well-known that these unlawful 2 or improper practices were taking place, or that those 3 who denied knowledge did so falsely, then these are 4 conclusions which can and should be fully addressed in 5 the report. How else, I ask rhetorically, can the 6 inevitable questions which have been raised in the minds 7 of the somebody about the culture, practices and ethics 8 of the press and which, by definition, will not be dealt 9 with in any criminal investigation -- how else, we say, 10 can they be properly answered? 11 It's not just a matter, we say, of satisfying the 12 public's interest. It's also a matter of ensuring that 13 this Inquiry fulfils its terms of reference under part 1 14 as comprehensively as possible. 15 LORD JUSTICE LEVESON: Well. 16 MR SHERBORNE: We say it's as simple as that. I'm not going 17 to repeat the submissions that are set out in writing. 18 LORD JUSTICE LEVESON: Thank you. 19 MR SHERBORNE: Unless I can assist you, given the time, with 20 any of the other matters. That's all I wish to say on 21 behalf of the core participant victims. 22 LORD JUSTICE LEVESON: Thank you very much indeed. It may 23 be that I will have to add to the list of issues for the 24 future what I can publish in a report, but if the effect 25 of some of the submissions that I have received means</p> <p style="text-align: center;">Page 86</p>	<p>1 submissions I received, and I'd be happy to receive 2 their views as to that approach. 3 Anything else? Thank you very much. 4 (4.39 pm) 5 (The hearing adjourned until 9.15 am the following day) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 88</p>

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