

<p>1 2 (2.00 pm) 3 LORD JUSTICE LEVESON: Yes, Mr Barr. 4 MR BARR: Sir, good afternoon. The witness we're hearing 5 from now is Mr Martin Clarke. 6 MR MARTIN PETER CLARKE (sworn) 7 Questions by MR BARR 8 MR BARR: Mr Clarke, could you confirm your full name, 9 please? 10 A. Martin Peter Clarke. 11 Q. And could you confirm that the contents of your witness 12 statement are true and correct to the best of your 13 knowledge and belief? 14 A. I do. 15 Q. You tell us a little bit about your background at the 16 start of your witness statement. You've been employed 17 by the Daily Mail, albeit not continuously, since 1987. 18 You've worked in a wide variety of posts, including the 19 picture, news and features desks. You've edited the 20 Scottish Daily Mail, Ireland on Sunday. You were the 21 executive editor of the Mail on Sunday, the launch 22 editor of Live magazine and London Lite, and you've been 23 in charge of MailOnline editorial since 2006 and 24 appointed publisher in 2010. 25 Perhaps I could pause there to ask you about the</p> <p style="text-align: center;">Page 1</p>	<p>1 that is the right word. 2 A. It isn't the word we use, but -- 3 Q. It's the old media term I know. A little bit about the 4 circulation of the MailOnline, and in particular you say 5 it's now by far the biggest newspaper website in the UK, 6 and according to comScore, the most visited newspaper 7 website in the world. 8 A. Yes, that was true that month. I believe the New York 9 Times got their heads -- ahead of us again last month, 10 I have to say that in fairness to them, but if we're not 11 the biggest, we're very nearly the biggest. Depends 12 which month you choose. 13 Q. As for your income, I'm not interested in precise 14 figures but I would like to know essentially what is 15 your business model, how do you make money? 16 A. Essentially we make money from advertising. We are 17 a free website. We took a decision a couple of years 18 ago that we weren't going to put up a paywall because we 19 did not believe that for a general interest newspaper 20 a paywall was a viable proposition. It obviously works 21 for papers like the FT or the Wall Street Journal, but 22 when everything else, when all the other news on the 23 Internet is free, whether it be from Sky TV or the BBC 24 in this country, or Yahoo or AOL or one of the other 25 foreign providers of English language news, then it</p> <p style="text-align: center;">Page 3</p>
<p>1 difference in terminology there. What is the difference 2 between being in charge of MailOnline editorial and its 3 publisher? 4 A. As publisher I'm responsible for both the editorial and 5 the commercial sides of the operation, so I'm ultimately 6 responsible for our profit or loss, and also the 7 editorial output, which is unusual in newspapers but not 8 unusual in the online world, in the digital world. 9 LORD JUSTICE LEVESON: So is that the equivalent of being 10 the editor and the managing editor? 11 A. Yes, similar. If I can elaborate, it's because 12 obviously on the digital side it's a very fast-moving 13 business and you need to be able to take decisions very 14 quickly, and obviously it streamlines the whole process 15 if you're only really arguing with yourself rather than 16 with a managing director. 17 LORD JUSTICE LEVESON: I'm not sure, sometimes arguing with 18 yourself is rather more difficult. 19 A. It is. 20 MR BARR: You were outside of Associated Newspapers news 21 editor of the Daily Mirror at one stage and you've also 22 edited the Scotsman and were editor-in-chief of the 23 Scottish Daily Record and Sunday Mail; is that right? 24 A. Yes. 25 Q. You tell us next a little bit about the circulation, if</p> <p style="text-align: center;">Page 2</p>	<p>1 struck us that it would be very difficult to charge for 2 things that people could get elsewhere for free. 3 Q. You make the point in paragraph 7 that your content is 4 available not just on conventional computers but also 5 now on tablet computers and on smartphones, and that you 6 have a growing readership, again if I may use the old 7 media term -- 8 LORD JUSTICE LEVESON: It's probably still readership. 9 MR BARR: One hopes so, sir -- on this type of platform 10 growing at a rate of 10 per cent a year? 11 A. More like a month. 12 Q. Sorry, a month. So is this very much the future of 13 digital news? 14 A. Well, both. We see the future jointly as people 15 accessing digital news via the web on a PC or via the 16 web on a tablet but also via native apps and we provide 17 native apps for the iPhone, the iPad and any kind of 18 Android device, and we're also building them for other 19 mobile phones because they offer an ease of access on 20 a small screen that you don't really get from a normal 21 website. And yes, they're growing faster than our web 22 traffic is but that's extraordinarily fast. But our web 23 traffic is still growing as well. 24 Q. You turn next to your editorial independence and 25 business structure. Can I ask you, who did you report</p> <p style="text-align: center;">Page 4</p>

1 to?

2 **A. Editorially I report to Paul Dacre, the editor-in-chief.**

3 **And on a business side, I report to the managing**

4 **director of Associated Newspapers, Kevin Beatty.**

5 Q. And on the editorial side, what sort of frequency of

6 contact do you have with Mr Dacre?

7 **A. I speak to Mr Dacre most times -- most days of the week,**

8 **but we don't sit down and discuss in detail the content**

9 **of MailOnline. He trusts his editors to get on with it.**

10 **In the same way as he trusts the editor of the Mail on**

11 **Sunday or the editor of the Daily Mail in Ireland or the**

12 **Daily Mail in Scotland to get on with it, he trusts us**

13 **to use our best judgment. So, you know, I'm responsible**

14 **for what goes out on MailOnline, for good or ill, not**

15 **Paul.**

16 Q. Accepting entirely that it is your decision ultimately

17 and not suggesting that it's in any way improper, is

18 there any occasion when Mr Dacre will seek to persuade

19 you to follow one editorial line over another?

20 **A. Never.**

21 Q. So far as the proprietor of Associated Newspapers is

22 concerned, what contact do you have with him?

23 **A. I see the chairman on a reasonably frequent basis.**

24 **Sometimes you'll see him several times a month,**

25 **sometimes you won't see him for several months. It**

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1 **depends on his movements in this country and elsewhere.**

2 Q. Again without suggesting anything improper, does he ever

3 seek to persuade you to take one editorial line over

4 another?

5 **A. Not in the least. His engagement with the business is**

6 **on a long-term strategic business basis. He's**

7 **interested in the long-term strategic direction of the**

8 **business, not the day-to-day editorial.**

9 Q. Sticking with questions about your business and business

10 structure, you tell us you have around 70 journalists

11 a day spread between London, New York and Los Angeles.

12 The phrasing there is a little curious: "around 70

13 journalists a day". Do you have a dynamic --

14 **A. It varies from day to day. It varies -- obviously with**

15 **that many journalists, some will go sick so there won't**

16 **be the same number every day, we have a smaller number**

17 **on a Saturday and a Sunday, and obviously some days are**

18 **busier than others. And it varies according to demand.**

19 **Probably this week we'll have more journalists on to**

20 **cover some big stories than we'd normally have.**

21 Q. In terms of your business procedures, do you use

22 Associated Newspapers' group procedures or do you have

23 your own bespoke procedures for news online?

24 **A. Sorry, can you explain that question again? I didn't**

25 **quite catch that.**

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1 Q. Do you use group procedures or do you have your own

2 procedures at the MailOnline?

3 **A. To do what?**

4 Q. Just general business procedures. For example, whatever

5 practices you might have on the checking of stories --

6 **A. I'm slightly at a loss with the question. In terms of**

7 **if you're asking do we operate the same way as print**

8 **journalists, then yes, and we hold ourselves to the same**

9 **standards of accuracy, libel, contempt and any other**

10 **regulations.**

11 Q. I'm thinking of your written policies and procedures.

12 **A. Yes. Our journalists are subject to the same contract**

13 **and HR procedures as the journalists on the paper.**

14 LORD JUSTICE LEVESON: So these 70 journalists, you say who

15 are split between London and America, are they full-time

16 on MailOnline? They're full-time engaged --

17 **A. Not all of them are full-time. Some are casual**

18 **journalists, the same as in any other newspaper.**

19 LORD JUSTICE LEVESON: But they're not also working for the

20 Daily Mail and Sunday Mail?

21 **A. Not concurrently. Some of them will have worked on the**

22 **paper in the past and some of them will be going back to**

23 **the paper at some point and some have never worked on**

24 **the paper. It varies.**

25 LORD JUSTICE LEVESON: Just help me, remind me. Could you

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1 tell me how many journalists there are on, say, the

2 Daily Mail or the Mail on Sunday?

3 **A. I'll be honest, I don't know. A lot more than 70.**

4 LORD JUSTICE LEVESON: I'm sure I've been told and we can

5 find the details.

6 **A. Off the top of my head, I wouldn't like to answer that.**

7 LORD JUSTICE LEVESON: Thank you.

8 MR BARR: Moving now to the way in which you obtain stories,

9 and I'm looking at paragraph 10 of your witness

10 statement, you say here that as a rolling news service

11 you, like the television and the radio, are:

12 "... happy to report, providing it is legally safe

13 and with proper attribution, what other reputable news

14 organisations are saying while we try to confirm it

15 ourselves."

16 I'd like to ask you arising from that: why is it

17 that you publish something at all which you have not

18 yourselves checked?

19 **A. I think that's because we're a 24-hour rolling news**

20 **service and not a once-a-day newspaper publication.**

21 **We're just following the same practice that any other**

22 **rolling news service would follow on the TV or the**

23 **radio. You'll quite often hear, won't you, on the Today**

24 **programme in the morning they're reporting something**

25 **that's being reported elsewhere by a news agency or**

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1 **a foreign TV station that they're unable to**
 2 **substantiate, and I think as long as -- we just follow**
 3 **exactly the same procedure.**
 4 **If every other news organisation in the world is**
 5 **reporting, you know, that the leader of North Korea has**
 6 **died, obviously it's incumbent upon us to do the same.**
 7 **We can't spend all day trying to wait until it's**
 8 **absolutely confirmed beyond all doubt. And that's what**
 9 **I mean by that. But we wouldn't report anything that**
 10 **didn't come from a source that wasn't reputable, or**
 11 **that, even if it was from a reputable source, would be**
 12 **in any way legally dangerous or subject to a complaint,**
 13 **because obviously it's no excuse that you didn't**
 14 **originate the report.**
 15 Q. I understand the generality of that answer, but if you
 16 are adopting other news agencies' stories, you are
 17 effectively putting yourselves into their hands, to some
 18 extent, as to the accuracy of the story. I'd like to
 19 know whether there's any specific procedures that you
 20 have to try and manage that risk.
 21 **A. All newspapers use content from reputable agencies, be**
 22 **it Reuters or AP or domestic agencies, and some of them,**
 23 **or the vast majority of them you know you can trust, and**
 24 **that's the way newspapers, TV and radio operate. If you**
 25 **get a piece of information from a source that you don't**
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1 **trust, then you have to check it before you publish.**
 2 Q. A problem more specific to an Internet publisher such as
 3 yourself is, as you describe later in your witness
 4 statement, you are competing against other Internet
 5 publishers who are subject to very different legal
 6 regimes to the one which you adhere to. How do you
 7 manage the risk of picking up somebody else's story,
 8 which might comply with, say, American law, but doesn't
 9 comply with UK law?
 10 **A. We have to comply with British law. So if an American**
 11 **website was reporting something that by British**
 12 **Standards was, say, libellous or in contempt, then we**
 13 **couldn't do it, clearly.**
 14 Q. Could you give us an indication, broadly speaking, of
 15 the sort of proportion of your content which is being
 16 taken from other sources and published --
 17 **A. It depends what you mean by -- the vast -- you know, we**
 18 **have 70 journalists working very hard. We have all the**
 19 **content that comes from the newspaper, obviously, as**
 20 **well on top of the content that we produce ourselves, so**
 21 **the vast majority would be our own stories or stories**
 22 **from reputable agencies to whom we pay a fee, and that's**
 23 **just the way any newspaper works. We're no different in**
 24 **that.**
 25 Q. Do your journalists monitor, for example, the
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1 Twittersphere and take stories from what is being
 2 tweeted?
 3 **A. We monitor the Twittersphere and quite often Twitter**
 4 **will alert you to a story that you weren't otherwise**
 5 **aware of. Sometimes the tweet will be the story. If**
 6 **somebody tweets a comment, then obviously very often we**
 7 **will -- the fact that somebody's tweeted that comment is**
 8 **the story. Obviously you have to be careful that it is**
 9 **genuinely the tweet from the person you think it is, and**
 10 **there have in the past been rogue tweets with fake**
 11 **accounts that have fooled other people on the Internet,**
 12 **but Twitter now takes steps to make sure that celebrity**
 13 **accounts are who they say they are, they verify it, so**
 14 **you know if an account is the person it claims to be.**
 15 **Quite often the tweet will be the story.**
 16 Q. Can I have some idea of the level of checking that your
 17 organisation goes to before publishing a tweet-based
 18 story? Will you contact the maker?
 19 **A. It depends. If it was a celebrity who tweeted a picture**
 20 **of themselves and a comment attached and that is -- then**
 21 **that is the story, and providing we know from previous**
 22 **experience that that tweet account is genuine, then the**
 23 **story is checked. That's it.**
 24 Q. What --
 25 **A. If the tweet was alleging something contentious, then**
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1 **obviously you would have to check it out in the normal**
 2 **way to normal journalistic standards. It depends.**
 3 Q. What steps do you take to ensure that tweets really are
 4 from who they say they are?
 5 **A. Unless they're verified accounts, then we treat them**
 6 **with huge suspicion. But Twitter now do provide a means**
 7 **for people to verify their accounts.**
 8 Q. You make the important point that one of the advantages
 9 of doing business online is you're able to collect
 10 statistical information about how many visitors you've
 11 got to your site, what they're reading and for how long,
 12 and that helps you to understand what your readers want
 13 to read.
 14 **A. Yes.**
 15 Q. Can you help us with what that information is pointing
 16 you towards?
 17 **A. It helps us -- it helps us craft a product that we know**
 18 **is engaging. We don't follow our numbers exclusively --**
 19 **and I should point out that we don't pay attention to**
 20 **the overall number of people reading a particular story**
 21 **who may have been directed to it from Google or**
 22 **wherever. We're only really interested in the people**
 23 **landing on our dedicated home pages, the home page, the**
 24 **US home page or the UK home page, we're only interested**
 25 **in their behaviour because we want to know what stories**
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1 are they interested in, so that we can make sure that
 2 the stories they are most interested in are projected
 3 best and that we follow best. But we don't follow that
 4 slavishly.
 5 Quite often -- it also helps us to craft headlines,
 6 so it means that if there's a story that I as
 7 a journalist and an editor think is really important
 8 that people should be reading but aren't reading, then
 9 it gives me the opportunity to recraft the headline or
 10 the intro or the picture to make sure that people do
 11 read it. It's not a question of just putting the most
 12 popular stories at the top, it's not as simple as that,
 13 but it allows you to craft the most engaging product
 14 that you can and clearly it's been a huge part of
 15 MailOnline's success because it's those direct visitors,
 16 the people who are landing direct on your home page,
 17 that the business is built around and that we edit for.
 18 We don't edit for aggregators, we don't edit for Google
 19 News or anyone else, we edit for people who type in
 20 "Daily Mail" into their browser bar and come to us
 21 directly every day.
 22 Q. Your site is particularly famous for the right-hand bar
 23 with celebrity news stories, and you tell us in your
 24 witness statement that that accounts for about a third
 25 of the hits that you get on your site --

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1 A. May I just say, that bar isn't exclusively showbiz.
 2 There's feature material in there -- but it's lighter
 3 content than we project on the left-hand side of the
 4 page.
 5 Q. What I want to come to is whether you have two separate
 6 markets running in parallel, the news market and the
 7 celebrity market --
 8 A. No. No, we don't. Only about 10 per cent of our
 9 visitors in a month only look at a news story, and about
 10 only 10 per cent only look at a showbiz story. The vast
 11 majority of our users look at both. If they were two
 12 completely separate markets, it would probably make more
 13 sense to have two separate websites. The reason it
 14 works is because the content works together, which is
 15 the way British newspapers have always worked. If you
 16 buy a tabloid paper, it's a mixture of serious news and
 17 entertainment. That's always been Fleet Street's model.
 18 LORD JUSTICE LEVESON: Could I just interrupt and ask you
 19 about two separate markets running in parallel in
 20 a slightly different context? That is the market in the
 21 UK and the market in America. I choose America because
 22 that's where your other journalists are. You've made it
 23 clear that you ensure that you comply with English law
 24 in relation to your content. Do you comply with English
 25 law or American law in relation to your American

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1 content, which is presumably a different site?
 2 A. Generally, if it's an American court case, we would
 3 legal it to American standards. Obviously not British
 4 standards, because we wouldn't perhaps report most
 5 American court cases. They have an entirely different
 6 legal system. So yes, our American content is produced
 7 in compliance with American law, and our British content
 8 is produced in compliance with British law. Of course,
 9 where it gets confusing is where you have stories that
 10 are live in both markets, and that's something that
 11 obviously this Inquiry has to kind of grapple with.
 12 LORD JUSTICE LEVESON: That's actually why I asked the
 13 question. But presumably you then have to work to the
 14 highest standard, because you can publish less in
 15 America, but you can't publish more in the UK simply
 16 because you're also publishing in America. Is that
 17 right?
 18 A. May I set out the commercial background to this first,
 19 because I think that -- I need to explain that
 20 background, explain why we publish in America first of
 21 all, because I think it's important that everyone
 22 understands that.
 23 As I explained earlier, we took a decision not to
 24 put up a paywall because we didn't think we could make
 25 it pay, and we still believe that's the case.

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1 Advertising yields online are lower than in print, so to
 2 have a viable future you have to be big, you have to
 3 have scale. Luckily the Internet provides us with an
 4 answer to that, it provides us with the rest of the
 5 world to which we can now export our content directly
 6 without having to set up a print plant in every country.
 7 So that's why we have an American operation.
 8 The third part of the pillar is that Fleet Street's
 9 legacy, its vibrant legacy, the fact that we are used to
 10 doing entertaining news that engages people and people
 11 find compelling, gives us a competitive advantage
 12 against American websites who maybe don't come from that
 13 kind of background. So that explains the success we've
 14 had so far.
 15 So in answer to your question, no, we can't always
 16 follow the highest standard of regulation if that
 17 regulation is unreasonable.
 18 If I can give you a specific example,
 19 Pippa Middleton, for instance, British newspapers have
 20 a voluntary embargo on pictures of her taken going about
 21 her daily business on the basis that she's a private
 22 individual, so we don't use pictures of her going to the
 23 shops or going to work. We only use pictures of her
 24 when she's at a public event. But I think your Inquiry
 25 has already heard that there are hundreds of pictures

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<p>1 that drop in on the wires of her every day. The 2 question is why are those pictures dropping if nobody's 3 using them? The answer is they're being used every day 4 in America by sites with which I'm in competition. 5 We don't use those pictures because we stick by the 6 agreement that the British newspapers have made, and 7 that's a commercial disadvantage that I just have to 8 live with. 9 Similarly, there are things that we can't write, 10 pregnancy stories, for instance. The PCC says that 11 we're not allowed to say somebody somebody's pregnant 12 unless they've confirmed it, whereas American websites 13 reveal celebrities' pregnancies all the time. There was 14 a case a few weeks ago where it was reported that 15 Sienna Miller was pregnant and every other celebrity 16 website in America, with which I'm in competition on one 17 level, reported that and we sat on our hands for hours 18 and hours and hours not reporting it until, bizarrely, 19 her sister confirmed it on Twitter, at which point we 20 thought, well, I guess that's okay then. 21 We're happy to deal with that imbalance, if you 22 like, and the fact that we don't live on a level playing 23 field with our American competitors, but it's important 24 to us that it doesn't get any more skewed, if that 25 answers your question.</p> <p style="text-align: center;">Page 17</p>	<p>1 you only have one -- 2 A. One website. 3 LORD JUSTICE LEVESON: -- website and therefore -- 4 A. With two home pages. 5 LORD JUSTICE LEVESON: I understand. And therefore I do 6 understand that you do mean in answer to my question: 7 yes, we do have to restrict what we publish on our one 8 website -- 9 A. Yes. 10 LORD JUSTICE LEVESON: -- to comply with the highest 11 standards required of English laws; we could get away 12 with far more if we were only publishing in America. 13 A. Absolutely. The point I was making is that would be 14 very difficult, a very difficult position to sustain if 15 the highest standard was significantly higher, is what 16 I'm saying. We're already at a competitive 17 disadvantage. And this isn't hypothetical competition, 18 this is the competition British newspapers are going to 19 have to enter if they want to have a future, which is 20 why we have a New York office, why the Guardian have 21 also chosen to invest heavily in America, because 22 they're a free website, presumably they've done the same 23 calculations we have and have realised that the English 24 language news is not one market any more, it's a global 25 market, it's anywhere where they can speak or read</p> <p style="text-align: center;">Page 19</p>
<p>1 LORD JUSTICE LEVESON: Yes, but actually then your answer to 2 my question isn't no. Your answer to my question is 3 actually yes, because you don't put on the American 4 website that which you wouldn't put on the British 5 website. 6 A. No, we don't, because there is no such thing as an 7 American -- this is important to understand. There's no 8 such thing as the American website or the British 9 website. There is just the website. If we publish 10 a story in this country, it's visible everywhere in the 11 world. Similarly -- 12 LORD JUSTICE LEVESON: Yes, it's visible -- I don't know, 13 you'll have to help me. Do you have a -- I think the 14 domain name for you in this country has a co.uk on the 15 end. Presumably you have a different domain address in 16 America? 17 A. We have various domain addresses, but it doesn't matter 18 where you are in the world. We don't have 19 dailymail.com, by the way, that belongs to an American 20 newspaper in Charleston, but we have mailonline.com, 21 which will take you to our website. But if you type 22 mailonline.com in this country, you'll still go to our 23 website. The internet -- it's the World Wide Web. 24 LORD JUSTICE LEVESON: I understand that. So what you're 25 saying to me is you do not actually have two websites,</p> <p style="text-align: center;">Page 18</p>	<p>1 English, and fantastically, Fleet Street is very well 2 placed to exploit that market. 3 In the 1980s when they deregulated the City, it gave 4 the City a chance to compete around the world for 5 financial business, and it did so fantastically. In a 6 way this is Fleet Street's Big Bang, this is our chance 7 to compete with everyone else in the world, and the home 8 of the Internet is America, the biggest news providers 9 in the world are American. My main competition isn't 10 really, to be honest, the other Fleet Street papers. My 11 main competition is AOL or Yahoo or People Magazine. 12 LORD JUSTICE LEVESON: But they are aggregators, aren't 13 they? 14 A. No, Yahoo employs hundreds of journalists. AOL HuffPo 15 employ hundreds of journalists. They produce content as 16 well as aggregate content. But to be honest, most big 17 sites now are a combination of the two. They are a 18 combination of content producers and content 19 aggregators. 20 LORD JUSTICE LEVESON: We'll doubtless come to that. 21 MR BARR: Just picking up on the structure of your website, 22 and I have it on screen in front of me here, I can see 23 that under the headline "MailOnline" there are a number 24 of tabs and the third tab is US. 25 A. That will be the US home page.</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 Q. Is it right then that if someone logs on here and clicks 2 the US tab and gets the US home page, are they getting 3 content which is edited to American legal standards or 4 to British legal standards?</p> <p>5 A. It depends on whether it's an American story or 6 a British story. If you look at the American page 7 you'll find British content on it, the same as if you 8 look at the British page you'll find stories that 9 originated in America on it, and if it's an American 10 court case it will be legalised to American legal 11 standards. If it's a British court case, it will be 12 legalised to British standards. We don't produce two 13 versions of one story, or incredibly rarely do we 14 produce two versions of one story. We don't geoblock 15 content. Everything we publish is available everywhere 16 in the world, so it's published according to the demands 17 of that story.</p> <p>18 Q. And so what do you do in the case of a story which has 19 privacy implications and it involves a global superstar?</p> <p>20 A. If it was -- I mean, before this Inquiry was set up, we 21 had the superinjunction controversy and we clearly then 22 obeyed British law, we're a British company. We don't 23 break British law. It would be -- but American websites 24 with whom I'm in competition obviously can ignore that. 25 Any of them could have chosen to publish those names</p> <p style="text-align: center;">Page 21</p>	<p>1 read it from an American website.</p> <p>2 Q. Let's explore that in a little more detail. As a matter 3 of principle, do you think it is good business practice 4 to produce your product ethically?</p> <p>5 A. You have to produce a product that's trusted. As I say, 6 our business is not built around sensational one-off 7 hits that may attract a lot of people virally. We build 8 our business by growing the number of people who visit 9 us regularly every day. In the UK over 60 per cent of 10 our visitors come regularly. They don't come via Google 11 or Facebook or one of the other third-party routes in, 12 they come directly as a matter of choice, and that's how 13 you build a business because those people consume the 14 majority of your pages and you know who they are and you 15 can build a relationship with them, and clearly you 16 could not do that if you weren't producing a website 17 that they trusted and respected.</p> <p>18 Q. Isn't there an advantage, therefore, to having a product 19 which can be seen as professional, kite marked to a gold 20 standard?</p> <p>21 A. Undoubtedly.</p> <p>22 Q. And as we saw at the outset of your evidence, the 23 imbalance that you tell us about hasn't prevented you in 24 fact from becoming, if it's a neck and neck race, one of 25 the two websites vying for the most popular website in</p> <p style="text-align: center;">Page 23</p>
<p>1 without any comeback whatsoever.</p> <p>2 This is the point I'm trying to make. We operate at 3 a competitive disadvantage in some ways, but it's 4 a disadvantage we're happy to accept, and 5 journalistically we can see, for instance, when it comes 6 to libel or contempt, some of the things that are 7 written in America about live trials as a British 8 journalist you find very shocking. So we're happy to 9 abide by the British law and British press regulation.</p> <p>10 The only point I'm trying to make is that it does 11 put us at a competitive disadvantage against not 12 disreputable sites but very reputable publishers and it 13 would be very difficult for us going forward if that 14 regulatory environment was to become even stricter so 15 that we ended up with a situation where maybe there was 16 something that most normal people, reasonable people, 17 would think was perfectly -- should be published yet we 18 could not publish because of, say, an injunction, and 19 American newspapers could publish. It's not 1936 any 20 more, for instance. If you had a corollary of that 21 situation where there was something that for whatever 22 reason British newspapers weren't publishing and 23 American publishers were publishing, as with the 24 abdication, the British public would not be in 25 ignorance. It would just be able to click on it and</p> <p style="text-align: center;">Page 22</p>	<p>1 the world?</p> <p>2 A. We don't find the current regulatory environment too 3 disabling. There are occasions when it can be 4 frustrating or irritating, but it's not something that 5 points a dagger at the heart of our business. But if 6 things were significantly tightened, then it may well 7 do.</p> <p>8 Q. Do you mean tightened in the sense of the bar of -- the 9 standards bar being raised higher, or do you mean 10 tightened in the sense of --</p> <p>11 A. I think standards is a loaded --</p> <p>12 Q. If I could just finish the question.</p> <p>13 A. Okay.</p> <p>14 Q. Do you mean raising the bar as to the standard required 15 or do you mean the degree of compliance with the bar set 16 at the level that it is?</p> <p>17 A. I think -- no, I think standards is a loaded term. 18 I don't -- you know, in terms of accuracy, the gold 19 standard of an editorial website is accuracy: are you 20 right? Then you get into matters of value. One 21 person's intrusion of privacy is another person's 22 non-intrusion of privacy.</p> <p>23 LORD JUSTICE LEVESON: But if accuracy is the only 24 standard --</p> <p>25 A. Not the only standard. I said the most important, not</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 the only.</p> <p>2 LORD JUSTICE LEVESON: Yes, but therefore you're being</p> <p>3 somewhat overcritical of Mr Barr, because what he's</p> <p>4 trying to get at is the slightly different question of</p> <p>5 if there is a bundle of standards of which the most</p> <p>6 important is accuracy, the question that I think he's</p> <p>7 asking is: are you complaining that that bundle</p> <p>8 shouldn't get more restricted or are you complaining</p> <p>9 that the way in which the bundle is enforced shouldn't</p> <p>10 become more restricted?</p> <p>11 A. I think essentially what concerns me most about the</p> <p>12 areas of this Inquiry is obviously the privacy area. We</p> <p>13 comply with the PCC code on privacy. We have a very</p> <p>14 good record against that, both in terms of PCC</p> <p>15 complaints and external legal complaints, or, as</p> <p>16 I explained by giving you the example of</p> <p>17 Pippa Middleton, it causes some issues at the moment,</p> <p>18 but they are not unendurable. But if the goalposts were</p> <p>19 to be moved in that area specifically, then that would</p> <p>20 put us at a competitive disadvantage against all sorts</p> <p>21 of people, and I don't just mean celebrity websites in</p> <p>22 the United Kingdom. Huffington Post, for instance,</p> <p>23 relies very heavily on celebrity content, and they've</p> <p>24 already set up an office here and if we moved our</p> <p>25 goalposts here, they could quite happily ignore them, if</p> <p style="text-align: center;">Page 25</p>	<p>1 Huffington Post, if I may say so. We haven't heard from</p> <p>2 anyone in a senior position at AOL HuffPo at all.</p> <p>3 Q. But their position in the United Kingdom is that they</p> <p>4 abide by United Kingdom law.</p> <p>5 A. Yes.</p> <p>6 Q. So in their United Kingdom operations they're on a level</p> <p>7 playing field with you, aren't they?</p> <p>8 A. At the moment in terms of what they publish about</p> <p>9 British celebrities in Britain, they operate to</p> <p>10 a different standard when it comes to American</p> <p>11 celebrities. I've seen celebrity stories on</p> <p>12 Huffington Post and royal stories on Huffington Post</p> <p>13 that we wouldn't have run, because we stick within --</p> <p>14 Q. On their American site?</p> <p>15 A. No, there is no such -- on the Internet a page is</p> <p>16 a page, it's not a website. A page is just the bit you</p> <p>17 direct people to in that country, but everything you</p> <p>18 publish, everything HuffPo publish wherever they publish</p> <p>19 in the world is available to be viewed anywhere in the</p> <p>20 world via the right link. It's just a question of what</p> <p>21 you choose to project. The home pages are a bit of</p> <p>22 a red herring. International websites are just one</p> <p>23 organic thing, maybe with different outward faces.</p> <p>24 Q. Can we move now to paragraph 26 of your statement, where</p> <p>25 you -- we'll deal with this briefly, I hope -- you say:</p> <p style="text-align: center;">Page 27</p>
<p>1 they chose.</p> <p>2 I think that's what concerns me most. You know, if</p> <p>3 we need to tighten up on the enforcement of anything,</p> <p>4 it's the law of the land. This Inquiry's been set up</p> <p>5 because of a failure to enforce the laws, not</p> <p>6 regulation.</p> <p>7 LORD JUSTICE LEVESON: Well, you'll start an argument with</p> <p>8 me, Mr Clarke, which I'm not sure you'd want to do.</p> <p>9 A. I certainly don't.</p> <p>10 LORD JUSTICE LEVESON: The issue might be cast in slightly</p> <p>11 different terms. I mean, I've seen assertions just like</p> <p>12 you've identified, "Oh, it's all a question of enforcing</p> <p>13 the law", and then I've seen equally headlines where the</p> <p>14 police have done that and arrested journalists, saying,</p> <p>15 "Oh, it's become a Stasi state, the way they're</p> <p>16 arresting journalists", so actually there's a risk of</p> <p>17 trying to have it both ways.</p> <p>18 A. I'm giving my opinion.</p> <p>19 LORD JUSTICE LEVESON: Well I understand.</p> <p>20 A. I certainly wouldn't criticise police for making</p> <p>21 arrests.</p> <p>22 MR BARR: Picking up on one of the details from that answer,</p> <p>23 you talked about the Huffington Post in the United</p> <p>24 Kingdom and the Inquiry has heard from --</p> <p>25 A. You've heard from a very junior member of the</p> <p style="text-align: center;">Page 26</p>	<p>1 "Fleet Street's intense competitiveness may have led</p> <p>2 some publishers down a murky path in recent years for</p> <p>3 which there can be no excuse but I believe that those</p> <p>4 abuses and criminality were largely confined to one</p> <p>5 newspaper group."</p> <p>6 Can I ask you, do you there have in mind one</p> <p>7 particular form of criminality or are you speaking about</p> <p>8 press conduct in general?</p> <p>9 A. Without wishing to irritate Lord Leveson, this Inquiry</p> <p>10 was set up specifically because of the issue of phone</p> <p>11 hacking. That was what precipitated it. Its terms of</p> <p>12 reference were eventually much broader, and that's quite</p> <p>13 as it should be, but the catalyst was phone hacking, and</p> <p>14 yes, that's what I'm talking about.</p> <p>15 Q. So if I draw your attention to the considerable body of</p> <p>16 evidence that this Inquiry has heard suggestive of</p> <p>17 difficulties on a more widespread basis in terms of</p> <p>18 press practice, culture and ethics, you wouldn't be</p> <p>19 seeking to suggest that there's no problem at all, would</p> <p>20 you?</p> <p>21 A. I think the -- I think -- I think they're -- I think</p> <p>22 there are very, very few problems in groups other than</p> <p>23 the one that's at the centre of most of this trouble.</p> <p>24 I've worked for the Mail, as you pointed out, on and off</p> <p>25 for 20 years. It's an ethical decent newspaper run by</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 decent people --</p> <p>2 Q. I'm not --</p> <p>3 A. I can't speak for the rest of Fleet Street, I can only</p> <p>4 really speak for the Mail.</p> <p>5 Q. Can I ask you about how your publication deals with</p> <p>6 corrections. You tell us in paragraph 32 of your</p> <p>7 witness statement one of the beauties of being an online</p> <p>8 publisher is you can correct matters very quickly.</p> <p>9 I take it that that's simply by taking down the post?</p> <p>10 A. Not always. Sometimes it's a matter of just going in</p> <p>11 and editing the story to correct a mistake in fact.</p> <p>12 Sometimes it's a question of taking it down. The</p> <p>13 Internet is an iterative process. We have far more</p> <p>14 interplay with our -- both in terms of the people</p> <p>15 reading us, because they can comment, and quite often</p> <p>16 we've changed a story either because somebody's pointed</p> <p>17 out an error of fact in it, one of our readers, or</p> <p>18 because they've pointed out to us that we've made an</p> <p>19 unfair interpretation of something. So that's one</p> <p>20 level. So it evolves over time through the interaction</p> <p>21 with the readers.</p> <p>22 But we also have a more interactive relationship</p> <p>23 with the people we're writing about, particularly</p> <p>24 celebrities, for instance. Quite often they will ring</p> <p>25 up and say, "You didn't get that quite right", or, "I'd</p> <p style="text-align: center;">Page 29</p>	<p>1 correction either amended or erased. I don't recall</p> <p>2 somebody ever ringing up saying, "I don't like that</p> <p>3 story, you've got that completely wrong, but don't just</p> <p>4 kill it, please leave it up but correct it. Or put a</p> <p>5 correction up and leave the story amended". Very, very</p> <p>6 rarely do people want that. Obviously if there's a PCC</p> <p>7 adjudication that we've lost, and there have been</p> <p>8 a couple, then it's part of the agreement that we do</p> <p>9 make it plain that there's a -- that we made a mistake</p> <p>10 and this was the story and this is the PCC's ruling.</p> <p>11 Q. Do you think --</p> <p>12 A. And we have to post those prominently, but 99 per cent</p> <p>13 of the time, if not more, people would just want the</p> <p>14 mistake corrected or removed.</p> <p>15 Q. Do you think as a matter of practice it might be a good</p> <p>16 idea to post something recording the fact that there has</p> <p>17 been a correction so that those who have read the</p> <p>18 earlier copy, who might revisit your site, are aware</p> <p>19 that something they've read earlier has been corrected?</p> <p>20 A. I think if somebody -- I think it would be impractical</p> <p>21 to record every single change you make as you go along.</p> <p>22 As I say, we're editing constantly, we're improving,</p> <p>23 we're polishing, we're changing headlines, we're</p> <p>24 changing intros. We're constantly -- it's an evolving</p> <p>25 organic animal of a product. So you couldn't record</p> <p style="text-align: center;">Page 31</p>
<p>1 rather you didn't say that", or, "Actually the truth is</p> <p>2 this", so quite often we'll just correct content as we</p> <p>3 go along. That's the way the Internet works. It's not</p> <p>4 like a newspaper where you publish it once and it's --</p> <p>5 there it is in print and it's there forever more.</p> <p>6 Digitally it doesn't work like that. Or sometimes we'll</p> <p>7 just take the story down if --</p> <p>8 LORD JUSTICE LEVESON: It's actually not there forever more,</p> <p>9 because if it's in print, then it's gone by the</p> <p>10 following day, whereas if it's there online, it's</p> <p>11 recoverable forever.</p> <p>12 A. Well, in print it's recoverable from any newspaper</p> <p>13 library.</p> <p>14 LORD JUSTICE LEVESON: Oh yes.</p> <p>15 A. And it has a tangibility and a physicality that you can</p> <p>16 go for. The point is that's why the Internet -- if we</p> <p>17 kill a story, it's not there forever more, it's gone.</p> <p>18 Within half an hour or so, it's vanished.</p> <p>19 MR BARR: In what circumstances do you go further and draw</p> <p>20 explicit attention to the fact that there's been</p> <p>21 a correction?</p> <p>22 A. I would say 99 per cent of the time, if people want</p> <p>23 either a small correction made or if they really object</p> <p>24 to a story and we agree with them and decide to remove</p> <p>25 it, 99 per cent of the time they would just want that</p> <p style="text-align: center;">Page 30</p>	<p>1 every single change you made as you went along, it would</p> <p>2 be impractical. But if somebody wanted us -- felt</p> <p>3 strongly that we should, then we would. Wherever</p> <p>4 possible, I try to -- where I think we have made</p> <p>5 a mistake, I try to correct as quickly and as cleanly as</p> <p>6 we can.</p> <p>7 Q. If --</p> <p>8 A. It's -- which is why we have a -- I think digitally we</p> <p>9 have a very different relationship with the people we</p> <p>10 write to and the people we write about.</p> <p>11 Q. In what circumstances do you publish apologies other</p> <p>12 than as a result of a PCC adjudication?</p> <p>13 A. I can't think that we have.</p> <p>14 Q. You tell us --</p> <p>15 A. If I can elaborate, because if the person is happy with</p> <p>16 the result of whatever complaint they've made, then they</p> <p>17 clearly haven't asked for an apology.</p> <p>18 Q. You tell us at paragraphs 33 to 35 about the level of</p> <p>19 certain types of complaint. You tell us that in the</p> <p>20 last three years you've had 205 legal complaints, 35</p> <p>21 were for privacy issues and of those three led to you</p> <p>22 making compensation payments and you tell us that you've</p> <p>23 had just six privacy complaints via the PCC. Those</p> <p>24 statistics speak for themselves in the context of --</p> <p>25 A. If I can just say the privacy payouts were all foreign</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 courts, where we maybe fell foul of the fact that in 2 Europe -- in Europe, basically and in some European 3 jurisdictions they have a different level of privacy 4 from that which we have in the UK, which is -- we're 5 running out of time so I don't want to get into that, 6 but that's becoming another big issue.</p> <p>7 LORD JUSTICE LEVESON: Don't worry about the time, 8 Mr Clarke. We can factor in sufficient time to cope 9 with what you consider is sufficiently important.</p> <p>10 A. May I raise this issue then? Because I think it is one 11 that the Inquiry may wish to consider, which is that in 12 France and Germany, in particular, they have a different 13 level of privacy. If we take a picture in France or 14 Germany, then we try -- we're not -- it's not our 15 jurisdiction, and it's understandable sometimes that we 16 make a mistake. We try and follow the law of that 17 locality. But we now have a situation where we have 18 some personalities, particularly one French personality, 19 who is trying to sue us for pictures not taken in France 20 but taken perfectly reasonably and legally in America, 21 which would not be in breach of the PCC, let alone 22 British privacy law such as it is, and we are going to 23 dispute those because it seems to me unreasonable for 24 foreign nationals to export their own countries' levels 25 of privacy wherever they travel around the world.</p> <p style="text-align: center;">Page 33</p>	<p>1 in Britain.</p> <p>2 A. No, but --</p> <p>3 LORD JUSTICE LEVESON: Your complaint is that the French 4 have a different standard, which, if you're going to 5 publish in France, you run the risk of falling foul of.</p> <p>6 A. No, because -- no, you misunderstand me slightly. An 7 American website -- the American websites published 8 those, which were also visible in France, but they 9 cannot be sued because they're not based in an EU 10 country. It's not -- I'm not subject to the French law 11 because I published it in France. I'm subject to the 12 French law because I'm based in an EU country. That's 13 the difference. This celebrity can do nothing to the 14 American websites who published exactly the same 15 pictures because they're based in America and American 16 companies do not have to recognise judgments in EU 17 courts. We do.</p> <p>18 LORD JUSTICE LEVESON: Yes, that's a slightly different 19 point. You still could be sued in -- the American 20 company could still be sued in France for what is said 21 to be a breach of French law. The only problem the 22 successful claimant might have is enforcing the judgment 23 in America if that's the only place in which that 24 particular website has assets.</p> <p>25 A. Exactly.</p> <p style="text-align: center;">Page 35</p>
<p>1 I only raise that to give you an inkling of the 2 complexities and the issues that the digital business 3 raises where you have a globalised business and 4 globalised competitors all trying to pick their way 5 through individual and varying jurisdictions.</p> <p>6 LORD JUSTICE LEVESON: Would you not have run the risk, if 7 you take your French example, of litigation in France in 8 relation to that which you put on your Internet site, 9 which is capable of being seen in France?</p> <p>10 A. But that brings me back to the point of principle. I'm 11 in competition with American websites. American 12 websites, many of them ran the same pictures. They 13 can't be sued because they're not based in the EU, so -- 14 but that celebrity would have to try and sue in an 15 American court and would get very short shrift. But 16 because we're part of the EU, they can sue in a European 17 court, ie their home court in France, and if I lose, 18 then as an EU -- as a company based in an EU country, 19 I have to pay up. It just gives you an idea of the very 20 slight way the playing field is slightly skewed against 21 us by being based in Britain and on a broader level in 22 the EU.</p> <p>23 LORD JUSTICE LEVESON: That's not by being based in Britain 24 at all, because your premise was that the picture was 25 perfectly legitimately taken and legitimately published</p> <p style="text-align: center;">Page 34</p>	<p>1 LORD JUSTICE LEVESON: So if they have assets in England or 2 France or Italy, then they can pursue those assets in 3 that country because that's part of the EU.</p> <p>4 A. Exactly. But for the vast majority, they would not have 5 assets in France.</p> <p>6 LORD JUSTICE LEVESON: If they did --</p> <p>7 A. And also they would claim that they weren't subject to 8 French law, being an American company. So it then -- 9 technically, yes, I suppose they could go around and 10 seize some offices from Yahoo in Paris, or whatever, but 11 you then raise the bar yet further for the plaintiff 12 because they have to not just win but they have to then 13 seize the money rather than -- it's obviously much 14 harder --</p> <p>15 LORD JUSTICE LEVESON: That's what happens in legislation, 16 in litigation throughout. You not only have to win, you 17 have to then find the money. Perhaps it's easy in 18 relation to Associated, but it's not necessarily easy in 19 relation to some other companies.</p> <p>20 A. I don't think it's because these companies haven't got 21 assets, it's because they're not based in an EU country.</p> <p>22 MR BARR: Could I just try and understand the high level 23 point that comes out of that. You're plainly explaining 24 to us the practical issues you face in complying with 25 several different legal regimes when you're running an</p> <p style="text-align: center;">Page 36</p>

<p>1 international business. Are you -- I say simply but 2 I know it's not a simple matter -- are you simply trying 3 to communicate that difficulty and complexity to us or 4 are you going further and trying to say: therefore, the 5 standards bar in this country should be lowered? 6 A. No, I'm explaining how difficult it is already and 7 suggesting that it would be very dangerous to businesses 8 like MailOnline to raise it any higher. I still have 9 a problem with standards, but for the purposes of 10 shorthand, I know what you're saying. 11 Q. We were talking about complaints, and I think I should 12 draw out that the statistics I referred to earlier are 13 against the background of 400 or 500 stories that you 14 print every day electronically. But in addition to 15 those legal complaints and PCC matters, am I right to 16 understand from your earlier evidence there is actually 17 a much larger volume of shall we say more mundane issues 18 raised with you directly with your readers which you 19 deal with -- 20 A. I wouldn't characterise most of it as complaints. 21 Complaints -- some of them, yes, people are complaining, 22 in others they're just trying to help. But every 23 newspaper and every TV station, every radio station 24 receives numerous communications which might be 25 characterised as complaints but are easily resolved, and Page 37</p>	<p>1 spectrum. They'll get up, they'll look at their 2 friend's Facebook's page, so that friend on Facebook has 3 published something. They'll then follow somebody on 4 Twitter who has also published something and that person 5 on Twitter may have -- Stephen Fry has nearly 4 million 6 users. He can reach more people in an hour than I can. 7 So is he going to be regulated? Then you have bloggers, 8 and then you move through news publishers and then 9 obviously Fleet Street, or what used to be Fleet Street, 10 is just one portion of the people publishing news 11 online. 12 As Mr Murdoch said, in 20 years' time there may not 13 be any newspapers. So it seems to me odd that 14 everything's moving away -- newspapers become quite 15 frankly a smaller part of the media landscape every year 16 so why are we obsessing just with one area? Am I going 17 to end up with a situation in 10 years' time where 18 MailOnline -- or 20 years' time -- is subject to one 19 kind of regulation because we used to publish 20 a newspaper, and other publishers I'm in competition 21 with are subject to an entirely different method of 22 regulation? It's the big elephant in the room, and 23 I think we're looking backwards fighting the last war 24 rather than worrying about the troubles and problems 25 coming down the track. Page 39</p>
<p>1 if something is easily resolved, then it's not much of 2 an issue for anyone. 3 Q. You then turn to subjects it is which are perhaps at the 4 heart of why the Inquiry is interested to hear your 5 views -- 6 LORD JUSTICE LEVESON: Mr Barr, I know it's slightly early, 7 but I don't suppose we'll take the full afternoon, 8 subject to anything else that Mr Clarke feels that he 9 wants to deal with, but I think that we'll give the 10 shorthand writer just a few minutes' break. 11 (2.58 pm) 12 (A short break) 13 (3.04 pm) 14 MR BARR: I'll move now to some issues that surround the 15 issue of how, if at all, does one regulate Internet news 16 publishers. You start by discussing in your statement 17 the position of domestic bloggers at paragraph 38 of 18 your witness statement, and the point that you make, if 19 I've understood it correctly, is you're finding it 20 difficult to see what might force bloggers to join 21 a regulatory arrangement. 22 A. It's a bit more fundamental than that. I think the 23 point I'd like to try and make is that you can't really 24 slice and dice the Internet up into different bits. 25 People consume the Internet as a kind of continuous Page 38</p>	<p>1 Going back to your question, yes, bloggers are just 2 one part of the Internet landscape and it's a good 3 example. How do you compel a blogger to comply? He 4 may, as you say, think it's worthwhile belonging to 5 something that gives him a gold standard or a kite mark, 6 or he may think it's more trouble than it's worth. 7 Q. Perhaps we can, to take your analogy, look forwards 8 a little. If one takes Twitter in its normal usage as 9 being effectively just a conversation -- 10 A. That's what I -- sorry to interrupt -- that's what 11 I disagree with. I think Lord Leveson's referred to it 12 as people chatting in the pub. Well, it's a very big 13 pub, isn't it, where you can reach 4 or 5 million people 14 with one shout? I don't think it is people chattering 15 away in the pub. They're chattering away, it's like 16 giving everyone their own private radio station. 17 Q. Would you make a distinction between those using the 18 Internet to promulgate news commercially as opposed to 19 non-commercially? 20 A. No. I don't understand the question. 21 Q. What I am saying is: do you think, for example, 22 a blogger who is making money through his blog should be 23 regulated? 24 A. So in that case we shouldn't be regulating the Guardian, 25 because they make no money. The idea of whether you Page 40</p>

10 (Pages 37 to 40)

1 **make a profit --**
 2 LORD JUSTICE LEVESON: Oh no, no, no, no, no. Stop. Stop,
 3 Mr Clarke, and think just a bit more carefully.
 4 Mr Barr's question is perfectly reasonable. This is
 5 about whether those who are in the course of a business
 6 should be the subject of regulation. The Guardian is
 7 undeniably in the course of a business.
 8 **A. Well, that's a fair point, but that wasn't the question.**
 9 **The question was: should those who are making money be**
 10 **treated differently. No. But I don't agree --**
 11 **obviously people who are in a formal business have to be**
 12 **treated somewhat differently. That's a level of**
 13 **practicality. The point I'm making is they can't be**
 14 **treated entirely differently. We cannot have**
 15 **a situation where people can -- individuals on Twitter**
 16 **can go and talk about big things that are happening,**
 17 **which for whatever reason newspapers aren't allowed to.**
 18 **We'll just become irrelevant and people won't bother**
 19 **coming to us any more because "Well they don't know**
 20 **what's going on, why am I reading about this on Twitter**
 21 **and why are my friends on Facebook all linking me to**
 22 **this person's blog when the newspapers have a wall of**
 23 **silence?"**
 24 LORD JUSTICE LEVESON: Let's give an example of that. There
 25 was in the recent past the publication on one of these,

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1 I think it was Twitter, but it may have been Facebook,
 2 the name of a victim of a sexual offence. Now, you know
 3 perfectly well that victims, complainants of sexual
 4 crime, are by English law entitled to anonymity.
 5 First of all, do you think that's a sensible legal
 6 provision?
 7 **A. Absolutely.**
 8 LORD JUSTICE LEVESON: So, therefore one does have to
 9 address what one should do about those who publish that
 10 sort of information.
 11 **A. I believe that -- I think the answer to your question is**
 12 **very simple: arrest them. In fact, I think that**
 13 **person's been arrested.**
 14 LORD JUSTICE LEVESON: I think that might be right.
 15 **A. Yes, so clearly everyone has to obey the law of the**
 16 **land, whether they be a newspaper or individually. If**
 17 **people are going or naming rape victims on Twitter, then**
 18 **they're very easy to find and the police know where they**
 19 **live. I don't see that it needs an inquiry to deal with**
 20 **that.**
 21 LORD JUSTICE LEVESON: With great respect, you might just
 22 talk yourself into getting more law, not less law,
 23 because what will happen is you will cause those that
 24 are responsible for law in this country to say, "Right,
 25 well, the way to ensure that people are not the subject

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1 of inappropriate intrusion is to legislate just that
 2 fact", and it will cover everybody. So what I mean I'm
 3 trying to do is to find out whether there is a middle
 4 ground. If there isn't, then I understand your
 5 position. If there is, I would like to know what it is.
 6 **A. I think it would be very foolish to go down the -- yes,**
 7 **of course, Parliament could legislate. Essentially all**
 8 **that would happen, and if you hamstrung British**
 9 **newspapers and British websites relative to their**
 10 **international competition, this is what I've tried to**
 11 **explain, is that the international competition will end**
 12 **up supplanting British newspapers, because they will be**
 13 **able to report things which British newspapers are**
 14 **prevented from.**
 15 LORD JUSTICE LEVESON: So you would permit the non-British
 16 newspapers, you would accept there's nothing we can do
 17 about a non-British newspaper publishing the name of
 18 a rape victim?
 19 **A. There is nothing that you can do. Obviously most**
 20 **reputable news organisations would never do something as**
 21 **objectionable, but there have been cases -- I would have**
 22 **to go away and look them up, but I'm pretty certain**
 23 **there have been cases where American newspapers have**
 24 **published things that would be -- names of victims and**
 25 **things which we wouldn't have done, but you're**

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1 **misunderstanding what I'm saying. I'm not arguing for**
 2 **looser control, I'm not arguing that as a new website we**
 3 **shouldn't follow the British law of contempt and libel**
 4 **and obey injunctions where -- privacy injunctions**
 5 **et cetera where they're granted, I'm not arguing that**
 6 **for a moment. What I'm arguing is that it's very**
 7 **difficult to -- it would be -- it is -- it would be very**
 8 **unpalatable for newspapers or newspaper websites like**
 9 **MailOnline to be placed under an even heavier burden of**
 10 **regulation when the rest of the Internet is not placed**
 11 **under any burden of regulation. But of course I'm not**
 12 **arguing for the freedom that people should be able to**
 13 **say what they like on Twitter, and where they break the**
 14 **law they should be arrested.**
 15 LORD JUSTICE LEVESON: That's why Mr Barr is talking about
 16 how one could go about regulating or providing an
 17 appropriate measure of regulation in Internet provision
 18 short of newspapers.
 19 **A. Well --**
 20 LORD JUSTICE LEVESON: It's not an unreasonable question.
 21 **A. No, no, and I think I'm answering it, I think,**
 22 **reasonably. But let's suppose that -- I'm arguing that**
 23 **I don't think that newspapers shouldn't be placed --**
 24 **newspaper websites shouldn't be placed under a more --**
 25 **tighter burden of regulation, but if you go back to your**

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1 point with the bloggers, how do you compel a blogger to
 2 join some kind of regulatory system, how do you compel
 3 him if his servers are abroad, if he's operating abroad,
 4 if he's operating, say, from the United States where
 5 they have the First Amendment, which they seem to think
 6 is important, and which trumps everything, which trumps
 7 what we would consider reasonable protections against
 8 contempt or reasonable protections against reputation,
 9 they think the freedom of speech trumps that. If
 10 they're operating from that environment, where
 11 politicians and journalists take the view that, yes,
 12 some people will abuse the freedom of speech, but giving
 13 them the freedom is worth paying the price of that
 14 abuse, then it's very difficult to see how you could
 15 compel that blogger to join a British regulatory system.
 16 And also, you have to pick your fights, I guess.
 17 It's one thing to start locking people up for
 18 promulgating pornography or child porn. It's another
 19 thing to start locking people up -- because that's what
 20 it comes down to at the end of the day, if the state
 21 wants to enforce something, it has to use the law --
 22 start locking people up for saying things, then I think
 23 that might be a price that is too high to pay for --
 24 LORD JUSTICE LEVESON: You're trying to prove rather more
 25 than we're trying to deal with. I'm not talking about

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1 locking people up necessarily. It might be a civil
 2 wrong. It might be a regulatory wrong. There are all
 3 sorts of mechanisms short of the criminal law to cope
 4 with this sort of problem. Or are there? And that's
 5 really the question.
 6 A. I think you have to test something to destruction, and
 7 that's all I'm trying to do here. You're saying can we
 8 compel private bloggers who may be making a small amount
 9 of money from the Internet to sign up for regulation?
 10 Okay, it maybe stops short of prison, but somehow --
 11 whether it's a civil case, ultimately if you refuse to
 12 pay damages or comply with the results of a civil case,
 13 the ultimate penalty is imprisonment. At the end of the
 14 day, how far --
 15 LORD JUSTICE LEVESON: Not for a very long time, Mr Clarke.
 16 Trust me.
 17 A. Well, I don't -- you're much more eminent in the law
 18 than I am, but the ultimate sanction for contempt is
 19 imprisonment, whatever.
 20 LORD JUSTICE LEVESON: Yes, contempt, certainly. Contempt,
 21 certainly.
 22 A. The point I'm making is that how far is the state
 23 willing to go to compel private individuals and curtail
 24 private individuals' freedom of speech? And I'm
 25 suggesting that in the real world, when it came to

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1 a real point of principle, it would not be a price that
 2 the public was willing to pay to protect, say,
 3 a celebrity's private life. The weight of regulation,
 4 the weight of policing and the licensing system,
 5 whatever it was, would be out of all proportion to the
 6 harm that you are seeking to protect against, because at
 7 the moment the great harm, the harm of libel, the harm
 8 of prejudicing somebody's trial, the harm of invading
 9 somebody's home, all the big abuses are currently
 10 catered for either under the law or under the current
 11 system of regulation with the PCC, and as I say, I'm not
 12 arguing to be exempt from that, I'm just cautioning that
 13 there is a growing part of the media that isn't subject
 14 to any of that and that we have to be seen in that
 15 context.
 16 LORD JUSTICE LEVESON: Do you think that the PCC then is
 17 effective? You've just spoken of it as though it was
 18 effective.
 19 A. I think -- I don't think -- I don't think it's as broken
 20 as some people make out. I think there is a need --
 21 I think there is a need --
 22 LORD JUSTICE LEVESON: I think you might be the second
 23 person throughout the whole of this Inquiry to think
 24 that.
 25 A. Let me finish. I think there is a need to convince the

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1 public that it isn't broken, and I think obviously the
 2 press needs to do more to re-engage the trust of the
 3 public and that's why we as a company have suggested new
 4 arrangements. But I don't wish to point out the
 5 obvious, but that wasn't -- the fact that -- people were
 6 not -- people were not driven to the point of disgust by
 7 the fact that the PCC was broken. People -- the
 8 firestorm that caused this Inquiry to be set up was not
 9 caused by failures of the PCC.
 10 LORD JUSTICE LEVESON: Mr Clarke, you're becoming an
 11 advocate. The fact is that the straw that broke the
 12 particular camel's back may very well have been the
 13 phone hacking incident, but there have been many, many
 14 more stories, and you don't need me to tell you about
 15 them, that have generated enormous public concern, and
 16 don't you see something, that we've discussed several
 17 times during the course of this Inquiry, rather
 18 interesting about the way there is some great public
 19 concern, there's an Inquiry, the press say it will be
 20 much better next time, we really will do it better, and
 21 then it improves for a while and then drops down again,
 22 then there's another inquiry, so we've gone through this
 23 cycle several times since the war. Don't you think
 24 that's a matter of concern to you as somebody who
 25 obviously --

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1 **A. Yes, and --**
 2 LORD JUSTICE LEVESON: -- feels extremely strongly about
 3 journalism?
 4 **A. Yes, and one of the things I enjoy about working in the**
 5 **digital environment is building a slightly different and**
 6 **more collaborative arrangement with our readers and the**
 7 **people we write about and the digital environment**
 8 **enables you to do that, enables you to be flexible, find**
 9 **compromise quicker. It's entire positive. Equally, as**
 10 **you say, we've been down this road and around in circles**
 11 **several times during the war, and the point I'm making**
 12 **is that now we're obsessing over an industry that is, as**
 13 **I say, becoming less important, and in the course of**
 14 **fighting the last war, we're going to stop newspaper**
 15 **websites from winning the next one, quite frankly, if we**
 16 **place the British press and British websites under**
 17 **a regulatory environment that is too strict.**
 18 **There wasn't much Mr Murdoch said that I agreed with**
 19 **except his sound bite that if we're not careful, we'll**
 20 **end up with no industry to regulate and this Inquiry**
 21 **will be academic because the British newspapers will not**
 22 **have survived.**
 23 LORD JUSTICE LEVESON: Do you mind if I object to the word
 24 "obsessing"?
 25 **A. No.**

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1 **Does that answer -- does that cover that point**
 2 **generally?**
 3 MR BARR: I'll move on. If you are concerned about the
 4 difficulties with regulating various people who compete
 5 with you on the Internet providing news, whether they be
 6 tweeters, bloggers or large commercial concerns, but at
 7 the same time you are content in principle to be subject
 8 to domestic regulation, what do you say the answer is?
 9 **A. It's -- it's -- it's very difficult. And to a certain**
 10 **extent -- let me say, let me -- I'm not arguing for**
 11 **lighter regulation of the press, at all. I wouldn't**
 12 **want anyone here to take that away. I'm warning against**
 13 **overregulation of the press and I have explained the**
 14 **background, the competitive background as to why that**
 15 **concerns me.**
 16 **As regards the broader Internet, and clearly I don't**
 17 **see -- you know, MailOnline is on the same footing as an**
 18 **individual blogger or certainly not some individual**
 19 **tweeter, and I -- and I think to a certain extent we as**
 20 **a society have to accept that the world has changed.**
 21 **The Internet is a very disruptive medium. It's**
 22 **disrupted many businesses, including newspapers. We're**
 23 **hoping to make the best of it. But it also disrupts not**
 24 **just newspapers, it disrupts politics, the law, and**
 25 **I think it's a great engine for democratisation. It**

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1 **allows people to know more about things that previously**
 2 **they were not privy to than they ever did before.**
 3 **It allows everyone, as I said, through Twitter or**
 4 **wherever, to have their say, and quite frankly there are**
 5 **people in the political establishments, legal**
 6 **establishments and even journalistic establishments who**
 7 **are pretty uncomfortable with that. We all pay lip**
 8 **service to democracy and freedom, but when it comes**
 9 **right down to it, I think some people, the elite in this**
 10 **country, are uncomfortable with it.**
 11 **But even though there is a downside, it allows**
 12 **people to be irresponsible to a certain extent, and be**
 13 **unpleasant to a certain extent. The upside, in the fact**
 14 **that how it engages people in -- in the matters of the**
 15 **day, how it engages people with each other, the**
 16 **commercial opportunities it offers to businesses, not**
 17 **just media businesses but all sorts of businesses that**
 18 **seek to compete with the rest of the world, I think**
 19 **outweigh the problems that it causes, and, you know, we**
 20 **used to get -- we used to get quite upset -- or the**
 21 **media used to get excited when there would be some kind**
 22 **of storm on the Twittersphere and 20,000 people would**
 23 **complain about something, until it happened half a dozen**
 24 **times and you just realise that's the Internet. It's**
 25 **not -- it's sometimes -- because we're used to dealing**

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1 **in an analogue world, in a print world, when the same**
 2 **thing happens online, it seems blown out of proportion.**
 3 **So my answer is this: the press endures tighter**
 4 **regulation than our competitive press abroad,**
 5 **particularly in America. We have no problem with that,**
 6 **I don't complain about that, but I would prefer not to**
 7 **see it get any worse. The law of the land should be**
 8 **enforced, whether it be a journalist abusing the law or**
 9 **an individual taking to Twitter to break the law.**
 10 **Whether it be racist abuse or sexual abuse or revealing**
 11 **somebody's address, the law should be -- the law as it**
 12 **stands should be enforced, within the bounds of free**
 13 **speech.**
 14 **So now if you would like to sketch out for me**
 15 **a bigger problem that needs solving, then obviously**
 16 **I can address that, but you're asking me -- you're**
 17 **saying what is the -- how do we regulate the Internet?**
 18 **My question is: do you need to regulate the Internet?**
 19 **Any more than you need to have a policeman standing in**
 20 **the corner of every pub watching what everyone says.**
 21 Q. You used the word enduring, endures regulation. Is that
 22 your mindset towards regulation --
 23 **A. No.**
 24 Q. -- as something that you have to endure?
 25 **A. No, no, because as I say, if I'm frank, I'm British, and**

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<p>1 I spend a lot of time in America, and it's not for me to 2 tell other countries how to run their business, 3 certainly while I'm trying to do business there, but as 4 I say, when I see some of the things that are written 5 about people facing trial, or during a trial, and as 6 journalist you think, well, thank goodness we have the 7 contempt law in Britain. No, I don't know --</p> <p>8 LORD JUSTICE LEVESON: It may be that they do it slightly 9 differently, because what they do in America is they 10 sequester the jury, so they allow comment to go but 11 the jury don't see the comment because they're 12 sequestered.</p> <p>13 A. Sometimes, but quite often this comment happens before 14 the jury has even been empanelled, when a person's been 15 charged, where obviously in this country we wouldn't 16 dream of doing anything like that. So sequestration is 17 of fairly limited use. And they rarely use it.</p> <p>18 MR BARR: Does it amount to this. Are you saying that in 19 your opinion there is a large proportion of the Internet 20 which is simply beyond self-regulation?</p> <p>21 A. I think where you're dealing with -- the problem is the 22 Internet enables everyone, not just news -- that's what 23 I'm saying. It's a democratising agent. It allows 24 everyone to have a voice. Things like Twitter and 25 Facebook mean that everyone can have a voice. You could</p> <p style="text-align: center;">Page 53</p>	<p>1 a judge, a single judge, had taken the view that British 2 newspapers should be enjoined from reporting a fact, 3 had taken the decision effectively to gag the entire 4 British media, and that would obviously not just apply 5 to newspapers, it would apply to British broadcasters, 6 and individuals, obviously, also, if they were aware of 7 it, but which American newspapers could report and beam, 8 if you like, into British homes via the Internet.</p> <p>9 It's difficult, we're dealing with hypotheticals and 10 I wouldn't want to cast aspersions on a judge's 11 judgment, but you could see a situation where a judge 12 had taken a decision that seemed to journalists, either 13 in this country or elsewhere, perverse, in which case -- 14 and British people would -- would learn from foreign 15 media what their own media were not allowed to tell 16 them.</p> <p>17 Q. We're coming back to the argument from earlier that if 18 you publish something here, whatever its sources, the 19 law will catch up with you even if it may be more 20 difficult practically to do so.</p> <p>21 A. Well, the Americans take the First Amendment fairly 22 seriously. I would say if you were seeking to pursue an 23 American media organisation through the American courts 24 for exercising what they considered their constitutional 25 rights, you would have a very uphill struggle indeed.</p> <p style="text-align: center;">Page 55</p>
<p>1 go home and set up a Facebook page tonight and if there 2 was something sufficiently interesting on it, that link, 3 the link to your Facebook page, if you left it open to 4 all-comers, could be viewed millions of times by 5 tomorrow morning. You could reach more people in the 6 next 24 hours than MailOnline does, quite easily. The 7 question is you have to accept that people have 8 a freedom of expression and we have to just take the 9 good with the bad to a certain extent when it comes down 10 to individuals.</p> <p>11 Q. Can I move now to paragraph 61 of your witness 12 statement, please, where you describe as "ludicrous" 13 a situation where to compete globally but comply with UK 14 regulation and law MailOnline has to block some stories 15 about British subjects from only its British readers 16 while American websites can serve them in Britain.</p> <p>17 You wouldn't describe it as ludicrous, would you, 18 complying with the law of the various countries in which 19 you do business?</p> <p>20 A. No. I was thinking specifically there of the 1936 21 parallel, to which I alluded earlier.</p> <p>22 Q. That, I think we can agree, was a very long time ago.</p> <p>23 A. Yes, it was a long time ago, but it's a very good 24 analogy, isn't it? Very good analogy for where you had 25 a very important fact that for whatever reason, because</p> <p style="text-align: center;">Page 54</p>	<p>1 Q. I'm looking now at the last page of your witness 2 statement, where you talk in somewhat emotive terms 3 about the issues we've been discussing. You say at 4 paragraph 72 they can no longer control what people are 5 allowed to know and you talk about rather than looking 6 at how to handcuff the press while the rest of the web 7 grows unchecked.</p> <p>8 Can I just be clear as to whether we're to 9 understand the language that you're using as amounting 10 to agreeing with what an earlier witness to the Inquiry, 11 Mr McMullan said, when he said that in his opinion, 12 privacy was a matter for paedophiles?</p> <p>13 A. No, I wouldn't agree that. Everyone's entitled -- 14 everyone is entitled to a degree of privacy, no 15 question. What I was alluding -- what I was alluding to 16 there was the point I was making earlier, which is 17 that -- which is that -- which is that -- is that -- is 18 that we are seeking to compete in a different medium 19 with different rules against different competitors from 20 different countries, and we already -- we already -- we 21 already -- we already work under a tighter regulatory 22 system and legal system than everywhere else and 23 I wouldn't want to see it tightened any further. That's 24 all I'm trying to say there.</p> <p>25 The point I'm making on a more general, if you like,</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

<p>1 philosophical level is that, as a society, we have to in 2 a way stop worrying too much about what happens in every 3 corner of the Internet and accept that the Internet 4 brings us many, many, many brilliant things, but there's 5 a price for everything. But I think if you asked 6 people, "Would you rather have a free Internet and 7 accept that every now and again somebody's going to 8 behave badly on it, or would you rather live in North 9 Korea where they don't have any Internet?", they would 10 rather live in a free society and I think we have to 11 balance the restrictions that regulation places on 12 individual freedom against the benefit, and if you're 13 asking me how do you regulate beyond the established 14 media, I'm saying it's very, very difficult and probably 15 you're using a sledgehammer to crack a nut but that's 16 not the same thing as it as to say you shouldn't 17 regulate the serious media. I freely accept that and in 18 many ways personally I'm glad for it.</p> <p>19 LORD JUSTICE LEVESON: I'm not sure the parallel between 20 total freedom and North Korea is quite apposite, but 21 would I be right in saying that I should not read 22 paragraph 74 as saying: well, actually, rather than 23 looking for restrictions, the new reality is it's almost 24 anything goes, therefore we should try and explore how 25 we're going to cope with it?</p> <p style="text-align: center;">Page 57</p>	<p>1 say, we weren't the only people who did that, other news 2 organisations did it as well.</p> <p>3 The second error, though, that compounded it was the 4 fact that we had prepared what in newspaper parlance is 5 called a set and hold, which is when you're expecting 6 a verdict late at night, in newspaper days when the 7 paper was near edition, you'd have copy ready to roll, 8 so you wouldn't have to sit down and write it from 9 scratch and save time, which was sent out at the same 10 time as the verdict. Now, that shouldn't have happened, 11 because -- obviously it shouldn't have gone out because 12 the verdict was wrong anyway, but it shouldn't have gone 13 out full stop until it had been checked against what had 14 actually happened and amended. So that should never 15 have been published.</p> <p>16 And the third error was, because bear in mind this 17 story was live for about a minute and 30 seconds, once 18 we'd killed the story, because we realised very quickly 19 we'd made a mistake, once we'd killed the story, we 20 should have done something technical called flashing the 21 cash, which would have erased the story from the 22 Internet very quickly rather than leaving it sitting 23 around for half an hour or so.</p> <p>24 So there were three errors made, all of which 25 basically boil down to human error.</p> <p style="text-align: center;">Page 59</p>
<p>1 I read that, you see, as rather saying that: far 2 from the present restrictions, restrictions should be 3 eased because of the problems of the Internet.</p> <p>4 A. No, I'm not arguing that. I'm not arguing --</p> <p>5 LORD JUSTICE LEVESON: But do you see why I --</p> <p>6 A. Okay, I'm sorry if I misphrased that but I'm not, and 7 I've said frequently, I'm not arguing that restrictions 8 should be relaxed, I'm just warning against the 9 unintended consequences of tightening restrictions 10 further. I'm certainly not arguing that restrictions 11 should be relaxed.</p> <p>12 LORD JUSTICE LEVESON: Yes.</p> <p>13 MR BARR: Moving on now to just a couple of systems-related 14 questions I'd like to explore, first of all I think it's 15 well-known that your publication -- and it was not 16 alone -- ran into difficulties when it published an 17 incorrect story about Amanda Knox?</p> <p>18 A. Yes. Yes.</p> <p>19 Q. Could you tell us first of all how did that error come 20 about?</p> <p>21 A. It came about through human error and overzealousness. 22 There were three mistakes we made. The first one other 23 people made as well, which was they misunderstood 24 a verdict being delivered in Italian and basically got 25 it round their necks and got it back to front. As you</p> <p style="text-align: center;">Page 58</p>	<p>1 I would say the one that made me personally -- 2 I hate -- you know editors -- it seems to happen a lot 3 with editors, but I wasn't in the office that day, the 4 thing that made me angriest was that there was no need 5 for it. It's a bit of a fiction that Internet sites and 6 TV stations -- well I can't speak for TV stations, I can 7 only speak for myself, I guess -- they are desperate to 8 get a story out ten seconds before the competition. I 9 have no interest in that whatever. There's no benefit 10 to it whatsoever.</p> <p>11 First of all, Google News for instance isn't that 12 important to us in terms of traffic. Secondly, even if 13 you are the first person up there, the chances are 14 you'll be knocked off the top spot by whoever files in 15 five minutes' time, so my people are under no pressure 16 to be 30 seconds ahead of the competition, so there's no 17 need not to sit back and wait literally a minute until 18 it was obvious what the verdict really was. We had 19 a thorough inquiry, as you can tell, advice was issued, 20 firm advice, to people, and I'll be very displeased if 21 any of those things happen again. But we are dealing 22 with humans, I'm afraid.</p> <p>23 Q. Now there are a number of questions which a core 24 participant wanted put to you. I'm not blaming anybody 25 for this, but the fact is they came to you very late in</p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 the day, but I understand that you are prepared to deal 2 with those by way of a supplementary statement? 3 A. Yes, I'll happy -- I didn't see them until gone 4 6 o'clock last night and they're all quite historical, 5 so I'd have to go and check the facts and answer in 6 writing. 7 Q. And a final issue on your systems, and I've picked from 8 today's edition of your publication a story, and I'm not 9 putting these questions because I want to criticise the 10 choice of story or the publication, it's simply an 11 example to explore how you go about the question of 12 checking for factual accuracy and compliance with the 13 code. The story I've chosen is one about an actress 14 from the well-known television show "The Only Way is 15 Essex" -- 16 A. We call it TOWIE. 17 Q. Yes, I know that. It publishes a number of photographs 18 of this actress enjoying a holiday in Dubai. The photos 19 are accredited to bigpicturesphoto.com. It's unclear 20 from the photographs whether or not they were taken with 21 the consent of the subject. Do you know whether they 22 were or they weren't? 23 A. Well, it's not unclear to me. You know, this is my job. 24 It was self-evident to me that those pictures were taken 25 with consent. You can see the photographer, it's on Page 61</p>	<p>1 because of the context, then we'll ring them up and say 2 "How were these pictures taken?" and then they'll tell 3 us and we'll make a judgment. 4 Quite often it's an issue of it can be a contentious 5 issue. We'll publish a picture, the celebrity or their 6 agent will ring up and say, "You can't use those, they 7 were taken in a way that was not acceptable", we'll 8 speak to the agency and the agency will give an entirely 9 different story and then you have to pay your money and 10 take your choice and decide who you believe, and that's 11 where the skill and judgment of editing comes in, I'm 12 afraid. It isn't an exact science. If I get it wrong, 13 then I can end up in front of the PCC or even a court. 14 But these -- but -- you know, I think the Inquiry 15 has to understand the world of celebrity. First of all, 16 there's nothing wrong with showbiz. It's not a dirty 17 word. 18 Q. Nobody's suggesting it is. 19 A. People, millions and millions of people enjoy popular 20 culture, and thank goodness for showbiz stars that they 21 do, otherwise they'd all be out of business. There's 22 nothing wrong with watching X Factor or reading about 23 it. I have to produce a website which makes a profit 24 because profit is the only real way of having any 25 freedom in journalism. The only journalism that's truly Page 63</p>
<p>1 a very short lens, right in front of her. There were 2 several dozen of them in different poses and contexts, 3 so it seemed to me -- 4 Q. I'm not going to suggest that one couldn't say they 5 appear to be posed -- 6 A. I'm not saying that, but it was -- it was -- the issue 7 of whether or not these were taken with consent, bearing 8 in mind the fact that she is a star on a big reality 9 show and the context of the pictures and -- no, they 10 were clearly taken with her consent. 11 Q. What I'm asking is: did you ask or I think you've now 12 answered my question, no, you didn't -- 13 A. In this instance, I didn't need to ask. It was -- 14 I would stake my year's salary on it being taken with 15 consent. 16 Q. Do you have any system in place for dealing with 17 photographic agencies like Big Pictures to verify that 18 the circumstances in which they have taken photographs 19 comply with the PCC code or do you simply work on 20 instinct? 21 A. No, we rely -- first of all, we rely on agencies like 22 Big, as I think Darryn said when he attended the 23 Inquiry, to follow the rules of the PCC, particularly 24 British celebrities. If there is something that rings 25 alarm bells because of the way the pictures look or Page 62</p>	<p>1 free is profitable journalism otherwise you're in hock 2 to the taxpayer or a charitable foundation or some rich 3 sugar daddy, so you have to make money. 4 I have to produce a product that is engaging and 5 entertaining and I do that by providing things that 6 people want to read about, that they're interested in, 7 one of which is showbiz. It's not everything we do, 8 it's only about a third of the page impressions we do. 9 We do loads of science stories and foreign coverage that 10 are far in excess of what the paper does because I have 11 more space than the paper does. 12 Very few people wake up one morning and find oh my 13 goodness, I woke up, I'm a celebrity. It doesn't happen 14 by accident. I know that we are probably the 15 celebrities' favourite website. I know for a fact that 16 they are glued to us because I hear from them all the 17 time. Most of them, their biggest concern in life is 18 not appearing on it. This is a very good example of 19 a nexus between PR, freelance picture agencies and 20 newspapers and websites. And quite often I think the 21 Inquiry has to guard against pictures that might to the 22 man in the street seem to be intrusive but were in fact 23 taken with the celebrity's full consent. 24 Of course, quite often if we're not there now to 25 take a picture, the celebrity will helpfully Twitter one Page 64</p>

<p>1 just in case anyone missed it, so I think, you know, an 2 awful lot of showbiz content has to be seen in that 3 context. 4 Does that answer your final point? 5 MR BARR: It does, thank you. Those are all my questions. 6 LORD JUSTICE LEVESON: You were concerned that time would 7 not permit you to make all the points that you wanted to 8 make, Mr Clarke. Is there anything else that you want 9 to say? 10 A. No, you've been very indulgent. Thank you very much. 11 LORD JUSTICE LEVESON: I'm not sure about that. Thank you 12 very much indeed. 13 A. Thank you. 14 MR BARR: Sir, the only remaining item of business for the 15 Inquiry this afternoon is for me to mention a list of 16 statements that we'd invite you to take as read. 17 LORD JUSTICE LEVESON: Yes. 18 MR BARR: They are: Mike Garnatt of the UK Press Card 19 Authority, Sean Lawrence Bellew, the third witness 20 statement of Liz Hartley, the third witness statement of 21 Paul Dacre, response by HMIC to further CP questions on 22 the PNC, Media Regulation Roundtable proposal for future 23 regulation of the media by the MSA, witness statement of 24 Damian Green MP, a letter from Mr Colin Crowell 25 supplementing his oral evidence, a submission by Inquest</p> <p style="text-align: center;">Page 65</p>	<p>1 I understand it, circulated and complaint can be made, 2 if it is appropriate, about the statement being read, 3 and a decision will then be made. 4 I simply want to emphasise that statements being put 5 into the record are not in any sense second class 6 statements. They are just as important as other 7 evidence that I have heard from the witness box. 8 Thank you. 9 Thank you very much, you needn't remain there. 10 Mr Sherborne, the issue. 11 MR SHERBORNE: Yes, sir, I don't know whether -- 12 LORD JUSTICE LEVESON: Let Mr Clarke go. 13 MR SHERBORNE: That's what I was going to say. He may want 14 to leave the hot spot. 15 Application by MR SHERBORNE 16 Sir, I indicated before the luncheon adjournment in 17 the light of Mr Gilmour's evidence this morning that 18 there is an application or an issue that I would wish to 19 raise. It's been forewarned to some extent in 20 Mr Crossley's email of last week, which I hope has been 21 drawn to your attention since I mentioned this matter 22 before lunch. 23 Mr Crossley's email was, for understandable reasons, 24 directed at the evidence and questions that might be 25 asked of Mr Gilmour. But it does indicate in general</p> <p style="text-align: center;">Page 67</p>
<p>1 and appendices 1 to 5, the third witness statement of 2 Alexander Owens, witness statement of Nick Davies dated 3 28 March 2012, second witness statement of JK Rowling, 4 second statement of Lord Stevens, second statement of 5 John Ungoed Thomas, witness statement of Mike Sparham 6 and the Prospect Union, witness statement of 7 Andrew Thomas, Public and Commercial Services Union, the 8 second witness statement of Richard Caseby, response of 9 Collyer-Bristow to the second witness statement of 10 Mr Caseby, letter from Catherine Taylor about the oral 11 evidence of Mark Lewis, witness statement of Tim Lord, 12 and a witness statement of Gillian Phillips. 13 LORD JUSTICE LEVESON: Thank you. I wouldn't want anybody 14 to misunderstand the process of the Inquiry. It is 15 inevitable, if the Inquiry is not to take very much 16 longer than it has taken, that choices have to be made 17 about those witnesses who will be asked or required to 18 give oral evidence. Those whose evidence is taken as 19 read, whose statements will appear on the website, 20 should not feel aggrieved on the basis that less 21 attention is being paid to what they say or their views. 22 Attention will be paid to what they say and to their 23 views, and full consideration will be given to all that 24 these statements contain. 25 Indeed, before statements are read, they are, as</p> <p style="text-align: center;">Page 66</p>	<p>1 terms the nature of what I'm seeking, although the issue 2 is more targeted. 3 Can I just briefly explain the context? As the core 4 participant victims have repeatedly stated, throughout 5 modules 1 and 2 of this Inquiry, the unlawful and 6 systematic trade in the mining of people's private 7 information which was revealed by Operation Motorman is 8 as good as any example of the culture, practices and 9 ethics of the press. I say as good as any example 10 because perhaps in contrast to what we've seen in 11 relation to the News of the World and its use of 12 voicemail interception, we have evidence here, hard 13 evidence, that this practice of buying people's private 14 information because these people would not give it 15 willingly, or just because a newspaper could, thanks to 16 people like Mr Whittamore, that this practice was 17 widespread throughout Fleet Street, and because 18 particular offenders such as Associated Newspapers, who 19 were top of the table, claim never to have used the 20 similarly dark art, we say, of hacking. 21 Again, unlike the investigation into the 22 interception of voicemails, which was rife at the News 23 of the World, the Inquiry's hands are not tied because 24 of a fear, understandable as it is, of prejudicing 25 a criminal investigation and which as you yourself, sir,</p> <p style="text-align: center;">Page 68</p>

<p>1 said may take so long that we may never, heaven forbid, 2 reach part 2 of this Inquiry. Your hands are not tied 3 therefore in relation to what Operation Motorman reveals 4 about the press as a whole, and it's therefore all the 5 more important, I submit, that this is fully 6 investigated under modules 1 and 2.</p> <p>7 Let us not forget what Operation Motorman has shown 8 us about the culture, practices and ethics of the press, 9 and that is the endemic use across the board of 10 unlawfully purchasing information, not just about the 11 rich and famous, but about members of the public who 12 have found themselves under attention from newspapers, 13 whether through their own acts or unwittingly --</p> <p>14 LORD JUSTICE LEVESON: You have to be a bit careful about 15 the use of the word "unlawful" given the statutory 16 defence, haven't you, Mr Sherborne, which we've not 17 investigated.</p> <p>18 MR SHERBORNE: We haven't investigated it and that's one of 19 my points. But what, in my submission, we have heard is 20 clear evidence of the types of information that were 21 being sought by these newspapers which included criminal 22 record checks, friends and family numbers, DVLA checks 23 and requests for the private numbers of people who 24 deliberately sought them to be ex-directory. 25 Listening, as we did, through Mr Gilmour's evidence,</p> <p style="text-align: center;">Page 69</p>	<p>1 example, that this was just a quick way of getting 2 information which could otherwise have been obtained 3 lawfully, if journalists had just a little bit more time 4 to do so. A lazy journalistic tool, apparently.</p> <p>5 Again we say the scale and the nature of the checks 6 and requests that were carried out at the request of 7 these newspapers is a complete answer to this. Put 8 simply, these are details which could not have been 9 obtained by wholly lawful means.</p> <p>10 And whether, for example, as Mr Thomas said, this 11 illegal trade in personal information, the victims of 12 which number as many as they are in relation to 13 Mr Mulcaire's activities on behalf of the News of the 14 World, whether, as Mr Thomas said, this is more or less 15 serious than hacking is irrelevant, because both were 16 the unlawful tricks of a very tawdry trade in people's 17 private information. And whilst to greater and lesser 18 extent some of newspapers have put their hands up and 19 admitted to the use of Mr Whittamore, of course they had 20 to because we have seen it in the books that the core 21 participants have been privy to, the answer which has 22 come back from the core participant media organisations 23 is that this is all historic. One core participant, 24 I recall, described it rather optimistically as "very 25 historical".</p> <p style="text-align: center;">Page 71</p>
<p>1 to the answers that those few journalists who were in 2 fact questioned, questioned either in the presence or 3 with the knowledge of the legal departments of the 4 newspapers for which they worked, listening to their 5 answers given in synchronised chorus that they didn't 6 know that this material had been obtained unlawfully in 7 my submission was hardly credible. As I say, the sheer 8 number of those types of checks, of criminal records, 9 friends and family numbers and so on, is a testament to 10 this.</p> <p>11 LORD JUSTICE LEVESON: Again one has to be careful because 12 the officer spoke about seven journalists and that was 13 the entire number that -- considering, of course, they 14 weren't considering Motorman --</p> <p>15 MR SHERBORNE: No, they were not considering Motorman. 16 We've heard from Mr Owens, we're heard from others and 17 we've all seen the material ourselves, so we know the 18 volume and we know the nature of the checks that were 19 being carried out at the request of a number of 20 newspapers. That's why I say it is reflective of the 21 culture, practices and ethics of the press one doesn't 22 need to single out precisely which newspapers were 23 involved or who did what to whom and when.</p> <p>24 And we say again it is equally not good enough to 25 say, as Mr Dacre did, for example, and he is but one</p> <p style="text-align: center;">Page 70</p>	<p>1 Let me explain very briefly why that is not the case 2 and why we say there are questions, important questions, 3 about this which still need to be answered.</p> <p>4 It's not historic for a number of reasons. To start 5 with, it's not historic in terms of the dates alone when 6 these activities took place.</p> <p>7 Just to give you two examples: after all, 8 Milly Dowler's phone was hacked into by the News of the 9 World before Mr Whittamore's offices were raided and 10 whilst he was still plying his very lucrative trade. 11 And when "What price privacy now?" came out, it was in 12 the same year as Mr Mulcaire was convicted. Simply 13 because the full scale of what took place at the News of 14 the World only came to light, despite the company's best 15 endeavours, much later doesn't make what was revealed by 16 Operation Motorman in 2006 historic.</p> <p>17 It is also not historic because as also appeared 18 clear from the evidence of some of the core participant 19 media organisations, these newspapers continued to use 20 Mr Whittamore after his offices were raided, after he 21 was arrested, after their journalists were interviewed, 22 after Mr Whittamore was convicted and even, even after 23 "What price privacy now?" was published.</p> <p>24 But equally important and what makes this far from 25 historic, we say, is the true consequence of this</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 systematic purchasing of people's private information 2 without their knowledge and in flagrant disregard of 3 their rights, not to mention, we say, also the law, over 4 a number of years, and that is, for example, what has 5 happened to the journalists who routinely used 6 Mr Whittamore's services, of which there are many, as 7 the Operation Motorman books reveal? What has happened 8 to the information which they obtained as a result? Has 9 it mysteriously disappeared?</p> <p>10 I wish I could answer those questions, despite 11 having sat in this Inquiry since November of last year, 12 but I can't. Those who can answer it, namely the core 13 participant media organisations, we say have never 14 properly done so. And this failure has real 15 significance for the Inquiry because, and I take this as 16 one example only, Mr Caplan, in his opening submissions, 17 like other core participant media organisations have 18 done and no doubt will do as well, placed great store 19 upon the fact that no penalties were awarded against any 20 newspaper for this and no journalist was ever charged.</p> <p>21 We've heard about this this morning from Mr Gilmour, 22 as I said, and whilst the police have explained what 23 they did in relation to this investigation, and the 24 problems that they found, we have had no proper answer 25 from the newspapers.</p> <p style="text-align: center;">Page 73</p>	<p>1 services of Mr Whittamore? Were they in fact fired? 2 Were they disciplined? Were they admonished in any way? 3 Or are they in fact still working for the newspaper, as 4 we believe, and have even been promoted to senior 5 positions, as we understand it?</p> <p>6 The second of the questions is: what steps, if any, 7 were taken to identify whether any of this information, 8 any of the information obtained through the use of 9 Mr Whittamore, was and is still being retained or used 10 by the newspaper? And if no such steps were taken, why 11 not? And it needs now to take place.</p> <p>12 We say these are questions which are relatively easy 13 to answer, because the core participant media 14 organisations have all the information they need. They 15 have both the internal information as regards what was 16 done at the time and they have all of the Motorman 17 information which was provided to them by the Inquiry.</p> <p>18 Presumably that was one of the reasons why this 19 material was given to them back in December, and it is 20 answers that they can give in writing.</p> <p>21 We say however the logistics are dealt with, these 22 are questions which need to be answered and need to be 23 answered before the end of this Inquiry.</p> <p>24 Sir, that is my application.</p> <p>25 LORD JUSTICE LEVESON: To some extent, the factual framework</p> <p style="text-align: center;">Page 75</p>
<p>1 We now know as a result of Mr Gilmour's evidence 2 that not only were the journalists questioned, but they 3 were done so with the full knowledge and support of the 4 newspapers' legal departments and also external 5 solicitors.</p> <p>6 There are, we say, questions which need to be 7 answered. Did the newspapers in the face of this mount 8 an aggressive defence, like News of the World did, in 9 relation to hacking, or did they take it seriously and 10 clean out the Augean stables?</p> <p>11 That brings me to the application.</p> <p>12 What I'm not asking you to do, sir, as you invited 13 me, is to seek the names of individual journalists, 14 something to which they clearly object, despite the fact 15 that they are so keen on other occasions to name names, 16 and we're not asking for the unredacted files of 17 Operation Motorman to be published so the public can see 18 them, despite the clear public interest there might be 19 in it.</p> <p>20 What we are asking the Inquiry to do is to require 21 these core participant media organisations to answer 22 what we say are relatively straightforward questions 23 which they have not done so far.</p> <p>24 The first of those is: what steps, if any, were 25 taken in relation to those journalists who used the</p> <p style="text-align: center;">Page 74</p>	<p>1 which forms the basis of your specific inquiry, and 2 which is postulated by reference to the evidence, also 3 and already speaks to culture, practice and ethics. 4 It's there. And the investigation of culture, practice 5 and ethics is necessary in order to review the extent, 6 if at all, to which the regulatory regime has failed.</p> <p>7 At the end of the day, would you agree with this 8 proposition: the purpose of this Inquiry cannot be to 9 answer all the factual issues not just because of the 10 present police investigation, not just because of what 11 I say for shorthand is the self-denying ordinance, but 12 also because it would be quite impossible to look at ten 13 years of journalistic endeavour across a wide range of 14 titles, to do balanced and fair justice to individual 15 incidents?</p> <p>16 What it's driving towards as I have seen, but help 17 me if you think I'm wrong, is to create what I have 18 called a narrative to justify the conclusions I reach as 19 to the regulatory regime, and the question is: to what 20 extent will I be helped by investigating further 21 specific facts in an attempt to devise the answer to the 22 questions that I have to answer?</p> <p>23 Now, I can quite understand the two specific 24 questions that you have asked. The second is perhaps of 25 greater significance than the first, and I'll tell you</p> <p style="text-align: center;">Page 76</p>

<p>1 why I think that, and I'll let other people comment if 2 they want to in due course. And if not today, then 3 tomorrow, because this is obviously an important matter. 4 I don't want people to feel that they have to respond on 5 the hoof.</p> <p>6 There is a value to the question: what steps have 7 been taken to identify whether this information is still 8 being used? Because that affects the here and now. And 9 I can see an argument that, although I'm not descending 10 into detail, the here and now is important.</p> <p>11 What steps were taken against journalists who used 12 Whittamore, and what is their present position now, is 13 a slightly different question because that really goes 14 to what I make of the answers which I've already 15 received, namely: well, we think this was legitimate. 16 Because I would then have to analyse: well, was it 17 legitimate or what do I make of this answer that all 18 these cases where there is -- if I use the formulation 19 of principle that I discussed some weeks ago -- strong 20 prima facie evidence of breach of the law can be 21 answered by saying, "We accept that, but actually we 22 looked at it" or "we didn't look at it", whatever.</p> <p>23 The fact is that if I consider that to be the case, 24 strong prima facie evidence, then it's important that 25 I introduce, it seems to me, a regulatory regime which</p> <p style="text-align: center;">Page 77</p>	<p>1 were raised in the course of that question? This isn't 2 personal to any particular core participant victim, 3 because we fully understand that the task which 4 confronts you, the task which confronts the Inquiry, is 5 to look at the culture, practices and ethics of the 6 press and, in the light of what you conclude about that, 7 to make recommendations as to the future.</p> <p>8 That raises three elements, to my mind. The first 9 is, certainly in relation to Operation Motorman and what 10 we know: what are the facts, what is the evidence about 11 the practices which were revealed by Operation Motorman? 12 I don't need to rehearse those. And the questions I ask 13 are not directed at that.</p> <p>14 But as important, I say, in terms of shining a light 15 on what the practices, culture and ethics -- and 16 I apologise for repeating that phrase so often -- but as 17 important in shining a light on that as the actual facts 18 of what Operation Motorman revealed is the way in which 19 the newspapers themselves dealt with what was revealed, 20 whether they accepted or admitted that it was a breach 21 of the criminal law or not.</p> <p>22 LORD JUSTICE LEVESON: To some extent we know. If we take 23 Mr Dacre as an example, he said in terms: from this 24 moment on -- I think I have it right -- nobody will use 25 a private inquiry agent.</p> <p style="text-align: center;">Page 79</p>
<p>1 copes with that problem, whether or not it was dealt 2 with properly then because of all the other events. 3 It's not just Motorman that I'm talking about, it's not 4 just Caryatid that I am talking about, it's not just the 5 McCanns or the Watsons or the Jefferies. I could carry 6 on with the different stories that we heard last 7 November. Because they all may provide material which 8 allows me to reach conclusions all directed to the 9 recommendations that I have to make.</p> <p>10 And in that regard I bear in mind what Mr Clarke has 11 said, because he wasn't, I think, the first to speak 12 about the problem of the Internet. I think I made the 13 point about it being the elephant in the room very, very 14 early on in the Inquiry, so I'm alert to the problem, 15 and so there's a, if you like, rock and a hard place 16 through which I have to manoeuvre myself.</p> <p>17 But the question I'm really asking, Mr Sherborne, 18 is: I understand the reason for the request and 19 I understand that any one of your clients are entitled 20 and doubtless have gone to the Information Commissioner 21 to find out personal details about them, but I want to 22 know to what extent, for example, your first question 23 helps me solve what I have to do.</p> <p>24 MR SHERBORNE: Sir, I understand that. Can I start by 25 answering that question, or a number of the matters that</p> <p style="text-align: center;">Page 78</p>	<p>1 MR SHERBORNE: Yes.</p> <p>2 LORD JUSTICE LEVESON: Now, actually, because I am not going 3 to be focusing in on the Daily Mail generally in 4 relation to the wider question of culture, practices and 5 ethics, I could equally take the example of another 6 newspaper, which I believe carried on using 7 Mr Whittamore for some years.</p> <p>8 MR SHERBORNE: Yes.</p> <p>9 LORD JUSTICE LEVESON: And I ask you: is that not enough to 10 say for the purposes of the Inquiry, well, this is 11 a risk against which I ought to be ensuring I am 12 covered, not necessarily to make the system more 13 strenuous upon those who wish to abide by ethical 14 standards, but to raise the bar of enforcement?</p> <p>15 MR SHERBORNE: Yes, and that's of course the third element 16 as to what you do in the light of what you conclude 17 about the practices, culture and ethics, but we're 18 missing out, with respect, the second element, and I'm 19 not directing this at any particular newspaper, and, 20 sir, you give an example of a newspaper that came out 21 with a very clear statement. But there are other 22 newspapers which didn't come out with clear statements.</p> <p>23 LORD JUSTICE LEVESON: Yes.</p> <p>24 MR SHERBORNE: That's what I mean by the second element and 25 that's why we asked the first question, and indeed the</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 second question that we ask.</p> <p>2 Can I put it this way, and I apologise for being</p> <p>3 colloquial, but the question for you is this: was it</p> <p>4 cover-up or clean-up once Operation Motorman had</p> <p>5 revealed what it revealed?</p> <p>6 One only has to look at what happened in the</p> <p>7 analogous situation of the News of the World and hacking</p> <p>8 to see why that does throw light, why it's significant,</p> <p>9 we say, on what you have to consider for the purposes of</p> <p>10 your report.</p> <p>11 LORD JUSTICE LEVESON: Let me enter into a debate on that</p> <p>12 question with you. In fact, for regulatory purposes,</p> <p>13 I asked the question without reaching a conclusion</p> <p>14 because I've not thought it through. Does it matter, in</p> <p>15 this sense: if any solution that I propose for the</p> <p>16 regulatory regime is going to require or permit</p> <p>17 a regulator to become rather more engaged in the</p> <p>18 allegation of wrong and to provide perhaps a swifter</p> <p>19 remedy, perhaps a cheaper remedy, all the things we've</p> <p>20 talked about for the future, does it become necessary to</p> <p>21 answer your question -- and I ask it rhetorically -- and</p> <p>22 is it possible to answer your question without going</p> <p>23 into the facts in very much more detail than is possible</p> <p>24 within the context of all the elements of the terms of</p> <p>25 reference that I have to address? Do you see the point</p> <p style="text-align: center;">Page 81</p>	<p>1 MR SHERBORNE: I wasn't going to apportion blame.</p> <p>2 LORD JUSTICE LEVESON: No, well I'm not -- well.</p> <p>3 MR SHERBORNE: But you see my point, sir. There are two</p> <p>4 possible ends of the spectrum, and we don't know,</p> <p>5 because there's been no investigation, where on that</p> <p>6 spectrum the true state of the culture, practice and the</p> <p>7 ethics of the press lies.</p> <p>8 LORD JUSTICE LEVESON: But the truth is that it isn't</p> <p>9 a binary answer. The fact is that across the spectrum</p> <p>10 different media interests approached the problem in</p> <p>11 different ways. But once you have a situation where</p> <p>12 there are some who are not ascribing to it the</p> <p>13 significance that I might think it should have, or that</p> <p>14 a regulator properly informed is likely to think it</p> <p>15 should have, which is perhaps a better formulation, then</p> <p>16 I have to create a system that deals with that.</p> <p>17 MR SHERBORNE: Of course, and if you've reached -- and I'm</p> <p>18 sure you haven't, sir -- if you've reached a conclusion</p> <p>19 that there were some or say you reach a point somewhere</p> <p>20 over the summer or whenever it is that there are some</p> <p>21 media organisations that didn't take it seriously</p> <p>22 enough, then of course you would come up with that at</p> <p>23 stage 3 with some regulation which would deal with that,</p> <p>24 which would impose checks where internal checks had</p> <p>25 failed. But, in my submission, in order to get to that</p> <p style="text-align: center;">Page 83</p>
<p>1 I'm seeking to make?</p> <p>2 MR SHERBORNE: I understand it, sir, but in one sense, in</p> <p>3 order to be fair, to use a phrase, to the media core</p> <p>4 participants. Take two possible scenarios. Take</p> <p>5 a possible scenario where every single newspaper, when</p> <p>6 it discovered its use of Mr Whittamore, what had been</p> <p>7 done, had come out with an unambiguous statement, there</p> <p>8 was never to be any more use of private investigators,</p> <p>9 we have looked at everything that we've done in relation</p> <p>10 to Mr Whittamore and we have made sure that none of the</p> <p>11 material we've obtained is to be used, all of our</p> <p>12 journalists have been told that whether it was in breach</p> <p>13 of the criminal law or not this was something we didn't</p> <p>14 want to do, if all of the newspapers had done that and</p> <p>15 that reflected the culture, practices and ethics of the</p> <p>16 media, then there would be no need for the kind of</p> <p>17 regulation that you might contemplate.</p> <p>18 Take the other end of the extreme, that none of the</p> <p>19 newspapers said that, and they all thought that this was</p> <p>20 in effect something they didn't need to take seriously</p> <p>21 because, to put it bluntly, nobody in the prosecuting</p> <p>22 authorities took this particularly seriously, and</p> <p>23 therefore there --</p> <p>24 LORD JUSTICE LEVESON: Well, some of them did and some</p> <p>25 judges didn't.</p> <p style="text-align: center;">Page 82</p>	<p>1 point, in order to get from A to C, you need to go</p> <p>2 through B first.</p> <p>3 LORD JUSTICE LEVESON: Well, yes. The question is --</p> <p>4 MR SHERBORNE: And that is why question one is framed in the</p> <p>5 way it is and question two, I hope, needs no further</p> <p>6 elaboration.</p> <p>7 LORD JUSTICE LEVESON: I understand about question two.</p> <p>8 All right. We have certainly identified your</p> <p>9 concerns. I think it's probably sensible that they are</p> <p>10 addressed by the media core participants, and I'm happy</p> <p>11 to listen now or I apprehend that over the next day or</p> <p>12 so we do not anticipate that the evidence which we've</p> <p>13 organised will take all day, and therefore if people</p> <p>14 would like to just reflect upon the issues that you've</p> <p>15 raised -- and I notice that you're suggesting written</p> <p>16 responses, which is something to be taken into</p> <p>17 account -- then it may be that's the most sensible thing</p> <p>18 to do.</p> <p>19 Let me just ask Mr White and Mr Caplan, because</p> <p>20 they're the ones who are here, whether they want to</p> <p>21 respond or whether they want to think or what the</p> <p>22 position is.</p> <p>23 MR WHITE: My Lord, we'd like to reflect.</p> <p>24 LORD JUSTICE LEVESON: Thank you. Mr Caplan?</p> <p>25 MR CAPLAN: Likewise, please. I think it's convenient,</p> <p style="text-align: center;">Page 84</p>

<p>1 maybe we could deal with it tomorrow or in writing, 2 whichever suits you, sir. 3 LORD JUSTICE LEVESON: Yes. I'm trying desperately not to 4 generate yet more written rulings, not least because 5 I think I've issued three in the last eight days, and 6 I'm happy to avoid having to do yet more and more, 7 simply because it all creates more and more work, 8 whereas I think this is very much a -- and creates work 9 for you as well. 10 MR CAPLAN: Yes. We certainly wish to respond, if I may say 11 so, forcibly. 12 LORD JUSTICE LEVESON: I'm sure you do. 13 MR CAPLAN: But maybe it could be tomorrow. 14 LORD JUSTICE LEVESON: Yes. Let's see if we can find the 15 time to do it. 16 I can understand why the second question could 17 legitimately call for an answer for all sorts of 18 reasons, which would not trespass on the overall impact 19 of the work of the Inquiry, but might come under the 20 description "fair enough". You've heard what I've said 21 about the first. I'm not ruling upon it. I see the 22 point that Mr Sherborne makes, because it just provides 23 another couple of dots for me to join up in the 24 analysis, but on the other hand I'm sure you've 25 understood that I am focusing very much on the</p> <p style="text-align: center;">Page 85</p>	
<p>1 recommendations that I have to make and that must be in 2 the context not merely of Motorman, but also Caryatid 3 and all that has flown since, including the many stories 4 that we've had of less than satisfactory journalism to 5 put alongside, I say immediately, the very fine 6 journalism about which others have spoken. 7 All right. I think we'll call it a day there. 8 10 o'clock tomorrow. Thank you very much indeed. 9 (4.18 pm) 10 (The hearing adjourned until 10 o'clock the following day) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 86</p>	

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