

<p>1 Monday, 14 May 2012</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: Mr Jay, you will be aware that on</p> <p>4 6 May there was published an article in the Independent</p> <p>5 on Sunday which caused concern that there had been</p> <p>6 a leak of a statement made by Mr Andy Coulson to the</p> <p>7 Inquiry, which had been published on the Lextranet</p> <p>8 system.</p> <p>9 I investigated that leak during the course of last</p> <p>10 week, and it was indeed confirmed by Mr Mullin, the</p> <p>11 editor, that he had been provided with sight of the</p> <p>12 statement, although he said that his story had been</p> <p>13 independently researched and verified before his sight</p> <p>14 of that statement.</p> <p>15 I have considered the circumstances and published</p> <p>16 today a detailed ruling on the website -- or will</p> <p>17 publish today a detailed ruling on the website -- in</p> <p>18 relation to this incident. I do not intend to take any</p> <p>19 action under section 36 of the 2005 Act in relation to</p> <p>20 this matter but the ruling contains very detailed</p> <p>21 consideration of the circumstances, and I strongly</p> <p>22 advise anyone who publishes material likely to emanate</p> <p>23 from our Lextranet system to read that judgment with</p> <p>24 care, whether they be a core participant or not.</p> <p>25 Thank you. Yes, Mr Rhodri Davies?</p> <p style="text-align: center;">Page 1</p>	<p>1 Such a deal would constitute a fraud by the newspaper on</p> <p>2 its readers and by the politician on the electorate.</p> <p>3 Such a deal would be a denial of democracy.</p> <p>4 But it is quite wrong, as Mr Jay did last week, to</p> <p>5 muddy the definitions and the boundaries to the point</p> <p>6 where no differences is seen between a newspaper</p> <p>7 supporting a politician it agrees with and respects and</p> <p>8 a corrupt deal between the two.</p> <p>9 At the top of page 7 of the printed version of</p> <p>10 Mr Jay's opening, which is now available on the Inquiry</p> <p>11 website, he identifies what he describes as the heart of</p> <p>12 the problem, but in doing so he rolls up, without</p> <p>13 differentiation, at one extreme a case where the</p> <p>14 trade-off for support from the press is the deliverance</p> <p>15 by government of media policies which favour the</p> <p>16 commercial interests of a particular newspaper group,</p> <p>17 and at the other extreme, the case where the trade-off</p> <p>18 for support from the press is, and I quote:</p> <p>19 "The espousal by government of other, that is to say</p> <p>20 non-media policies, which correspond with the world or</p> <p>21 political views of influential newspaper proprietors or</p> <p>22 editors."</p> <p>23 That amounts to saying that it is sinister --</p> <p>24 indeed, at the heart of the problem -- for Mr Murdoch</p> <p>25 and the Sun or Mr Dacre and the Daily Mail to support,</p> <p style="text-align: center;">Page 3</p>
<p>1 Opening submissions for Module 3 by MR DAVIES</p> <p>2 MR DAVIES: Good morning, sir. Thank you for allowing me</p> <p>3 a little time this morning. I don't believe that you</p> <p>4 will need the hourglass which was referred to a Friday.</p> <p>5 Following the opening which Mr Jay delivered in</p> <p>6 relation to Module 3 on Thursday of last week, we would</p> <p>7 like to make some observations on what the Inquiry</p> <p>8 should be focusing on and how it should approach</p> <p>9 Module 3, which is concerned with the contacts and the</p> <p>10 relationships between national newspapers and</p> <p>11 politicians and the conduct of each.</p> <p>12 That is a very broad subject, and it's necessary for</p> <p>13 the Inquiry to identify the area in which it is to</p> <p>14 focus. There is one obvious area where there is or may</p> <p>15 be legitimate public concern. That is the possibility</p> <p>16 that illegitimate deals have been done between press and</p> <p>17 politicians, in which favourable coverage in the press</p> <p>18 has been traded for favourable exercises of governmental</p> <p>19 powers. In order to focus on this area, it's necessary</p> <p>20 to analyse what constitutes an illegitimate deal.</p> <p>21 Illegitimacy is present where a newspaper or a media</p> <p>22 group agrees to alter its coverage from what it would</p> <p>23 otherwise write and publish in return for a promise by</p> <p>24 a politician that a governmental power will be exercised</p> <p>25 in a way in which it would not otherwise be exercised.</p> <p style="text-align: center;">Page 2</p>	<p>1 through their pages, politicians whose views they agree</p> <p>2 with. But that is exactly what they are meant to do and</p> <p>3 are expected to do as agents of a free press in</p> <p>4 a democracy.</p> <p>5 The problem comes not when they support politicians</p> <p>6 they agree with but if they prostitute their papers to</p> <p>7 support politicians they don't agree with in exchange</p> <p>8 for favours. The vice, we say, in Mr Jay's formulation</p> <p>9 is that it muddles right with wrong and fails to define</p> <p>10 what the Inquiry should be looking for.</p> <p>11 Indeed, it appeared at times from Mr Jay's opening</p> <p>12 that it was somehow discreditable to own or edit a</p> <p>13 newspaper such as the Sun, which has a very large</p> <p>14 readership, whose readers include those who vote across</p> <p>15 the political spectrum, whose readers include many who</p> <p>16 do not always vote for the same party and whose</p> <p>17 editorial line has been known to favour different</p> <p>18 parties at different times. Such a paper is, one might</p> <p>19 think, a valuable element in a vibrant democracy, but in</p> <p>20 Mr Jay's hands, these characteristics -- a large</p> <p>21 readership, floating voters, an absence of immutable</p> <p>22 party loyalties -- began to sound sinister, an apple so</p> <p>23 tempting and shining that politicians could not be</p> <p>24 trusted to talk to its editors or proprietors without</p> <p>25 doing underhand deals and somehow a vehicle for</p> <p style="text-align: center;">Page 4</p>

<p>1 wrongdoing, precisely because its readers and its 2 publishers do not reliably adhere to a strict party 3 line. 4 Now, if there is evidence of such underhand deals, 5 the Inquiry must, of course, look at it, but that may be 6 a relatively brief exercise. In the face of the 7 documentary record, Mr Jay rightly disclaimed the notion 8 that Mr Murdoch expressly asked for concessions. There 9 is, he said -- this is his page 13 -- little or no 10 direct evidence that Mr Murdoch did so. And, as Mr Jay 11 also said, it would not be safe to base any findings on 12 speculations. Nor, of course, would it be appropriate 13 to level such allegations in the face of compelling 14 evidence that no underhand deals were made. 15 Mr Jay rightly focused considerable attention on the 16 acquisition of the Times and the Sunday Times in 1981, 17 as that has served in popular lore as the original sin 18 of Mr Murdoch's expansion of publishing interests in the 19 United Kingdom, and as was suggested in the written 20 questions posed to Mr Murdoch, a paradigm of how he went 21 about having politicians bend the rules in his favour. 22 From the premise that the rules were bent at his behest 23 in 1981, the Inquiry took him through all of the 24 transactions that followed, from the development of Sky 25 and the merger that created BSkyB, the consideration of</p> <p style="text-align: center;">Page 5</p>	<p>1 a clear definition of what it is they are getting in 2 return. 3 Nonetheless, by inviting the Inquiry to enter into 4 this world of implied understandings, Mr Jay recognised 5 an important truth: that the documentary record common 6 conclusively establishes that there were no express 7 understandings, but that record leaves no room for 8 implied understandings either. 9 We know what Mr Murdoch and Mrs Thatcher talked 10 about when they had lunch at Chequers on 4 January 1981 11 because Mr Ingham made a note of it. There was no 12 discussion of the MMC and no promises were made on 13 either side. Mr Jay had an unjustified swipe at 14 Mr Ingham by describing his note as "carefully crafted", 15 but it have to be not merely carefully crafted but 16 positively dishonest if a deal was deliberately omitted 17 from the record. Nobody suggests that. 18 Moving on three weeks to the morning of 26 January 19 1981, we know -- because again we have the meeting 20 note -- that Mr Biffen told Mr Murdoch that he was 21 minded to refer the transaction to the MMC and that 22 Mr Murdoch told Mr Biffen that he would not object to 23 a reference, and furthermore, at Mr Biffen's request, 24 Mr Murdoch promised that he would extend his bid if 25 Thomsons agreed to attend their deadline for a sale in</p> <p style="text-align: center;">Page 7</p>
<p>1 investments in Channel 5 and Mediaset, the division of 2 broadcast rights in Premium League events and indeed the 3 whole history of News Corporation and 4 News International's growth over the last 30 years, all 5 of it viewed from the starting point of the 1981 6 transaction as a paradigm. 7 The documentary evidence, however, did not support 8 the thesis that in 1981 any deal was made, let alone 9 that any rules were bent. In the absence of any such 10 evidence, Mr Jay opened up instead what one can only 11 describe, with respect, as a science fiction theory, 12 that deals with done not expressly but through implied 13 understandings reached through messages -- and these 14 were his words -- transmitted by and to finely tuned 15 antennae, without anything actually being said. 16 This is, with respect, a flight from reality. It is 17 an invitation to the Inquiry to depart from an 18 examination of facts, who said what and who did what, 19 and to speculate instead about wordless meetings of 20 minds. This is the stuff of fantasy. Deals cannot be 21 done by telepathy. What are the terms? What is the 22 duration? What is the quid pro quo? When is the deal 23 fulfilled? What is it broken? The sophisticated and 24 powerful people Mr Jay identifies know better than to 25 commit their political and commercial capital without</p> <p style="text-align: center;">Page 6</p>	<p>1 order to allow a reference to the MMC. In other words, 2 the documents conclusively establish that not only did 3 Mr Murdoch not ask the Prime Minister to cut any corners 4 for him; he did everything asked of him to make it 5 possible for the Secretary of State to make a referral 6 to the MMC. 7 That left Mr Biffen with one central problem: to 8 persuade Thomson to extend its deadline. What happened 9 next is plain to see from the documents. The whip hand 10 was held not by Mr Murdoch but by Thomsons. Mr Biffen 11 saw them too on the morning of 26 January and they told 12 him at their meeting, then reconfirmed in a letter that 13 day, which the Inquiry has seen, that they would not 14 extend their deadline for the closure of the papers. 15 They had been held to ransom some by the unions many 16 times too often and at great cost and they would not 17 allow any opportunity for it to happen again. 18 This meant that the delay entailed by a reference to 19 the MMC risked causing the end of the Times and the 20 Sunday Times. When Mr Biffen explained his decision in 21 the House of Commons the next day he told the house -- 22 this is column 818 in the Hansard record -- that: 23 "At the heart of the matter was whether it was 24 possible to refer to the Commission and not invoke the 25 proposed closure plans that had been drawn up by the</p> <p style="text-align: center;">Page 8</p>

<p>1 Thomson organisation."</p> <p>2 Mr Biffen went on to explain that, although he had</p> <p>3 been urged to call Thomsons' bluff, he did not think</p> <p>4 that would be a wise posture for someone seeking to act</p> <p>5 in the public interest. He made it clear to the House</p> <p>6 that it was his decision and that he took responsibility</p> <p>7 for it. After the debate, he wrote to John Smith MP to</p> <p>8 explain the analysis by his civil servants of the</p> <p>9 solvency of the Sunday Times and arranged for the letter</p> <p>10 to be deposited in the library of the House of Commons.</p> <p>11 To suggest that Mr Biffen was a mere front for</p> <p>12 a deal between Mr Murdoch and Mrs Thatcher is as much an</p> <p>13 unwarranted charge against him as it is against them.</p> <p>14 Mr Jay said that whether there were any private</p> <p>15 conversations between Baroness Thatcher and Mr Biffen is</p> <p>16 both unknown and unknowable. Although Mr Biffen is no</p> <p>17 longer with us, that is not to say that there is no</p> <p>18 record of his thoughts on this subject. In November</p> <p>19 1998, after publication of Woodrow Wyatt's claims to</p> <p>20 have bent the rules for Mr Murdoch, Chris Mullin, the</p> <p>21 Labour MP, asked Mr Biffen about it. In his entry for</p> <p>22 4 November 1998, pages 386 to 7, Mr Mullin records</p> <p>23 Mr Biffen as saying that he had searched his attic and</p> <p>24 dug out his pocket book for the period in question.</p> <p>25 I will not read out the full entry but Mr Biffen</p> <p style="text-align: center;">Page 9</p>	<p>1 recollections, the documentary record demonstrates</p> <p>2 conclusively that there was no express deal and no</p> <p>3 implied deal either.</p> <p>4 We agree with Mr Jay that the record of the</p> <p>5 acquisition of the Times and the Sunday Times is of</p> <p>6 cardinal importance in the history. As I have said,</p> <p>7 it's been taken by Mr Jay and others as the paradigm</p> <p>8 example of Mr Murdoch's supposedly malign dealings with</p> <p>9 politicians and it took pride of place again in Mr Jay's</p> <p>10 opening last week. Because of its central place in the</p> <p>11 history and the mythology, it's vital that the Inquiry</p> <p>12 should understand the descending plausibility of the</p> <p>13 theories that have been advanced about what happened</p> <p>14 in January 1981.</p> <p>15 The first theory was that there was an explicit deal</p> <p>16 made between Mr Murdoch and Mrs Thatcher and executed by</p> <p>17 Mr Biffen. That theory is utterly demolished by the</p> <p>18 documentary record.</p> <p>19 The second theory is that if there was no explicit</p> <p>20 deal then there must have been an implied one. Here,</p> <p>21 metaphors take the place of evidence or analysis. So we</p> <p>22 have finely tuned antennae, doors springing open to the</p> <p>23 lightest of touches, people on the same page, Mr Murdoch</p> <p>24 knowing which buttons to press and perhaps also Max</p> <p>25 Weber's theory of charismatic authority. All these</p> <p style="text-align: center;">Page 11</p>
<p>1 recalled no pressure from Downing Street. So far as he</p> <p>2 knew, everything had been above board. One of the</p> <p>3 difficulties had been that the only other buyer in sight</p> <p>4 had been Robert Maxwell.</p> <p>5 The thesis that Mr Murdoch must have enlisted the</p> <p>6 Prime Minister in an effort to avoid a referral to the</p> <p>7 Commission therefore suffers not only from a complete</p> <p>8 lack of evidence in its favour but from a compelling</p> <p>9 documentary record to the contrary. The implied deal</p> <p>10 approach outlined by Mr Jay requires one to conclude</p> <p>11 that all of Mr Biffen's contemporaneous statements and</p> <p>12 reasoning were mere camouflage, that contrary to what he</p> <p>13 told the House of Commons in 1981 and what he told</p> <p>14 Mr Mullin in 1998, Mr Biffen paid no regard to the</p> <p>15 deadline impose by Thomsons but instead declined to make</p> <p>16 a referral to the Monday open his Commission because of</p> <p>17 a nod and a wink from Mrs Thatcher, who was in turn</p> <p>18 acting on the basis of an unspoken request from</p> <p>19 Mr Murdoch.</p> <p>20 Mr Murdoch managed to bring this all about not by</p> <p>21 asking the Prime Minister by for help by instead by</p> <p>22 telling the Secretary of State that not only did he not</p> <p>23 oppose a referral but he would extend his bid to</p> <p>24 facilitate one. To call this thesis speculation is to</p> <p>25 use too dignified a term. With or without Mr Biffen's</p> <p style="text-align: center;">Page 10</p>	<p>1 beguiling images have in common the cardinal feature</p> <p>2 that they are unable to explain what the deal was or how</p> <p>3 it was done. They also are demolished by the</p> <p>4 documentary record.</p> <p>5 The third theory emerged only last week. It is</p> <p>6 a desperate assertion that something must have been up</p> <p>7 and that Mr Murdoch must be lying when he says that he</p> <p>8 does not remember anything about it. Mr Jay put it more</p> <p>9 euphemistically but still in headline-grabbing style</p> <p>10 when he said it had to be asked whether Mr Murdoch was</p> <p>11 conveniently suffering from selective amnesia.</p> <p>12 It is against the rules -- and for good reason -- to</p> <p>13 raise such an issue after the witness is gone rather</p> <p>14 than when he is here to answer it, but never mind that.</p> <p>15 This theory fares no better than its predecessors.</p> <p>16 Mr Murdoch has nothing to lie about. The documents tell</p> <p>17 the story. It would be easy enough for him to say that</p> <p>18 now that he's seen Mr Ingham's note it has jogged his</p> <p>19 memory and it happened just as Mr Ingham record. If he</p> <p>20 had something to hide, that is exactly what he would</p> <p>21 have an incentive to say. If he says, in fact: "I still</p> <p>22 can't remember anything about it", then it is because,</p> <p>23 31 years later, he simply can't. The suggestion that he</p> <p>24 must be lying is not an argument or a theory based on</p> <p>25 evidence, but a conviction which is determined not to</p> <p style="text-align: center;">Page 12</p>

<p>1 face the evidence. 2 As I have demonstrated, the remarkably full 3 documentary record shows that Mr Murdoch has nothing to 4 hide in respect of the events of January 1981. There is 5 no basis for Mr Jay's delayed airing of doubts over his 6 credibility. That suggestion had no place in Mr Jay's 7 opening for Module 3. 8 What must, however, play a full part in the 9 Inquiry's consideration of Module 3 is the recognition 10 that the first and paradigm allegation of underhand 11 deals between Mr Murdoch and politicians has been 12 demolished. The base for what follows in 13 News International's success in the United Kingdom is 14 not a stolen transaction but a proper acquisition and 15 one that saved the papers from closure or, perhaps, from 16 Mr Maxwell. 17 That is all I wanted to say. If it would assist the 18 Inquiry to have a footnoted version of what I've said 19 with copies of the documents, then we will of course 20 provide that. 21 LORD JUSTICE LEVESON: I would certainly like them. Thank 22 you. 23 MR JAY: Sir, the first witness today is Lord O'Donnell, 24 please. 25 LORD JUSTICE LEVESON: Very good.</p> <p style="text-align: center;">Page 13</p>	<p>1 like to develop that at all? 2 A. Well, as I say in the statement, I think there are 3 enormous benefits from having a free press which can 4 hold governments to account. I think that's a massive 5 advantage which we should never ever underestimate. In 6 terms of how you manage the relationship between various 7 bodies, which I know the Inquiry's been looking into and 8 will do in turn -- politics, police and the like -- we 9 do need to bear in mind that we have a system which 10 allows rather different rules for different parts of the 11 media, and I think the issue we really need to think 12 about is how, given the technological changes, which 13 have made the different types of media -- blurred the 14 distinction between -- the phrase I used is BBC Online 15 versus Times Online. They are both regulated in very 16 different ways. Do the readers understand that and do 17 we have the right regulatory system which can 18 accommodate an area where newspapers are allowed to 19 actively support political parties, whereas broadcasters 20 are governed by a very strict set of rules? 21 I think the answer in terms of the relationship with 22 politicians is that we go for as much transparency as 23 possible. 24 Q. Okay, we'll pick that idea up in due course. In 25 paragraph 8 -- this is our page 05340 -- you begin to</p> <p style="text-align: center;">Page 15</p>
<p>1 LORD AUGUSTINE THOMAS O'DONNELL (sworn) 2 Questions by MR JAY 3 MR JAY: Your full name, please, Lord O'Donnell? 4 A. Augustine Thomas O'Donnell. 5 Q. You have kindly provided the Inquiry with a witness 6 statement on 4 May 2012. Are you content to put this as 7 your formal evidence to your Inquiry? 8 A. Yes, I am. 9 LORD JUSTICE LEVESON: Lord O'Donnell, I'm sure the 10 retirement wasn't intended to be taken up in this way, 11 but thank you very much indeed for the work you've put 12 into providing information. 13 A. You're very welcome, sir. 14 MR JAY: First of all, may I provide some career highlights. 15 1990 to 1994, press secretary to the Prime Minister, 16 Sir John Major. 2002, permanent secretary of the 17 Treasury. 2005, cabinet secretary and head of the Civil 18 Service. Retired at the end of 2011. January 2012, 19 life peer. 20 Lord O'Donnell -- 21 LORD JUSTICE LEVESON: Sounds like a sentence, Mr Jay. 22 MR JAY: At paragraphs 4 to 7 of your statement, you supply 23 your credo, your belief in a free press, and you develop 24 your reasons, and you say that transparency is the key 25 to accountability. That, I'm sure, is plain. Would you</p> <p style="text-align: center;">Page 14</p>	<p>1 identify the problem in the context of a low level of 2 trust in journalists and you lay markers down to 3 possible solutions, including speedy resolution for 4 errors of inaccuracy. Then you say: 5 "There must also be agreement on privacy and what 6 methods of investigation are acceptable." 7 You take that up later in paragraphs 41 and 8 following, and we'll come back to that. 9 May I ask you, please, about your time when you were 10 press secretary to Sir John Major, how you saw your role 11 perhaps in contrast to how your successors might have 12 seen it? 13 A. Well, I was told by the then cabinet secretary, Robin 14 Butler, that what he wanted me to do in the role as 15 press secretary was to lower the profile of the press 16 secretary -- as you mentioned, Mr Ingham, now Sir 17 Bernard, had a higher public profile -- and to establish 18 very clearly the impartiality of the process. Its 19 relationship with the media needed to change. At the 20 time when I took over as press secretary, the lobby 21 briefings had got to a stage where two newspapers, the 22 Guardian and the Independent, had exited the lobby, and 23 my job really was to try and get back to a situation 24 where all newspapers could be represented there and felt 25 able to attend, and indeed the Guardian and the</p> <p style="text-align: center;">Page 16</p>

<p>1 Independent did come back in to the lobby.</p> <p>2 So it was trying to establish general principles of</p> <p>3 the Prime Minister's press secretary being there clearly</p> <p>4 to present, in an impartial fashion, government policy,</p> <p>5 and to do that equally to all members of the media, both</p> <p>6 broadcast and newspapers.</p> <p>7 Q. For you as a civil servant, that of course did not</p> <p>8 create any tension or difficulty, did it?</p> <p>9 A. No, it didn't. I had been a press secretary in the</p> <p>10 treasury to briefly Nigel Lawson and then John Major</p> <p>11 when he was chancellor, so I got used to the fact that</p> <p>12 that was an important part of the job.</p> <p>13 Q. Do you have any reflections on the relationship between</p> <p>14 press and politicians during that period, particularly</p> <p>15 in the context of the 1992 election and then the way the</p> <p>16 press responded to the Conservative government after the</p> <p>17 financial crisis of that year?</p> <p>18 A. You have to understand, when John Major took over from</p> <p>19 Margaret Thatcher as Prime Minister and I moved in as</p> <p>20 press secretary, there was a clear presumption that</p> <p>21 there will be a change of administration at the next</p> <p>22 election. The opinion polls were showing something</p> <p>23 between 15 to 20-point lead for Labour, and my job</p> <p>24 was -- it was an interesting question of whether my job,</p> <p>25 going in as press secretary, would be seen as someone</p> <p style="text-align: center;">Page 17</p>	<p>1 between government and the press. Would you agree with</p> <p>2 that?</p> <p>3 A. I think that's true. I think the relationship was much</p> <p>4 more distant during that period than I have observed it</p> <p>5 being in later periods, yes. Certainly.</p> <p>6 Q. Did you have any sense, though, in government, that this</p> <p>7 was an opportunity perhaps to bring in press reform in</p> <p>8 a way which otherwise might not have been possible if</p> <p>9 there had been an overcosy relationship?</p> <p>10 A. Well, at that stage I think the case for having to</p> <p>11 reform things wasn't as great. I mean, there were some</p> <p>12 issues, but in the end I think politicians weren't</p> <p>13 convinced that that was something that actually was so</p> <p>14 bad that it needed to be resolved, certainly not in</p> <p>15 a statutory way.</p> <p>16 Q. We may come back to that issue with another witness.</p> <p>17 It is also said that the Prime Minister was obsessed</p> <p>18 with press coverage, went out to buy personally first</p> <p>19 editions of the Evening Standard, fear of the tabloid</p> <p>20 press. Was that true or not?</p> <p>21 A. Well, like I say, there had been something of a myth</p> <p>22 developed that the tabloids had been highly influential</p> <p>23 in the 1992 election. Certainly prime ministers -- and</p> <p>24 Sir John Major was no different in this respect -- care</p> <p>25 a lot about what the media say about them and get very</p> <p style="text-align: center;">Page 19</p>
<p>1 who would, by doing that, become politicised and would</p> <p>2 therefore, if there were a change of administration, as</p> <p>3 looked very likely, given the opinion polls, have to</p> <p>4 leave and someone else would come in.</p> <p>5 As it turned out -- it is alleged that the media</p> <p>6 played a big role in that election. I'm not sure that</p> <p>7 a thorough study of the evidence would back that up, but</p> <p>8 it's certainly the case that it was a very unusual</p> <p>9 election in that people lied in the exit polls,</p> <p>10 basically. So the way they voted and the way they</p> <p>11 actually said they voted in the exit polls were far</p> <p>12 different from what's happened in previous and post</p> <p>13 elections.</p> <p>14 So my job really was just to be, as it were, the</p> <p>15 impartial explainer of government policy and I carried</p> <p>16 on doing that post the election. It was interesting</p> <p>17 that there was a change of mood. The economy was going</p> <p>18 through difficult times. We had the exit from the</p> <p>19 exchange rate mechanism and the mood of the newspapers</p> <p>20 did indeed change and became more hostile towards the</p> <p>21 government, something that's not unknown in mid-terms of</p> <p>22 government, I have to say.</p> <p>23 Q. Of course, during that period, if we take the period in</p> <p>24 particular 1992 to 1997, some would say that that was</p> <p>25 characterised by the lack of an overcosy relationship</p> <p style="text-align: center;">Page 18</p>	<p>1 upset when there are inaccuracies reported. He got</p> <p>2 particularly upset when they would be of a personal</p> <p>3 nature. Indeed, I was involved in a situation where we</p> <p>4 went to litigation over some incorrect statements made</p> <p>5 in the New Statesman. So he did feel quite strongly</p> <p>6 that it was important that the press should be accurate</p> <p>7 and that if they made mistakes, that these things should</p> <p>8 be corrected.</p> <p>9 Q. But you wouldn't go so far as to say an obsession; is</p> <p>10 that it?</p> <p>11 A. Well, he was -- he took a keen interest.</p> <p>12 Q. You touched on lobby briefings. Final sentence of your</p> <p>13 paragraph 31, page 05346, you refer to them as being</p> <p>14 seen as the dark arts. Many people in this room will</p> <p>15 fully understand why you say that and what you mean by</p> <p>16 that, but could I invite you to expand, please?</p> <p>17 A. Certainly. There was a perception that somehow in lobby</p> <p>18 briefings something was going on which was giving</p> <p>19 information that was somehow not available elsewhere,</p> <p>20 and what I wanted to do is kind of move this to</p> <p>21 a situation where certainly we were giving that</p> <p>22 information and I was much more relaxed about</p> <p>23 attribution of that information to the Prime Minister's</p> <p>24 spokesman, and we were giving it to everybody because</p> <p>25 everybody was allowed in. I didn't want it televised</p> <p style="text-align: center;">Page 20</p>

<p>1 and the reason I didn't want it televised was because 2 I thought that in you televised a lobby briefing, then 3 the Prime Minister's press secretary becomes a very 4 public figure, and that meant that people would 5 associate that person with the policies, rather than the 6 elected politicians whose policies he or she was 7 explaining. So I drew the line as saying: look, 8 everyone can be there and report it but it shouldn't 9 you're televised. And I still think that's true. 10 So for me, the dark arts were when people were going 11 and spinning stories to individual newspapers in 12 different ways to accommodate the story to what they 13 believed would go well with the readership of that 14 particular story. What I felt, as a press secretary, 15 was what you were trying to do was actually tell the one 16 story to everyone at the same time and I thought that 17 was a very important part of keeping the wrote process 18 honest. 19 Q. The practice then of giving different versions of the 20 same story, according to the taste or predilection of 21 the listener -- spin in another form -- that was 22 a practice then which existed, on your evidence, long 23 before it became -- 24 A. I'm afraid -- yes. I mean, certain people would always 25 feed their version of the story to newspapers and</p> <p style="text-align: center;">Page 21</p>	<p>1 Q. The undue influence exerted by media proprietors over 2 politicians? 3 A. It's -- certainly the degree of relationships increased 4 through time. There's no question about that. I would 5 always be very clear with prime ministers that there 6 were appropriate ways of managing those conversations, 7 there were certain things that should happen, certain 8 things that shouldn't, but in general, I would say the 9 degree of closeness has increased over time. But I'm 10 not aware of anything -- I cannot give you any specific 11 examples of things where I think something happened that 12 shouldn't have done. 13 Q. All you can speak to then is the appearance and public 14 perception. You're not supplying us with hard evidence 15 which you could draw to our attention of the perception 16 maturing into fact; is that it? 17 A. That's right. 18 LORD JUSTICE LEVESON: But is it a reasonable perception, 19 from your view? 20 A. Well, if you look at the incentive structures, we have 21 a situation where newspapers can give support to 22 political parties. Therefore obviously politicians have 23 a strong incentive to explain to those newspapers their 24 policies in a way that they hope will garner their 25 support and therefore get them to support them in the</p> <p style="text-align: center;">Page 23</p>
<p>1 that's -- you know, that had been going on for many 2 years. 3 Q. Yes. 4 A. What I tried to do by reinstating the importance of 5 a lobby briefing to all journalists was to say: this is 6 the version. This is what the government believes. 7 This is why they're undertaking these sets of policies 8 and these are the responses to your questions and that 9 was the definitive guide across the whole of government. 10 Q. Okay, thank you. Paragraph 14 of your statement, 11 please. You begin to identify the problem, paragraphs 12 14 to 17. 13 A. Mm-hm. 14 Q. In particular, newspapers and broadcasters leading the 15 news agenda rather than following it. Paragraph 16: 16 "Another risk in an overly close relationship 17 between the media and politicians is the appearance and 18 public perception of an undue influence, even if such an 19 influence does not in fact exist." 20 Well, that almost picks up a theme which we heard 21 from Mr Rhodri Davies a few minutes ago. Are you able 22 to assist with your personal knowledge, rather than 23 a commentary on events, as to whether in your view that 24 influence does or does not exist? 25 A. The influence between ...?</p> <p style="text-align: center;">Page 22</p>	<p>1 election. That's the incentive structure, and therefore 2 it's in the strong -- 3 LORD JUSTICE LEVESON: Or get their support for policies? 4 A. Exactly. So it's in their strong interests for 5 politicians to talk to newspaper editors and proprietors 6 to try and explain their policies, try and explain why 7 that newspaper should support them. That's been going 8 on and continues to go on and that's the structure we 9 have. And as long as you have newspapers which are 10 allowed to strongly support and come out very overtly in 11 favour of political parties, that relationship is going 12 to continue. 13 Where I would like to see a change, perhaps, is if 14 you look at -- if you contrast the newspapers, say, in 15 the United States with the United Kingdom, you'll find 16 in the United States newspapers in general tend to 17 separate out opinion and news much more. So you'll get 18 a page of opinion, which basically says, "We strongly 19 support this politician or this set of policies", in 20 a very kind of almost propaganda-ish way, and then 21 you'll get the news columns, which tend to be pretty 22 straight. 23 I think if you looked at our newspapers, where they 24 differ is that you'll find that you get all the opinion 25 in the same way but in the news stories. If you took</p> <p style="text-align: center;">Page 24</p>

<p>1 the same news story, the same set of facts and you</p> <p>2 looked at how that was handled by, say, the Mail and the</p> <p>3 Guardian, you would find they were written up in very,</p> <p>4 very different ways, and I think that's the difference.</p> <p>5 LORD JUSTICE LEVESON: That actually raises a couple of</p> <p>6 questions, doesn't it? The first is the extent to which</p> <p>7 there is a sufficient distinction between fact and</p> <p>8 comment, which, of course, I think the code requires.</p> <p>9 A. Mm.</p> <p>10 LORD JUSTICE LEVESON: Secondly, the extent to which</p> <p>11 politicians feel they have to go to, as it were, try to</p> <p>12 persuade proprietors or editors that their line is the</p> <p>13 correct one, or best in the interests of the public, at</p> <p>14 the same time as proprietors and editors might have</p> <p>15 their own hobby horses or policies or campaigns which</p> <p>16 they're actually keen to get the government to take on</p> <p>17 board. That's where you get the risk of a mix.</p> <p>18 I'm sure Mr Jay is coming onto it, but it just all</p> <p>19 comes together in that, doesn't it?</p> <p>20 A. Indeed. If I take your two points in turn, sir. The</p> <p>21 first one about the code and the business about trying</p> <p>22 to differentiate news and comment. I really do think</p> <p>23 that if there were anything that could be done to</p> <p>24 reinforce that -- because I think it would be fair to</p> <p>25 say that if you did any sort of analysis of the same set</p> <p style="text-align: center;">Page 25</p>	<p>1 I understand. I understand a little bit more than some</p> <p>2 reporters in the press suggest but there it is. But is</p> <p>3 that differentiation still tenable? Is it valuable? It</p> <p>4 might be thought that it is valuable, if, for example,</p> <p>5 in relation to the BBC, it's a publicly funded service,</p> <p>6 or is it something that ought to be looked at?</p> <p>7 A. Well, I think inevitably if you're looking at regulation</p> <p>8 of the media, you have to look at all the different</p> <p>9 forms of media. You can't take some irrespective of the</p> <p>10 others because you'll drive -- you'll create incentives</p> <p>11 for one form rather than the other. If you -- just as</p> <p>12 we have with the current system. You know, it creates</p> <p>13 the incentives which mean that one of the ways in which</p> <p>14 newspapers can have a competitive advantage over</p> <p>15 broadcast media is by exploiting the fact that they are</p> <p>16 not subject to the same set of rules and regulations.</p> <p>17 So that's part of the competitive marketplace.</p> <p>18 So I think you do have to look at everything. The</p> <p>19 reason I used the example of BBC Online and Times Online</p> <p>20 is that they're there on your iPad beside each other,</p> <p>21 and I think one of the things we need to be clear about</p> <p>22 is: do the readers understand that they are subject to</p> <p>23 very different sets of regulation? And then comes the</p> <p>24 question of: if they understand it, are the regulations</p> <p>25 that were written some time ago really appropriate for</p> <p style="text-align: center;">Page 27</p>
<p>1 of facts reported by different newspapers, you'll see</p> <p>2 that it doesn't look like the same set of facts. So</p> <p>3 news and comment is much more mixed up than I think it</p> <p>4 should be.</p> <p>5 Your second point about persuading editors --</p> <p>6 obviously in a democracy, for politicians to get their</p> <p>7 message across, it's really important that the media</p> <p>8 report what they're saying, that they're given a stage.</p> <p>9 On the broadcast stage, there are various rules about</p> <p>10 how that happens. In the newspapers, it's very</p> <p>11 different. So we've created a structure which very much</p> <p>12 incentivises politicians to try and persuade newspapers</p> <p>13 that they have the right set of policies and that is</p> <p>14 inevitably going to lead to them wanting very much to</p> <p>15 engage in that process, and it, I think, does result in</p> <p>16 difficulties of them getting too close.</p> <p>17 LORD JUSTICE LEVESON: I don't know whether Mr Jay's going</p> <p>18 to come on to this, but it's twice you've now mentioned</p> <p>19 the obvious difference between broadcasting and print</p> <p>20 journalism and the inevitable consequence that there is</p> <p>21 a different way of approaching material. One can look</p> <p>22 at how people report statistics -- there are all sorts</p> <p>23 of subset examples of that.</p> <p>24 The reason for the broadcasting rules initially was</p> <p>25 because of bandwidth and all the rest, which</p> <p style="text-align: center;">Page 26</p>	<p>1 the degree of technology and the way people are</p> <p>2 accessing their news now?</p> <p>3 I think one of the worries I have about moving</p> <p>4 towards very specific legislation is it will be probably</p> <p>5 specific to the technology we have now and I suspect</p> <p>6 that in five years' time the technology will be very</p> <p>7 different. So you have a very difficult task writing</p> <p>8 legislation for this, which is why I'm all for thinking</p> <p>9 about ways which are -- do not go down that route, which</p> <p>10 are principles-based and build around independence but</p> <p>11 also have a compulsory element to them.</p> <p>12 It's not easy to square all of those things, which</p> <p>13 is why we have such an eminent Inquiry.</p> <p>14 LORD JUSTICE LEVESON: Don't start.</p> <p>15 MR JAY: At paragraph 17, Lord O'Donnell, you refer to</p> <p>16 senior politicians developing personal and direct</p> <p>17 relationships with the media in opposition and those</p> <p>18 carrying through go on government and you presumably</p> <p>19 have direct experience, evidence, you could provide as</p> <p>20 to that?</p> <p>21 A. Well, it's just that I think everybody knows this. When</p> <p>22 you're in opposition, an opposition politics, the key</p> <p>23 thing you have to do is get yourself into government,</p> <p>24 therefore you have a strong relationship with the media.</p> <p>25 You have much fewer resources. So you don't have big</p> <p style="text-align: center;">Page 28</p>

<p>1 press offices and the like, so you do tend to develop 2 much closer personal relationships with journalists. 3 There tends to have been swapping of mobile phone 4 numbers, all of those sorts of things. 5 So one of the things I think that is right about, if 6 you like, the theatre of coming into government, when 7 that Prime Minister is clapped into Number 10 Downing 8 Street, is to emphasise the difference between being in 9 opposition and being in government. It's really 10 important that when you come into government, we say, 11 "Look, you are now --" every single Secretary of State, 12 subject to collective responsibility, is much more 13 important in government than I would say in opposition. 14 You have to be much more careful about what you say and 15 when you say it, hence the whole panoply of saying, 16 "Here are codes of conduct, here's the way in which 17 press offices should operate." You should basically do 18 your operations through your press spokesman and your 19 press advisers, and basically change a lot of things. 20 That's not to say that I don't think there could be 21 something for opposition, and I think it would be worth 22 exploring with the leader of the opposition whether he 23 would think that there could be some way in which you 24 could have a set of rules which they would be 25 comfortable with in opposition, which would work for</p> <p style="text-align: center;">Page 29</p>	<p>1 MR JAY: In paragraph 18, top of the 05343: 2 "Undesirable behaviours are encouraged. For 3 example, a special advisor feeding a story exclusively 4 to a particular newspaper, knowing that it will appeal 5 especially." 6 Presumably you have personal knowledge of that, do 7 you, Lord O'Donnell? 8 A. Well, it's something that you can observe, that there 9 are closenesses between special advisers -- I mean, 10 a lot of them have media/PR backgrounds. You can see 11 particular stories appearing in a paper which have 12 a particular slant to them -- I'm using my experience 13 and judgment rather than actual evidence here -- which 14 suggests to me that this has been -- a special adviser 15 actually putting forward -- 16 LORD JUSTICE LEVESON: I'm not sure that's quite right. 17 I think you're using actual evidence that is in your 18 brain based upon your experience but you're being 19 cautious about revealing that, but rather telling us the 20 consequence of your consideration over many years. 21 A. Yes. 22 LORD JUSTICE LEVESON: Would that be fair? 23 A. That would be fair. 24 MR JAY: On a number of general points, do you have personal 25 knowledge of government policy being modified, or,</p> <p style="text-align: center;">Page 31</p>
<p>1 oppositions and which would allow that transition to be 2 smoother. 3 Q. You also say in paragraph 17 that you try to discourage 4 this sort of relationship in government, suggesting you 5 might not always have succeeded. Is that right? 6 A. Well, I think the Prime Minister himself, current 7 Prime Minister, has said that he felt his relationships 8 had got too close, and I agree with him. 9 LORD JUSTICE LEVESON: It's not just the leader of the 10 opposition, though, is it? Because then that will 11 filter down to minority parties generally. Or would it? 12 Or does it matter? 13 A. I think it's most important for the leader of the 14 opposition but if you get into a situation where -- you 15 know, we currently have a Coalition. I think you would 16 want to put it to the leaders of all the parties: here's 17 a set of rules that we think opposition parties should 18 abide by and I think in terms of working with the leader 19 of the opposition, in terms of some of the transparency 20 rules which have been adopted by the opposition, I think 21 there's an opportunity, a window of opportunity to get 22 the opposition parties together and say to them: can 23 there be a set of guidelines, code of conduct, 24 something, which would cover these relationships which 25 all could sign up to?</p> <p style="text-align: center;">Page 30</p>	<p>1 please, affected by fear of personal attack if 2 a newspaper line is not pursued? 3 A. What, particular politicians saying that we shouldn't do 4 this? I think there have always been examples of when 5 it comes to actually assessing the merits of a policy, 6 ministers will think about how -- well, how well will 7 this go down? Will we get general support for it? What 8 will be the media reaction to it? I mean, that's 9 generally part of one of the factors that ministers will 10 take into account. 11 When it comes to the area of is there a set of 12 policies where ministers are very nervous because they 13 think the newspapers might personally attack them, 14 I suspect it gets into the area that this Inquiry is 15 talking about. I mean, when you have discussions about, 16 let's say, policy issues like regulation of newspapers 17 or, dare I say it, imposition of VAT on newspapers and 18 magazines, then I think you'll get into the situation 19 where they'd say -- well, they come back to me with the 20 Sir Humphrey line, that it would be a very brave 21 politician that would go down that route. 22 Q. Can I pick up that last point? You mentioned in your 23 statement, in the context of current press regulation -- 24 you describe it as a discredited form of 25 self-regulation. In part, is that, in your view,</p> <p style="text-align: center;">Page 32</p>

<p>1 because of a failure properly to address the 2 manifestation of problems thrown up by the culture, 3 practices and ethics of the press, or at the very least 4 a section of the press?</p> <p>5 A. Well, I think the recent experiences over phone hacking, 6 the Milly Dowler and all the rest of it have clearly 7 dented the public's trust. The fact that there was 8 a PCC report on this which didn't come on up with 9 anything, the fact that the PCC has disbanded itself -- 10 I mean, I think all of these things have, I suspect, 11 meant that people that think about these things have 12 generally taken the view that the PCC is not -- didn't 13 solve the problems, didn't foresee them, and indeed, 14 I think in your evidence you heard somewhere the PCC 15 didn't regard itself as a regulator. So in a sense, 16 there was no regulator.</p> <p>17 Q. Okay. May we move on now to the Ministerial Code, which 18 you pick up at paragraph 20. You explain it was 19 introduced in 1997 by Mr Blair. Its status as a matter 20 of law is that it's an executive instrument; is that 21 right?</p> <p>22 A. Correct. I should stress -- I mean, one of the key 23 moments was when Prime Minister John Major decided to 24 publish questions of procedure for ministers. This was 25 the first time there had been anything out there, and</p> <p style="text-align: center;">Page 33</p>	<p>1 to take place, but now we have a proper system of rules 2 and I think it's important to emphasise how important 3 this is. When a new minister comes in and sits down 4 with their permanent secretary and goes through all of 5 their financial dealings, their financial holdings, this 6 is a very important part of not just getting the 7 conflicts on the record but establishing the culture and 8 framework within which ministers operate.</p> <p>9 Q. We'll look at the July 2011 amendment in a moment but in 10 the version of the code which we have in this bundle 11 under tab 7 -- it's described as the May 2010 version, 12 which does not contain the amendment which you advised 13 on in July of last year.</p> <p>14 A. That's right.</p> <p>15 Q. Of course, we've all pre-read it, but the relevant 16 sections in particular are section 7, which deals with 17 ministers' private interests, on page 14 of the internal 18 numbering.</p> <p>19 A. Yeah.</p> <p>20 Q. It's interesting that the drafters of the code, at 7.2, 21 refer not merely to a conflict of interest but also to 22 the perception of a conflict.</p> <p>23 A. That's correct.</p> <p>24 Q. And the issue of perception is taken up again in clause 25 7.7. There are various rules or principles which go</p> <p style="text-align: center;">Page 35</p>
<p>1 the Ministerial Code sort of grew out of questions of 2 procedure for ministers, and now I think so this is 3 a very important document and I know that ministers take 4 it very seriously and obviously you will read always in 5 the media about questions of: did minister A or B 6 violate the Ministerial Code? So it is taken very 7 seriously.</p> <p>8 Q. This probably should be seen as a series of high-level 9 principles rather than strict rules?</p> <p>10 A. Absolutely. It is principles-based and that's what we 11 try and do, because, like I say, given the changing 12 nature of the circumstances, I think you have to go down 13 a principles-based route.</p> <p>14 Q. In paragraph 21, you explain that the aspects which you 15 believe to be relevant to the conduct of relationships 16 between the media and ministers are, first, 17 accountability, collective responsibility, openness and 18 the need to avoid any conflicts of interest.</p> <p>19 Well, you've touched on those concepts already. Do 20 you feel you need to expand on any of them to the extent 21 to which they're not largely self-evident?</p> <p>22 A. No, I think all of them are very important. It's 23 interesting, if you look back on these things -- things 24 like conflicts of interest -- if you look back in 25 history, there are amazing conflicts that were allowed</p> <p style="text-align: center;">Page 34</p>	<p>1 outwith our Inquiry. Section 8 though is perhaps even 2 more relevant to this Inquiry. 8.2 -- this is page 18: 3 "In order to ensure the effective coordination of 4 cabinet business, the policy, content and timing of all 5 major announcements, speeches, press releases and new 6 policy initiatives should, where possible, be cleared in 7 draft with the Number 10 press and private officers 8 24 hours in advance."</p> <p>9 8.14. Can I ask you to comment on that one, please: 10 "Ministers may meet people in organisations and 11 consider a wide range of views as part of the 12 formulation of government policy. Departments will 13 publish at least quarterly details of ministers' 14 external meetings."</p> <p>15 So this covers, of course, a whole range of lobbying 16 activity, self-evidently, which would be relevant to the 17 formulation of government policy, but as your statement 18 says, meetings with journalists would not have been 19 thought to have been accommodated within this clause; is 20 that correct?</p> <p>21 A. That is correct. So that's why, in my advice to the 22 Prime Minister in the letter which you have, I suggested 23 some amendments to the code to add -- it will be in the 24 new version, paragraph 8.15 -- all of their meetings -- 25 well, meetings with specified editors, proprietors, all</p> <p style="text-align: center;">Page 36</p>

9 (Pages 33 to 36)

<p>1 of that, and in that note, I've suggested precisely what</p> <p>2 the forms of transparency should be. That's correct.</p> <p>3 Just going back to what we said earlier, I think</p> <p>4 that the whole principle behind this was -- the point</p> <p>5 about perceptions is basically a message of: err on the</p> <p>6 side of caution in all of this.</p> <p>7 Q. It might be said that a meeting with a journalist could</p> <p>8 be relevant to the formulation of government policy, or</p> <p>9 at least at the level of perception, but you might say:</p> <p>10 well, one would need hard evidence for that, and so</p> <p>11 interactions with journalists, as a matter of</p> <p>12 definition, are likely to be outside 8.14, if I have</p> <p>13 understood it?</p> <p>14 A. That's right. If you look at my letter, this goes on --</p> <p>15 it talks about the transparency with meetings with</p> <p>16 proprietors and editors. It doesn't go as far as to say</p> <p>17 meetings with individual journalists, because, in</p> <p>18 a sense, there will be conversations and meetings with</p> <p>19 individual journalists which are the basic lifeblood of</p> <p>20 politicians and the media interacting. If you see in</p> <p>21 the House of Commons, there are many media</p> <p>22 representatives there and ministers, they interact, they</p> <p>23 talk, they phone each other. So in a sense, I'm putting</p> <p>24 the bar at the editor and news proprietors above.</p> <p>25 You could say: everything has to be recorded.</p> <p style="text-align: center;">Page 37</p>	<p>1 some aspects of recent events but has that always been</p> <p>2 the case? I mean, are we only thinking about this in</p> <p>3 the last few years or has this been something that has</p> <p>4 been knocking around in your mind for a long time?</p> <p>5 A. A very, very long time. The truth is, all politicians</p> <p>6 come into politics having developed a social circle</p> <p>7 already. They have friends. It's a rather food thing,</p> <p>8 in my view, that politicians have got quite normal</p> <p>9 relationships and they have friends from different</p> <p>10 backgrounds, different -- maybe in industry, they may be</p> <p>11 trade unionists, they may be teachers, nurses. That's</p> <p>12 a good thing.</p> <p>13 LORD JUSTICE LEVESON: I entirely agree, and nothing I have</p> <p>14 said should be taken as suggesting that in some way we</p> <p>15 have to change that, because it's difficult enough</p> <p>16 persuading able people to enter public life anyway. To</p> <p>17 put further restrictions on them would make it even more</p> <p>18 difficult, so I understand entirely that point. The</p> <p>19 question is defining the line.</p> <p>20 A. Right, and I've taken the view that we should define the</p> <p>21 line at fairly senior proprietors and senior editors.</p> <p>22 I think they are different because of the ability of</p> <p>23 newspapers to very strongly support particular political</p> <p>24 parties. So I think there is something to be said for</p> <p>25 those things being noted in a transparent way, but they</p> <p style="text-align: center;">Page 39</p>
<p>1 However, I think that would be disproportionate and</p> <p>2 I don't think it would work.</p> <p>3 LORD JUSTICE LEVESON: There's another problem, too, isn't</p> <p>4 there, because there is also the prospect that actually</p> <p>5 politicians might be quite friendly with some</p> <p>6 journalists, or indeed, to take it away from journalism</p> <p>7 entirely, that you have a lifelong friend who's worked</p> <p>8 in a particular business or industry which then comes in</p> <p>9 for ministerial consideration and that has to be</p> <p>10 handled.</p> <p>11 A. Indeed, and I think you can have a situation where --</p> <p>12 and what I've suggested is where you have a situation</p> <p>13 where you have a lifelong friend who happens to work in</p> <p>14 industry X, what you should do is disclose that to your</p> <p>15 permanent secretary and you say you meet this person</p> <p>16 socially all the time. If it were to happen that</p> <p>17 a policy issue arose where industry X was absolutely</p> <p>18 crucial and it would have a big impact on that, then</p> <p>19 stronger degrees of transparency might be required and</p> <p>20 you might need to remind the minister that actually this</p> <p>21 person that they socialise with all the time, they have</p> <p>22 to be particular careful or they might want to amend</p> <p>23 their behaviour in some way during a particular period</p> <p>24 when that was a big issue.</p> <p>25 LORD JUSTICE LEVESON: That may arise in connection with</p> <p style="text-align: center;">Page 38</p>	<p>1 shouldn't be stopped.</p> <p>2 LORD JUSTICE LEVESON: But you still then have to cope with</p> <p>3 the fact that a minister might have a very good friend</p> <p>4 who is in fact an editor that they've known for years</p> <p>5 and years and years.</p> <p>6 A. Yes.</p> <p>7 LORD JUSTICE LEVESON: It's quite difficult then to</p> <p>8 calibrate how you organise that, isn't it?</p> <p>9 A. Well, I'd say if that's the case and the minister is</p> <p>10 a very good friend of a particular editor, I would fall</p> <p>11 back on transparency and say, "Look, in this case</p> <p>12 because that person has that particular job and because</p> <p>13 you have this particular job, I'm afraid you'll have to</p> <p>14 be more transparent than you would about other friends</p> <p>15 about when you meet", and you would remind them that</p> <p>16 because the nature of their specific jobs, they need to</p> <p>17 be quite careful what they talk about and what they</p> <p>18 don't.</p> <p>19 MR JAY: The advice you gave, Lord O'Donnell, in July of</p> <p>20 last year is under your tab 2 and starts at our</p> <p>21 page 05294.</p> <p>22 A. Mm-hm. Yeah.</p> <p>23 Q. It was advice to the Prime Minister --</p> <p>24 A. Indeed.</p> <p>25 Q. -- within a few days of the 13 July.</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 LORD JUSTICE LEVESON: Indeed, It was within two days of it. 2 It was on 15 July. You set out your thinking there. 3 In paragraph 4, page 05295, you're looking only at 4 proprietors and senior editors and senior executives. 5 You're not looking at all journalists. You explain that 6 that would be disproportionate and we've heard your 7 evidence on that. 8 In paragraph 7, you're into the more difficult area. 9 You call it the rather more complicated area of social 10 and political meetings. The most difficult area is 11 likely to be social meetings, particularly where there 12 are long-standing personal friends involved. 13 A. Mm-hm. 14 Q. Is one aspect to it this -- and one perhaps might see 15 the same phenomenon with the Freedom of Information 16 Act -- that if you make -- if you overregulate and you 17 drive people into clandestine interaction, so things are 18 not recorded, you're in danger of creating an even 19 greater vice. Is that part of your thinking or not? 20 A. Absolutely. I think if it is just social and that's all 21 there is to it, well, then transparency, I think, is the 22 answer. If you get down to the stage of saying: 23 actually, this is something where we're going to monitor 24 incredibly closely who said what had and we want 25 a record of your social interactions, I think that gets</p> <p style="text-align: center;">Page 41</p>	<p>1 A. That's right, yeah. 2 Q. "The government will be open about its links with the 3 media, all meetings with newspaper and other media 4 proprietors, senior editors and senior executives will 5 be published quarterly, regardless of the purpose of the 6 meeting." 7 In using the term "meeting", which perhaps suggests 8 a degree of semi-formality, are you intending to include 9 there a social interaction or not? 10 A. Yes. I think when there's lunches or get-togethers of 11 that form, then I think the idea is they would be 12 included, yes. 13 Again, I think just that it goes back to the 14 Ministerial Code, the question of not just reality but 15 perceptions, and I think by publishing them all, we can 16 be clear that -- hopefully we'll influence perceptions 17 and show that ministers feel they have nothing to hide 18 in these interactions. 19 LORD JUSTICE LEVESON: But don't you then have to go a bit 20 further -- I'm only asking you -- at least to identify 21 the headline. So if it's social, then you identify 22 that, or if there is something specific discussed -- 23 I've seen some of the record, "general business" or 24 words of very, very great generality, which actually 25 convey very little.</p> <p style="text-align: center;">Page 43</p>
<p>1 into the ridiculous area, and obviously then you would 2 get into the world of -- you just shunt things into the 3 unregulated part. So if there's someone -- just imagine 4 someone being at a social occasion kind of taking a note 5 of who said what to whom, then nothing will -- you know, 6 then you would push things into phone calls if they did 7 want to say something they shouldn't. You can't 8 regulate everything, you can't regulate past -- they may 9 say something out of the hearing of somebody else. So 10 I think we have to be proportionate about this. 11 Q. The public would perhaps be most interested in these 12 social interactions because they will say: well, therein 13 might lie the evidence which would demonstrate the 14 inappropriate interaction. Would you agree with that? 15 A. And that's where I think it does make sense, with people 16 like proprietors and chairs, that we are open and 17 transparent about this. There's nothing to hide, you 18 know. This is a person who I've been a friend with for 19 a long time and I'm meeting them and I'm quite happy for 20 the world to know about that. That's why I think 21 transparency is the right solution. 22 Q. The amendment you recommended, which was going to be 23 a new clause 8.15, which I believe has been accommodated 24 into the latest version of the code, is at the bottom of 25 05296. Do you see that?</p> <p style="text-align: center;">Page 42</p>	<p>1 A. Mm-hm. 2 LORD JUSTICE LEVESON: I entirely endorse the view you can't 3 start having detailed records -- that would go far too 4 far -- but I would be grateful for your view on some 5 clarity, because the risk otherwise is that you have 6 legitimately half a dozen such meetings and they all say 7 "general business", and then everybody says, "Hang on 8 a minute. I wonder what's going on here." That's the 9 problem. 10 A. The problem you'd have, in practical terms, of 11 implementing that -- let's say somebody has a friend and 12 they have a social relationship where they both happen 13 to support the same football team and they both go to 14 that team's home games together. Are you going to have 15 someone sitting in a seat beside them -- 16 LORD JUSTICE LEVESON: Absolutely not. To some extent, we 17 have to trust everybody. 18 A. Indeed. 19 LORD JUSTICE LEVESON: And all these rules are for the 20 guidance of the wise and the obedience of the others, 21 I suppose, as lots of rules in life are. 22 A. I absolutely agree with you, and so therefore I think 23 the -- just transparency, saying, "You went to these 24 social occasions -- why?", "To watch the football", 25 would be a sensible way around it.</p> <p style="text-align: center;">Page 44</p>

<p>1 LORD JUSTICE LEVESON: No, it's actually not so much the 2 social occasions because if you say -- I won't name 3 a football club because that will always get me into 4 trouble -- "attending XFC", then I think it's pretty 5 obvious. But if you're having what might be described 6 as a rather more formal meeting for a catch-up, where 7 you might very well be discussing issues that ministers 8 are entirely right to discuss with editors or 9 proprietors, whether there has to be a little bit more 10 detail associated with that -- not minutes, but just 11 a little detail. I'm asking you, not telling you, not 12 suggesting this is a conclusion. I'm trying to use your 13 experience.</p> <p>14 A. I'd probably be slightly stronger than you, in the sense 15 of --</p> <p>16 LORD JUSTICE LEVESON: I might be very strong. I'm just 17 (overspeaking).</p> <p>18 A. Imagine there's a lunch and the lunch is to discuss 19 a lot of political issues, trying to persuade 20 a proprietor that you have a set of policies which 21 deserve their political support. I'd expect in these 22 circumstances a Prime Minister to take along his Chief 23 of Staff, let's say, political appointee, and that there 24 might then be a record made of -- that that was the 25 nature of the conversation. If it was a conversation</p> <p style="text-align: center;">Page 45</p>	<p>1 spoke to some editors and not other editors.</p> <p>2 MR JAY: Moving on to special advisers now, Lord O'Donnell, 3 paragraph 22 of your statement, 05344. They're on the 4 interface between government and politics.</p> <p>5 A. Uh-huh.</p> <p>6 Q. You say they provide political input to government 7 business which would not be appropriate for the 8 permanent civil servants, and of course they're coming 9 up through the party system and they build up 10 relationships with ministers often in opposition and 11 then are carried forward as special advisers in 12 government. That's the way it works, of course.</p> <p>13 You've identified in paragraph 22 a change to the 14 code. We needn't turn it up, but paragraph 3.3 of the 15 Ministerial Code May 2010 edition does make it clear 16 they uphold their responsibility to the government as 17 a whole, not just their appointing minister.</p> <p>18 A. Indeed.</p> <p>19 Q. How does that work in the context (i) a of the close 20 relationship they might have with their minister, and 21 secondly in the context of a coalition government?</p> <p>22 A. Well, in a sense, it's particularly coalition that led 23 us to include that sentence, because what you wanted 24 was -- clearly, the special advisers are politically 25 partial, that's precisely why they're put there, and</p> <p style="text-align: center;">Page 47</p>
<p>1 which was going to stray into a lot of detail about 2 public policy, then you would expect there to be 3 a private secretary and for the private secretary to 4 keep a brief note, and then, in terms of what you put 5 out there transparently, to try and -- without going 6 into enormous detail -- just say there are certain 7 things.</p> <p>8 Now, of course, as soon as you get into the world of 9 a brief note, then you get the question: well, is such 10 a brief note FOI-able or not?</p> <p>11 LORD JUSTICE LEVESON: I understand the question, and you 12 get into another problem as well, don't you, because 13 then won't editors want fair treatment? And they will 14 look at the notes -- they'll look at the disclosures of 15 the last two months and say, "Hang on a minute, you saw 16 the editor of the Sun six times in the last six -- and 17 you've only seen me once or not at all. I want fair 18 treatment." I'd be very interested to know how you 19 would approach that sort of issue.</p> <p>20 A. I suspect that it's no secret that certain editors get 21 in to see prime ministers more often than others. 22 That -- I think transparency in that area might be quite 23 healthy, might create just those sorts of issues and it 24 will generate some interesting questions, and I suspect 25 prime ministers will be quite happy to defend why they</p> <p style="text-align: center;">Page 46</p>	<p>1 they will be politically partial to different parties 2 within a coalition government, and what you wanted was 3 to be clear that when they were operating, they were 4 operating interests of the coalition government, not of 5 their political party.</p> <p>6 I suspect that this is important and it will become 7 very strained as we move towards the end of this 8 Parliament, when you might expect with a coalition that 9 the political parties will start to think about 10 differentiating their product ahead of a future General 11 Election. But I think it's really important that it's 12 there and that it's obeyed by special advisers.</p> <p>13 Q. There's also a code of conduct specifically for special 14 advisers, which is under tab 26 in the bundle you have.</p> <p>15 A. Mm-hm.</p> <p>16 Q. We have here the April 2009 amendment. Are you able to 17 assist with the provenance of this document? Does it 18 have the same status as the code as some sort of 19 executive instrument? Perhaps slightly lesser normative 20 force, really. It's not a code -- well, it is --</p> <p>21 A. It's a code. No, it's a code. It's the same as -- in 22 a sense -- there's a Ministerial Code, there's a code of 23 conduct for civil servants and a code of conduct for 24 special advisers. So I regard them all as being the 25 documents which all of those different groups should</p> <p style="text-align: center;">Page 48</p>

<p>1 regard as the key document for them to decide precisely 2 what they should do. It's their key guidance document. 3 Q. So this would be drafted by civil servants and improved 4 by ministers? 5 A. By the Prime Minister. That's right. 6 Q. But not before Parliament? 7 A. No, it's an executive document. Although Parliament has 8 access to it and could -- the public administration 9 Select Committee might well want to comment on it. 10 Q. Paragraph 3 of the code of conduct identifies the sort 11 of work a special adviser might do for his or her 12 minister. Paragraph 4: 13 "Temporary civil servants appointed under article 3 14 of the Civil Service Order in the Council." 15 Although towards the end of paragraph 4, we see: 16 "The responsibility for the management and conduct 17 of special advisers, including discipline, rests with 18 the minister who made the appointment." 19 Which, of course, would be different with a civil 20 servant for obvious reasons. 21 A. Absolutely, yes, and legally different post the passing 22 of CRAG^name , the Act. 23 Q. Contacts with the media, which is paragraph 10 and 24 following: 25 "Special advisers are able to represent ministers' Page 49</p>	<p>1 years, it's usually been because they became a bigger 2 story than the minister they were appointed to serve." 3 That's your own take on past events? 4 A. Well, you might want to discuss that with the witness 5 you have this afternoon. 6 Q. Okay. That's fair enough. 7 LORD JUSTICE LEVESON: Do you intend to cover the time when 8 we moved from civil servants acting as press officers to 9 directors of communication? 10 MR JAY: Maybe we should. 11 LORD JUSTICE LEVESON: At some stage. It might be time to 12 give a break to the shorthand writer, so we'll just take 13 eight minutes. Thank you. 14 (11.17 am) 15 (A short break) 16 (11.27 am) 17 MR JAY: At paragraph 25 of your statement, Lord O'Donnell, 18 you deal with the appointment of Alastair Campbell as 19 Director of Communications in 1997. An order in council 20 granted him the power to instruct civil servants. You 21 thought that the power was an inappropriate one for 22 a special adviser to have. 23 Did you give any advice at the time about this or 24 not? 25 A. No, I was at that point in the Treasury, I think. Page 51</p>
<p>1 views to the media with a degree of political 2 commitment." 3 11: 4 "All contacts with the news media should be 5 authorised by the appointing minister and be conducted 6 in accordance with the guidance on government 7 communications." 8 Is one looking for express authorisation in every 9 instance of contact? 10 A. No. 11 Q. That wouldn't be feasible? 12 A. That would not be feasible, no, nor practical. It's 13 just a general feeling that a minister would say, 14 "I would like you to take charge of briefing on this 15 specific area in conjunction with the press office." 16 Q. Section 12: 17 "Special advisers must not take public part in 18 political controversy ..." 19 So those are the general principles, and you pick 20 them up in paragraph 23 of your statement. 21 A. Mm-hm. 22 Q. In particular, the fact the special advisers should only 23 brief the media with appointed ministers' express 24 authorisation. You say: 25 "Where special advisers have had to resign in recent Page 50</p>	<p>1 Q. Why did you, however, reach that conclusion? 2 A. I think it just blurred those lines between what special 3 advisers does and what civil servants do, and I think, 4 with hindsight, it didn't work as well as it should have 5 done because I think it created the idea that the civil 6 servants were obeying some rules by someone who was 7 politically appointed, which meant that they also would 8 be politically biased, and so it -- I don't think it was 9 a good idea. I was very pleased when it was abandoned, 10 and I did advise that it should be abandoned, and that's 11 very good. I don't think it's an experiment we will try 12 again, I hope. 13 Q. Do you have any personal knowledge, though, of 14 instructions which were given to civil servants of 15 a political nature pursuant to the powers that were had? 16 A. No. 17 LORD JUSTICE LEVESON: But a director -- 18 A. I think it was more a perception issue than anything 19 else. 20 LORD JUSTICE LEVESON: A Director of Communications is still 21 a post in being, isn't it? 22 A. Absolutely, but it's a Civil Service post. Well, sorry 23 there are different posts. Let me clarify. There's 24 someone overall who will look after all of the press 25 officers and run both the Civil Service, generally Page 52</p>

13 (Pages 49 to 52)

<p>1 someone based in the Cabinet Office, and there's 2 a Prime Minister's official spokesman, currently Steve 3 Field, who works in Number 10, a civil servant, and then 4 there is a Prime Minister's special adviser on media 5 matters, which is what Mr Coulson was, Mr Oliver is now. 6 So there are those three posts. 7 The point about the third one, the special adviser, 8 is that they have no powers of ordering civil servants. 9 The other two are civil servants. 10 LORD JUSTICE LEVESON: But who is the one -- I know the 11 answer to the question, but who is the one that now does 12 what you did when you were the Prime Minister's press 13 secretary? 14 A. Steve Field. What -- I think it's fair to say what 15 we've seen in the period since I was doing it in 1992 16 has been the growth of the importance of that special 17 adviser in number 10. In the past, that wasn't such 18 a big person. 19 LORD JUSTICE LEVESON: But obviously one only had to live 20 through the years and see the significant role that 21 Mr Campbell occupied and held. Has that role diminished 22 post Mr Coulson, and if so, do you think that's a good 23 idea? If not, do you think that's not a good idea? 24 A. No, I think what's tended to happen is in my day I would 25 do overall all the government material as press Page 53</p>	<p>1 the political parties, you would find that they would 2 split very much more pushing their particular party 3 rather than the Coalition government. 4 LORD JUSTICE LEVESON: And the risks? 5 A. The risks are that this person doesn't entirely accord 6 with the special advisers' code and goes overboard into 7 being a true party political, starts attacking the 8 opposition and all the rest of it. 9 LORD JUSTICE LEVESON: Because actually doing it from 10 Number 10 carries with it an authority. 11 A. Indeed it does, and in a sense it's quite important that 12 that authority is there with the media, because the 13 reason you want the Prime Minister's official spokesman 14 and that special adviser role to carry the authority of 15 the Prime Minister is that it's clear that, as it were, 16 it trumps individual officers so that it's very clear 17 that's the government view and that you co-ordinate it 18 across government to come to that view. Sometimes when 19 you're talking about this being out there with the 20 political parties, they would tend to kind of have one 21 faction or another, and it's not as obviously 22 co-ordinated across the whole. 23 LORD JUSTICE LEVESON: I see. 24 MR JAY: May I move you through your statement, still on the 25 theme of special advisers, to page 05352 under the Page 55</p>
<p>1 secretary. If they wanted to do a lot more of the party 2 style, they tended to use the party machines, the 3 central office or Smith Square, and what happened over 4 time is I think they've decided that they'd much rather 5 have that in Number 10, and have that element of 6 a special adviser role in Number 10 doing part of that 7 job. Obviously they can't do the same as the people in 8 the party political offices, and the special advisers' 9 code explains that there is quite a strong distinction 10 between those two, but they wanted to have that more 11 political element inside Number 10. 12 LORD JUSTICE LEVESON: But does that create a risk? 13 A. I think it -- it certainly creates a risk, but it also 14 solves a risk. The risk it solves is that if there 15 isn't anyone there that kind of handles the issues of 16 the day with a party political slant, that actually the 17 civil servant gets dragged into it, and I think -- there 18 have been occasions where there have been -- people have 19 argued that's happened. So I think it's quite a good 20 idea. You get rid of that risk by having someone in 21 Number 10. Also, they don't become -- and I think it's 22 particularly important now that that person's in 23 Number 10 with a coalition, where they have someone 24 alongside them from the Lib Dems so that they can manage 25 this process, whereas if you'd outsourced it totally to Page 54</p>	<p>1 rubric "General questions about special adviser 2 conduct". 3 A. Uh-huh. 4 Q. At question 14, you make the point: 5 "... a shift towards special advisers with the media 6 or PR background, rather than a strong policy 7 background, which is to be regretted in my opinion." 8 It's probable self-evident, but what is the basis 9 for your regret? 10 A. Well, when I look back on my times of those special 11 advisers I think who had most impact, they were ones 12 who -- they might have understood about handling the 13 media but they also had a very strong understanding of 14 the subject matter, and I think if you go across the 15 board through all the political parties, I think some of 16 the most successful special advisers were really on top 17 of their subject matter. I look back on economists we 18 had in Treasury who were special advisers who really 19 understood the economics, and there were examples both 20 during the Conservative period -- Bill Robinson would 21 be, I imagine, a good example -- and in the Labour 22 period, someone like Ed Balls, a trained economist as 23 a special adviser. So I think it helps if your special 24 adviser really understands the subject. 25 Q. In question 15, you explain: Page 56</p>

<p>1 "Recent events have demonstrated the need to keep 2 special advisers out of areas where ministers are 3 operating in a quasi-judicial capacity." 4 We may come to that in a moment. It's the last 5 sentence, I think, in particular: 6 "I think we do need to find better ways of policing 7 the compliance of special advisers with their code, 8 perhaps by making it clearer that the Prime Minister's 9 Chief of Staff has a very important role to play in this 10 area." 11 Could you expand on that, please? 12 A. Certainly, and this is a recent thing. The amendment we 13 made to the special advisers' code about them operating 14 for the government as a whole I think is important. If 15 you're a special adviser, it's actually quite a lonely 16 job. You're working within a department for the 17 particular minister that appointed you. To understand 18 the nuances of where department A and department B have 19 very different views and how that's been reconciled, and 20 in order for you to explain the new reconciled policy 21 and not get stuck in trying to explain actually what 22 department A thinks rather than department B is quite 23 a subtle role, and quite important that they get help 24 and assistance in that process, and I think the Chief of 25 Staff has a role to play and indeed does play this role, Page 57</p>	<p>1 A. Mm-hm. 2 Q. This is on the very day, 22 December. Particularly the 3 last paragraph: 4 "In advance of taking the decision to move 5 ministerial responsibility yesterday, the Prime Minister 6 specifically asked me whether there was any legal 7 impediment to moving it to Mr Hunt. I took advice from 8 lawyers and provided advice that there was no such 9 impediment. I was, of course, aware of the former 10 statements from Mr Hunt." 11 Which you cite. 12 "I am satisfied that those statements do not amount 13 to a pre-judgment of the case in question. Indeed, the 14 third quotation specifically states that Mr Hunt would 15 not want to second guess what regulators might decide." 16 So you acted on legal advice and the problem may lie 17 more in giving these decisions to ministers in the first 18 place, rather than the particular decision you made on 19 this occasion. 20 A. (Nods head) 21 Q. Do you have a view about that? 22 A. Well, at the moment we have a system which gives these 23 sorts of decision to ministers. So the issue for me 24 was: which Secretary of State should get it? And the 25 issue was clearly about media, so, surprise, surprise, Page 59</p>
<p>1 I think, in making sure -- and I think your witness this 2 afternoon, Alastair Campbell, would get together special 3 advisers to actually explain the overall government 4 position. 5 I think the point to stress about special advisers 6 rather than civil servants is the absence of a standard 7 management structure. They don't have a manager, as 8 such. They don't have a set of objectives, annual 9 appraisals, all those sorts of things. I've tried to 10 push that, and I think current government is going to 11 move some way in these directions, but I think we expect 12 a lot of special advisers working within a specific 13 department for a specific minister to actually 14 understand and operate to working for the best interests 15 for the whole of government. 16 Q. You were involved in the one aspect of the problems 17 which arose in connection with ministers occupying 18 a quasi-judicial role. Tab 31, Lord O'Donnell. After 19 Dr Cable's -- 20 A. Yes. 21 Q. 21 December 2010. The shadow business secretary wrote 22 to you, and the Financial Times have set out here the 23 text of his letter, pointing out that Mr Hunt might not 24 be able to bring an open mind to the issue either. You 25 replied under tab 32. Page 58</p>	<p>1 you think first of all of the Secretary of State for 2 Culture, Media and Sport. It's perfectly within their 3 provenance, and so that seemed to me the right place to 4 transfer the work. There were a number of ministers 5 who'd made a number of comments. I think the legal 6 question as it was put to me was: do those ministers' 7 comments amount to a pre-judgment of the issue? And 8 that's where the lawyers were clear that it didn't and 9 therefore, that -- it seemed to me it was entirely 10 appropriate to do it. There's obviously an entirely 11 separate question thereafter about how it was done, but 12 from the point of view of appointing a minister, that 13 seemed to me -- I was told that this clearly did not 14 amount to him having a close-minded view. 15 LORD JUSTICE LEVESON: Two points come out of that. First 16 of all, it was quite clear that before the decision was 17 made that Mr Hunt should do the job, his observation on 18 the website, which has been reported much in the press 19 of late -- that, like all good Conservatives, Hunt is 20 a cheerleader for Rupert Murdoch's contribution to the 21 health of British television -- was well-known and well 22 reported? 23 A. Absolutely. 24 LORD JUSTICE LEVESON: The second point. Somebody has 25 said -- I can't remember who, but somebody has said that Page 60</p>

<p>1 actually all leading politicians, of whatever political 2 persuasion, will have strong views one way or the other 3 about Mr Murdoch and the risk then comes -- the question 4 then arises how you get these decisions made, which 5 actually leads into what Mr Jay was then asking you. 6 Obviously you're getting the advice and you won't be 7 surprised that I am perfectly content that you take 8 legal advice and then act on it, but there are all sorts 9 of ramifications which are outside the pure law here. 10 A. Indeed there are, and you could -- I mean, we could have 11 the discussion -- but it might take us beyond the remit 12 of your Inquiry -- as to whether it's appropriate that 13 these sorts of decisions are dealt with in this way. 14 But that's the way we do deal with them and if you want 15 to take the view that -- I'm even being cautious about 16 using the phrase "quasi-judicial" because I know there 17 are some lawyers who argue about the use of that phrase, 18 and some would argue that politicians are -- precisely 19 because they have views, are the right people to take 20 these sorts of decisions. 21 But there is a debate to be had as to whether you 22 would want to the say: "Actually, in these sorts of 23 areas, we might want to do it in an entirely -- give it 24 to a judge, for example." 25 LORD JUSTICE LEVESON: Oh, enough. The judges have more</p> <p style="text-align: center;">Page 61</p>	<p>1 about the basis on which they're doing it and the way 2 they have to do it, and they have their lawyers 3 alongside them throughout the whole process and they're 4 very careful about it. I think on balance, I would 5 stick with these being done by secretaries of state. 6 LORD JUSTICE LEVESON: The real question is: does the 7 relevant Secretary of State have such a mindset, which 8 is perfectly understandable -- he's entitled to his 9 views like everybody else -- that he can't approach the 10 question objectively and make a decision which is 11 balanced, with all the factors in mind, rather than one 12 that is -- I don't say prejudiced but pre-judged, 13 because of the underlying background. It may be -- and 14 I'm not doing a legal analysis -- that that's what is 15 meant by "quasi-judicial". 16 A. It could be, but remember that if -- I mean, any 17 decision made will be subject to a JR, and during the JR 18 process I suspect that people that wanted to question 19 the decision would be making precisely that argument, so 20 it would be important, I think, when deciding that an 21 individual Secretary of State was the right person to do 22 it, that you'd take a view about whether such a JR would 23 be successful or not. 24 LORD JUSTICE LEVESON: Yes, but one has to be rather careful 25 here, because if you judge in terms of whether</p> <p style="text-align: center;">Page 63</p>
<p>1 than enough to do. But I'm not sure that it seriously 2 does take it outside the terms of reference in which 3 I apprehend you had more than a little hand, because the 4 terms of reference do require -- I'll just try and get 5 hold of them -- 6 A. That's outside -- my memory's quite good on -- you're 7 absolutely right. If you were to say, one of the 8 lessons from these experiences is that actually you 9 think we should amend this system and that it shouldn't 10 be done in this way in the future, then I think that 11 will be a very important finding one way of the other. 12 LORD JUSTICE LEVESON: Yes, it would be a very important 13 finding but the question is whether I should go there. 14 You have an experience of this sort of issue -- 15 A. Yes. 16 LORD JUSTICE LEVESON: -- that goes back many years. 17 A. Indeed. 18 LORD JUSTICE LEVESON: And people are entitled to say that 19 judges have certain experiences but not those and 20 therefore who I am I to say. That's why I need your 21 help. 22 A. To be honest, I've thought about this a lot and in the 23 end, I come down to the view that actually probably 24 elected politicians are in quite a good place to take 25 these decisions, as long as they're very, very clear</p> <p style="text-align: center;">Page 62</p>	<p>1 a judicial review will be successful, the risk is that 2 you start to focus on the process rather than actually 3 what's going on underneath the process, because it is 4 frequently said that judges are very good at making 5 their decisions proof of -- and ministers proof from 6 judicial review. That's not necessarily an absolute 7 guarantee that they haven't approached it slightly 8 differently. 9 A. Absolutely, and all I think we can do from the Civil 10 Service side is to actually ruthlessly emphasise the 11 process, the importance of taking legal advice, the 12 considerations that should be applied and shouldn't be 13 applied, the need in the whole process to show absence 14 of bias, and I think that's the crucial part. 15 LORD JUSTICE LEVESON: Or perception of bias. 16 A. Or perception of bias, indeed. 17 LORD JUSTICE LEVESON: Which is always more difficult. 18 A. Indeed. And there are legal rulings which make it clear 19 that you have to manage this process and get the 20 exact -- you know, that a respected outsider, as it 21 were, would be happy with the decisions that were made. 22 LORD JUSTICE LEVESON: The corollary, is: well, if it's not 23 going to be a minister, who is it going to be? It's 24 always easy to pull out the file marked "judge", but 25 judges aren't necessarily in the best position to make</p> <p style="text-align: center;">Page 64</p>

<p>1 policy decisions.</p> <p>2 A. No.</p> <p>3 LORD JUSTICE LEVESON: Based upon a framework which they</p> <p>4 have to react around that decision, or you have to have</p> <p>5 some select group, which itself creates its own</p> <p>6 problems.</p> <p>7 A. I totally agree with that. I would say this is an</p> <p>8 example of a policy decision, and if you think about it,</p> <p>9 ministers are making these sorts of policy decisions all</p> <p>10 the time and they're weighing up what in their view is</p> <p>11 in the public interest. What gives them the right to do</p> <p>12 that, I think, is the fact they've been elected to do</p> <p>13 precisely that. That's why, in the end, I come down to</p> <p>14 the view that it should be ministers that do these</p> <p>15 things, but subject to -- when we're in this sort of</p> <p>16 area, subject to very careful rules about process.</p> <p>17 I've observed other circumstances where we've kind</p> <p>18 of outsourced the view about assessing the public</p> <p>19 interest to others, and they're not always, to my mind,</p> <p>20 satisfactory.</p> <p>21 LORD JUSTICE LEVESON: The Competition Commission?</p> <p>22 A. What I had in mind was the panels of freedom of</p> <p>23 information tribunals, to be honest, trying to assess</p> <p>24 public interest versus safe space arguments for</p> <p>25 government. I think it's really hard for those panels</p> <p style="text-align: center;">Page 65</p>	<p>1 frequent access to the highest classification material.</p> <p>2 Only very small number of individuals are DV cleared,</p> <p>3 even within Number 10 and the Cabinet Office."</p> <p>4 Can I ask you a couple of questions about this.</p> <p>5 Were previous holders of Mr Coulson's post DV'd or not,</p> <p>6 to your knowledge?</p> <p>7 A. It's a question of what you define as the post, but</p> <p>8 I think in general terms they -- well, I'm just trying</p> <p>9 to think who would have been the equivalent before.</p> <p>10 I guess Alastair Campbell probably would have gone</p> <p>11 through DV'ing. Quite often you get a situation where</p> <p>12 they might start off not being DV'd and then you will</p> <p>13 consider whether they're going to operate the job in</p> <p>14 a way in which it means that they do get involved in</p> <p>15 some of these issues, where they would need -- you can</p> <p>16 have access to top secret under SC clearance, which</p> <p>17 Mr Coulson had, but it's frequent access that would be</p> <p>18 the issue, and it just depends on how those individuals</p> <p>19 operate in their job.</p> <p>20 Sorry, I can't remember offhand precisely all of the</p> <p>21 past holders of that post, whether they had it or not,</p> <p>22 but I'm sure we can provide that information.</p> <p>23 LORD JUSTICE LEVESON: Would that be done on a circumstances</p> <p>24 basis or --</p> <p>25 A. Yeah, in general it's --</p> <p style="text-align: center;">Page 67</p>
<p>1 to actually have the experience to understand the safe</p> <p>2 space part of it.</p> <p>3 MR JAY: Lord O'Donnell, you also were involved in the</p> <p>4 aftermath of the Mr Coulson issue. Under tab 30, you'll</p> <p>5 see a letter you wrote on 22 July 2011 to the Shadow</p> <p>6 Secretary of State, Mr Lewis.</p> <p>7 A. Mm-hm.</p> <p>8 Q. You say this:</p> <p>9 "Neither the Deputy Prime Minister nor the royal</p> <p>10 household raised any concerns with me or officials</p> <p>11 either before or during Mr Coulson's period of</p> <p>12 employment as a special adviser. I have to admit to</p> <p>13 being somewhat surprised to be asked about Buckingham</p> <p>14 Palace when they have already clearly said on no</p> <p>15 occasion did any officials from Buckingham Palace raise</p> <p>16 concerns to Downing Street and indeed it is outrageous</p> <p>17 to suggest this. Neither were any concerns raised with</p> <p>18 my by the Prime Minister or any other special advisers</p> <p>19 about Mr Coulson's conduct in previous employment."</p> <p>20 On the issue of vetting -- it's on the next page,</p> <p>21 Lord O'Donnell -- you point out, if I can paraphrase it:</p> <p>22 he was cleared to SC level, which allowed him access to</p> <p>23 secret papers. This is one level below DC, higher than</p> <p>24 CT. Then you say:</p> <p>25 "DV is required only for individuals who require</p> <p style="text-align: center;">Page 66</p>	<p>1 LORD JUSTICE LEVESON: -- routinely?</p> <p>2 A. Some people operate in that job would say, "Look, what</p> <p>3 I really want to do is get involved in the economy" --</p> <p>4 a whole set of issues which basically didn't go into the</p> <p>5 kinds of things that we would -- where regular top</p> <p>6 secret access was required, and they just wouldn't want</p> <p>7 to go there. It quite often turned out that they would</p> <p>8 start off with that view -- or, in this case, the</p> <p>9 Number 10 permanent secretary would have that view --</p> <p>10 and then, as events changed, they would realise -- the</p> <p>11 first big terrorist event came along and then there</p> <p>12 would be a lot of papers which, by their nature, were</p> <p>13 all top secret, and then you would say, "Actually, this</p> <p>14 isn't working, we need to give access to this", or: "It</p> <p>15 would have been better if that person had access to</p> <p>16 these papers routinely, therefore we've decided ..."</p> <p>17 And this is what happened with Mr Coulson: we decided in</p> <p>18 the light of the terrorist incident, the airline bomb</p> <p>19 plot, that actually it made for sense for him to be DV'd</p> <p>20 so we could give him regular access to these papers.</p> <p>21 Up to then, it hadn't been an issue because I don't</p> <p>22 think he'd been that interested in those aspects of work</p> <p>23 which would have required them to have top secret</p> <p>24 access.</p> <p>25 LORD JUSTICE LEVESON: So a lot depends, do I gather from</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 what you say, on what's happening at the time? So</p> <p>2 certainly under Mr Campbell's period in office, in the</p> <p>3 role that he occupied --</p> <p>4 A. Yes.</p> <p>5 LORD JUSTICE LEVESON: -- there were matters which were</p> <p>6 likely to involve considerable access to top secret --</p> <p>7 A. Yes. When you're at war, clearly --</p> <p>8 LORD JUSTICE LEVESON: That's what I had in mind.</p> <p>9 A. Absolutely.</p> <p>10 LORD JUSTICE LEVESON: But in the light of the public</p> <p>11 interest in just this issue, and the inferences that</p> <p>12 have been argued, it might be worthwhile identifying if</p> <p>13 and when each of the comparative equivalent holders of</p> <p>14 that particular post received the higher level of</p> <p>15 vetting.</p> <p>16 A. Yes.</p> <p>17 LORD JUSTICE LEVESON: Only to demonstrate that there isn't</p> <p>18 a smoking gun here. If there is, then there is. I'll</p> <p>19 be happy to allow the Inquiry's offices to be used to</p> <p>20 demonstrate that there isn't, so at least that</p> <p>21 particular argument can be dealt with.</p> <p>22 A. I'm very happy to give information on precisely when</p> <p>23 previous occupants of the office were DV'd and we can</p> <p>24 give you that detail. No problem about that.</p> <p>25 I think I should stress that the decision is --</p> <p style="text-align: center;">Page 69</p>	<p>1 I say, SC level allows people access up to "secret" and</p> <p>2 occasional access to "top secret". If you're getting</p> <p>3 a vast number of people having regular access to "top</p> <p>4 secret", you do have to worry from a security point of</p> <p>5 view that there's just too many people seeing top secret</p> <p>6 documents.</p> <p>7 LORD JUSTICE LEVESON: And the risk of leaks.</p> <p>8 A. The risk of leaks, exactly.</p> <p>9 LORD JUSTICE LEVESON: We have that even without secrecy.</p> <p>10 A. Precisely. I'm sure you're aware of that. So as the</p> <p>11 person sort of in overall responsibility for this,</p> <p>12 I want top secret papers to be kept on a restricted</p> <p>13 circulation, please, so I want them to be just to the</p> <p>14 DV'd. When people say to me: "Do you know how many</p> <p>15 people there are DV'd?" I say, "Well, actually, we</p> <p>16 should look at that and keep it as tight as we need to."</p> <p>17 So these should be really on a need-to-know basis. So</p> <p>18 I think I do have a bias towards trying to keep the</p> <p>19 numbers low.</p> <p>20 MR JAY: The other aspect of procedures you might be able to</p> <p>21 assist us about is the ascertainment of any possible</p> <p>22 conflicts of interest, and whether matters such as</p> <p>23 shareholdings are routinely asked for in disclosure</p> <p>24 forms or whatever. We're looking obviously now at May</p> <p>25 2010.</p> <p style="text-align: center;">Page 71</p>
<p>1 DV'ing takes a while, so on day one, if you bring</p> <p>2 someone into the office, by their nature you have</p> <p>3 a problem about having them in the right vetting space</p> <p>4 straight away. So you do have to restrict them from</p> <p>5 various things. It was just felt that SC, given</p> <p>6 Mr Coulson's interests and the fact that he seemed to be</p> <p>7 very much domestically focused, that it would be -- we</p> <p>8 would be able to do that, but actually, when it became</p> <p>9 apparent during a real terrorist incident that this</p> <p>10 didn't work, we started the process of DV'ing.</p> <p>11 I think some people have different understandings of</p> <p>12 what DV'ing would reveal. It wouldn't have gone into</p> <p>13 enormous detail about phone hacking, for example.</p> <p>14 LORD JUSTICE LEVESON: No. It's concerned with whether</p> <p>15 you're likely to be a risk.</p> <p>16 A. Whether you're blackmailable, basically, yes,</p> <p>17 absolutely, and in terms of your financial position or</p> <p>18 your personal life.</p> <p>19 LORD JUSTICE LEVESON: Yes. Do I gather from the next</p> <p>20 sentence in your letter that you'd taken the decision</p> <p>21 that actually the number of staff in Number 10 should be</p> <p>22 kept as low as possible or has that been a longstanding</p> <p>23 decision?</p> <p>24 A. No, that's -- in general, you try not to have an</p> <p>25 explosion of how many people go through DV'ing. Like</p> <p style="text-align: center;">Page 70</p>	<p>1 A. And the answer is: yes, they are, and there's a form</p> <p>2 which has to be signed which should disclose</p> <p>3 shareholdings.</p> <p>4 Q. Is this all shareholdings or any shareholdings which</p> <p>5 might be relevant?</p> <p>6 A. Conflicts, basically, is what it asks about.</p> <p>7 LORD JUSTICE LEVESON: Well, again, in the light of what</p> <p>8 we've heard, was such a sign formed by Mr Coulson?</p> <p>9 A. A form signed, but it didn't disclose the shareholding</p> <p>10 and it should have done.</p> <p>11 LORD JUSTICE LEVESON: He's said that it was an explanation,</p> <p>12 not an excuse. Well, the second half of your answer</p> <p>13 answers the next question I would otherwise have asked.</p> <p>14 MR JAY: Last aspect of special advisers: did you give</p> <p>15 advice at any stage to Mr Brown about the activities of</p> <p>16 certain of his special advisers? In particular,</p> <p>17 Mr McBride, but not necessarily limited to him.</p> <p>18 A. I did have a conversation with Gordon Brown when he was</p> <p>19 chancellor. I felt that what Damian McBride was getting</p> <p>20 into as press secretary was in the areas where it would</p> <p>21 be more appropriate for Damian McBride to be a special</p> <p>22 adviser than a civil servant and that status change was</p> <p>23 made, yes.</p> <p>24 Q. So he mutated from being press secretary to special</p> <p>25 adviser, given the sort of things he was doing, to put</p> <p style="text-align: center;">Page 72</p>

<p>1 it neutrally?</p> <p>2 A. I think he was clearly someone who had the capacity to</p> <p>3 operate in the special adviser mode, and after</p> <p>4 discussion, we felt it was probably more appropriate</p> <p>5 that that's where he operated.</p> <p>6 Q. Okay. At paragraph 27 and following, you deal with the</p> <p>7 position of civil servants.</p> <p>8 A. Yes.</p> <p>9 Q. In particular, the Phillis review. Can you explain to</p> <p>10 us the background to that review? Of course, it was in</p> <p>11 2004.</p> <p>12 A. Yes. I remember I was permanent secretary in the</p> <p>13 Treasury then. The background was very much in relation</p> <p>14 to your witness this afternoon, Alastair Campbell, and</p> <p>15 some worries about how the whole government</p> <p>16 communications machine was operating. There was an</p> <p>17 independent review led by Mr Phillis which came up with</p> <p>18 various recommendations, a number of which -- and</p> <p>19 principles which have been incorporated into the</p> <p>20 guidance for press officers.</p> <p>21 Q. If you look under tab 24, you'll see the review itself.</p> <p>22 You're right to say you're not yet cabinet secretary in</p> <p>23 2004.</p> <p>24 A. No. I didn't really have anything to do with this.</p> <p>25 I was busy working on the economy then.</p> <p style="text-align: center;">Page 73</p>	<p>1 and very much as permanent secretary there, but</p> <p>2 I think -- I have no reason to question what the Phillis</p> <p>3 review came up with. I think it may overstate the --</p> <p>4 I think that was a trend that was happening anyway, but</p> <p>5 it was certainly more marked post the change of</p> <p>6 administration.</p> <p>7 Q. It may be appearing to be placing all the blame, if</p> <p>8 that's the right way of putting it, on one individual,</p> <p>9 but subject to that qualification, would you agree with</p> <p>10 the general sentiment?</p> <p>11 A. I think the general sentiment, yes, in that there was an</p> <p>12 issue, I think, with whether government communications,</p> <p>13 communicators -- there were certain areas where they</p> <p>14 were deemed not to be as effective as they might be, for</p> <p>15 example, in the areas of instant rebuttal. The whole</p> <p>16 point about 24/7 media was that it was becoming</p> <p>17 a process whereby you really had to have press officers</p> <p>18 that were staffed up and capable throughout the 24</p> <p>19 hours, and I think prior to that, there had been a kind</p> <p>20 of feeling that you could manage this with rather less</p> <p>21 resources. So the resources allocated to media were</p> <p>22 increased quite substantially.</p> <p>23 Q. In one sense, you may be best placed to deal with the</p> <p>24 third point, which is the response of the Civil Service</p> <p>25 to the new demands that were placed on it. Can you</p> <p style="text-align: center;">Page 75</p>
<p>1 Q. Under section 4, page 6 on the internal numbering, we</p> <p>2 have the context and the evidence: a breakdown in trust,</p> <p>3 diminishing trust in the media. Then the background to</p> <p>4 the breakdown is on page 7. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. "We were told that three major factors had contributed</p> <p>7 to the breakdown of the relationship between government,</p> <p>8 the media and the public.</p> <p>9 "1. The communications strategy adopted by Labour</p> <p>10 administration on coming into power in 1997.</p> <p>11 "2. The reaction of the media and the press in</p> <p>12 particular to that.</p> <p>13 "3. The response of the Civil Service to the new</p> <p>14 demands that were placed on it.</p> <p>15 "Labour's past experience in handling the media, and</p> <p>16 its belief that government communications staff were not</p> <p>17 up to the mark saw a rise in the media handling role of</p> <p>18 politically appointed unelected special advisers. Their</p> <p>19 more aggressive approach and their increased use of</p> <p>20 selective briefing of media outlets, in which government</p> <p>21 information was seen to be used to political advantage,</p> <p>22 led to a reaction from the media that has produced a far</p> <p>23 more adversarial relationship with government."</p> <p>24 Is that close to the mark or not in your view?</p> <p>25 A. Like I say, at the time I was operating in the Treasury</p> <p style="text-align: center;">Page 74</p>	<p>1 assist us with that?</p> <p>2 A. Yes. From the Civil Service point of view, I think the</p> <p>3 question was -- it comes back to what I've said. There</p> <p>4 had been this massive growth in media outlets and the</p> <p>5 question was whether the press officers themselves were</p> <p>6 up to managing a situation where you had 24-hour news,</p> <p>7 you know, things happen instantly. When there was</p> <p>8 a terrorist event, you might get people using their</p> <p>9 mobile phones to put footage out straight away, and were</p> <p>10 we up to and capable of monitoring the media operation</p> <p>11 24/7 and of responding in real time? And I think that</p> <p>12 was the issue, that we needed to get better at our</p> <p>13 response times and our ability to co-ordinate positions</p> <p>14 really quickly.</p> <p>15 Q. Mr Phillis's report also deals with the role of special</p> <p>16 advisers again at page 10. Evidence of tensions between</p> <p>17 their respective roles. Well, that's something you've</p> <p>18 spoken to. The next paragraph:</p> <p>19 "Many of them concentrate their limited time on the</p> <p>20 political reporters in the lobby and on a handful of</p> <p>21 specialists. We have been told that this has created an</p> <p>22 inner circle of reporters who have good access but</p> <p>23 a disenfranchised majority who do not. This can leave</p> <p>24 reporters dealing with a sometimes poorly informed and</p> <p>25 demoralised press operation. The way some have operated</p> <p style="text-align: center;">Page 76</p>

<p>1 has also led to a blurring of information and comment." 2 Again, would you agree with that sentiment or not, 3 from your own experience? 4 A. Well, I mean there was obviously an issue about 5 journalists that were in the lobby and journalists that 6 weren't. That was one issue. The ones that were in 7 felt that they had better relationships. I think now 8 with lobby notes being placed on the record, you get 9 round that so it's all there for anyone to see. Also, 10 there are various -- the Press Association, PA, for 11 example, who put material out from the lobby. 12 Where there is an issue, I think, is at times 13 I think the focus has been too much on the national 14 media and it hasn't given enough emphasis on the 15 regional media. They are representative at the lobby 16 but not in great numbers and I think it does tend to 17 create this London-centric atmosphere. 18 LORD JUSTICE LEVESON: Interestingly enough, there's 19 a comment in the box there which I'd not previously 20 focused on but comes to mind in the light of one of your 21 previous answers to do with the difference between 22 special advisers and press officers, from Adam Boulton: 23 "The present elision of political and Civil Service 24 information is benefiting no one. In the short term, it 25 gives the government more wiggle room because no one</p> <p style="text-align: center;">Page 77</p>	<p>1 I appreciate I'm dancing back, but I'm just focusing on 2 the evidence you've given on the absence of a structure, 3 a managerial structure of control, and the fact that the 4 special adviser works to his or her minister without 5 that sort of supervision, subject only to the relevant 6 authority from the senior Civil Service, presumably the 7 Permanent Secretary. Has that always worked? 8 A. No, I think it's -- it is, like I say, a weakness in the 9 system in that I think various special advisers in 10 Number 10 -- Alastair Campbell, Ed Llewellyn -- have 11 tried to bring together the special advisers and create 12 some sort of cohesion, but to my mind the problem is 13 that there isn't a sort of managerial responsibility and 14 the fact is special advisers are employed by the 15 minister, so if there's an issue about a special adviser 16 violating the code, it's not a matter for the Permanent 17 Secretary; that's a matter for the minister. And it's 18 the ministers that have to decide on whether they should 19 stay or not. 20 LORD JUSTICE LEVESON: I understand. But I rather gather 21 from something you said that the Permanent Secretary did 22 have a role in relation to what special advisers could 23 or should do. 24 A. The minister has responsibility for the special adviser. 25 The minister, in saying, "Did my special adviser do the</p> <p style="text-align: center;">Page 79</p>
<p>1 knows where they stand, but in the long run it has 2 damaged the credibility of government statements, 3 including denials of allegations against it." 4 Do you have a comment on that? 5 A. This goes back to the point I made about I think it's 6 really important that the Prime Minister's official 7 spokesman is a civil servant and that's the clear 8 government line. If there is a desire to get some 9 political spin on that, then you can talk to the special 10 adviser, but everyone knows that what the 11 Prime Minister's official spokesman says is the 12 government's position and there's no wiggle room, there 13 shouldn't be any wiggle room, and I agree with what Adam 14 Boulton's saying there, that actually it's in nobody's 15 interests, this. You really need to know: this is the 16 government's policy and here's what it is, and someone 17 needs to be able to say that definitively and with 18 absolute credibility. That's the importance of the 19 Prime Minister's official spokesman. 20 Q. There weren't any other points on Mr Phillis. The 21 report otherwise speaks for itself. 22 The police and the media now. Paragraph 39 of your 23 statement. 24 LORD JUSTICE LEVESON: Just before we go onto the police, 25 while we're still talking about special advisers,</p> <p style="text-align: center;">Page 78</p>	<p>1 right thing here?" may well consult his permanent 2 secretary, who would say, "Actually, the special 3 advisers' code says the following, and it appears your 4 special adviser -- either what he did was fine or wasn't 5 fine", and will give advice to the minister. But it's 6 very much the ministers who are responsible for this. 7 Whereas if there was a civil servant who was accused of 8 breaking the code, then it would be for the Permanent 9 Secretary to sort out without reference to ministers. 10 LORD JUSTICE LEVESON: You will be aware that considerable 11 attention has been focused recently upon the 12 relationship between a special adviser to the Secretary 13 of State for Culture, Media and Sport and a PR 14 representative of News Corp. 15 A. Mm-hm. 16 LORD JUSTICE LEVESON: Without making any decisions -- 17 because of course, you are not there to do that any 18 more -- is there any assistance or light that you can 19 shed on how the relationship should have worked, who 20 should have got authority for what and how that should 21 have happened? 22 A. Well, the -- I think it's clear in the special advisers' 23 code that in terms of authorisation, ministers should 24 authorise their special advisers as to what they do, for 25 example, with the media. I would have expected the</p> <p style="text-align: center;">Page 80</p>

1 minister to be clear about what he thought his special
 2 adviser should be doing. Particularly, I think, the
 3 minister and permanent secretary will make clear what
 4 the nature of engagement should be in a -- if we're
 5 going to use the shorthand -- quasi-judicial procedure,
 6 absolutely.

7 LORD JUSTICE LEVESON: And would you expect that to be
 8 documented?

9 A. Not necessarily. I mean, these are fairly regular and
 10 routine things. They're slightly different in every
 11 particular case. If, for example, you're in DCLG and
 12 you're dealing with a planning issue, it's different.
 13 If you're dealing with a technical, economic or
 14 financial issue, again, it's different.

15 So these areas have slightly different aspects to
 16 them, but in general, the principles of keeping all
 17 parties informed about process is perfectly reasonable,
 18 but not getting into substance. I think that's
 19 a general accepted principle.

20 LORD JUSTICE LEVESON: Do you have any other observations
 21 upon the -- not the detailed fact, which I don't think
 22 it would be fair to ask you to comment upon, but upon
 23 the principles in relation to this particular case?

24 A. I think the principles should be very clear, that it
 25 should be made absolutely clear to all concerned that

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1 the way they should operate is fairly, ie. talking about
 2 process is fine but you should make sure that the same
 3 information is passed on all parties in a case, so
 4 that -- I mean, this is not least to protect against
 5 a future judicial review, so fairness is absolutely
 6 crucial to what happened. And -- well, that should be
 7 at the heart of the whole process, that everyone should
 8 be clear that that's the way they should operate.

9 MR JAY: Police and the media now, paragraphs 39 and 40.
 10 You pinpoint, Lord O'Donnell, the need for a culture
 11 change for the police. Maybe the starting point is to
 12 identify in your terms the existing culture, at least
 13 from your own perception, your own evidence.

14 A. Well, I think you saw Bob Quick's evidence on this. The
 15 experience I have is that senior police officers take
 16 the view -- and I'm now talking about the Met -- that
 17 it's really important for them to have close
 18 relationships with the media, with journalists, so that
 19 on occasion they can talk to them about stories they
 20 would like them not to run because it wouldn't be in the
 21 public interest, or if they would like them to run
 22 because they would be in the public interest, in order
 23 to help them, say, catch someone or alert the public to
 24 a danger. And this process has led to a very close
 25 relationship -- I think Mr Quick's evidence gives

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1 examples of questions about hospitality -- and the
 2 culture -- I mean, it's so different from a Civil
 3 Service culture where we basically say to people: "Look,
 4 there's a press office, it's their job to deal with the
 5 media." I wouldn't expect senior civil servants to be
 6 having close relationships with the media. They might
 7 do a particular briefing on a specific subject. I would
 8 expect all of our hospitality to be -- for senior civil
 9 servants to be very explicit, very transparent, to be
 10 out there. I wouldn't expect there to be a lot of it.

11 So it's a very different culture, I think. For us,
 12 you'll find that -- and you can look at all the records
 13 that have been disclosed -- there's very limited
 14 interaction with journalists in general amongst the
 15 senior Civil Service and what there is is out there
 16 transparently and I think that's the right way to do it
 17 and I think you should channel these things through your
 18 press offices.

19 It's also apparent, having prepared for this,
 20 reading some of the books written by former Met
 21 commissioners and Mr Quick's evidence -- it comes
 22 through as a systematic element of people complaining
 23 that their senior colleagues were briefing against them
 24 in the media. Now, that would never happen -- I mean,
 25 that would be incredibly rare in the Civil Service,

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1 simply because those senior civil servants would never
 2 dream of it being appropriate, given the code of
 3 conduct, for them to be talking to journalists about
 4 those sorts of issues.

5 So it does strike me as something quite widespread
 6 that really does need a fundamental look, and I would
 7 say that adopting the attitude that we do in the Civil
 8 Service, of basically saying, "Look, this is an issue
 9 you should just leave to your press office most of the
 10 time and not get involved in it yourself", would be
 11 a very good thing.

12 My own experience was that -- again, very difficult
 13 to come up with hard evidence, but I certainly had my
 14 worries, which is why I raised some of them with
 15 Sir Paul Stephenson about the cash for honours issue.

16 LORD JUSTICE LEVESON: Just pushing that along a little bit
 17 further, does that mean that if you're going to involve
 18 your press office in more, you have to be a bit careful
 19 about the relationships developing between the very
 20 senior people in your press office and the press?

21 A. Absolutely, yes, but at least you -- they're the ones
 22 you should focus on, and it should be that when a line
 23 comes to the press office, it's a line that's agreed
 24 across the whole of the organisation. That's the virtue
 25 of having a press office, as opposed to individuals

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<p>1 briefing. If you have a situation where the individuals 2 are briefing against each other, you have the risk of 3 there being different aspects of a story emerging in 4 different ways.</p> <p>5 LORD JUSTICE LEVESON: Oh yes, that's one aspect of it. The 6 aspect I was particularly asking about was whether there 7 was a risk of an unbalanced relationship with one media 8 group as opposed to another in the person of the 9 director of public affairs. There's no need to be coded 10 about it, because one of the issues that I have been 11 required to consider is whether News International 12 became excessively involved, at a very high level, with 13 senior police officers and indeed with the director of 14 public affairs.</p> <p>15 A. I think it is absolutely crucial that the person you 16 have when you put this power in the press office then 17 becomes someone who is seen as not being partial. They 18 have to be seen as being able to deal with all the media 19 across the board. It's absolutely right. It may well 20 be that they have some media background but that, 21 I don't think, should -- if anything, it should be an 22 advantage, but you wouldn't want them to have any 23 conflict of interest across a particular group, you 24 know, one specific news outlet rather than another.</p> <p>25 LORD JUSTICE LEVESON: Yes.</p> <p style="text-align: center;">Page 85</p>	<p>1 happening at my end. I mean, there may have been other 2 leaks happening from my end, but on this specific issue, 3 I wanted his view.</p> <p>4 Q. So the concern you expressed about Assistant 5 Commissioner -- or he was acting Assistant Commissioner 6 then, I think -- Yates' relationship with the media, 7 was, to put it bluntly, you suspected he might be the 8 cause of the leaks rather than any wider concern about 9 Mr Yates; is that correct?</p> <p>10 A. Well, he was doing this investigation, so in a sense 11 I wasn't necessarily saying that it was him. I was just 12 saying it was an area that he was in charge of and could 13 they -- could Paul Stephenson look into that area and 14 see -- was there someone in that group who possibly was 15 there. But it was quite apparent to me that a number of 16 senior police officers had very strong links with the 17 media, and they were very close and, in my view, I would 18 say, too close. Their defence of this was that this was 19 necessary, and this was true of a number of senior 20 police officers. I happen to think it's not the right 21 way to operate.</p> <p>22 Q. Issues of regulation now. Paragraph 41 of your 23 statement, our page 05347. You're giving us your views 24 here from your experience but evidently not from, as I'm 25 sure you would want to say, the perspective of a media</p> <p style="text-align: center;">Page 87</p>
<p>1 MR JAY: In relation to Mr Quick's evidence -- you'll have 2 seen it, of course -- under paragraph 19 of his 3 statement, which is --</p> <p>4 A. Which tab?</p> <p>5 Q. Tab 19, actually.</p> <p>6 A. Paragraph?</p> <p>7 Q. Paragraph 19. This is MOD2, 01508.</p> <p>8 A. Yes.</p> <p>9 Q. There was a meeting which Mr Quick says you had with 10 Sir Paul Stephenson in January 2007. Do you see that?</p> <p>11 A. Mm.</p> <p>12 Q. You raised a number of concerns regarding unauthorised 13 disclosures. You had specifically expressed concern 14 about Yates' relationship with the media in this regard. 15 Can you remember anything specific that you said on that 16 occasion, Lord O'Donnell?</p> <p>17 A. No, it -- well, I raised this issue of there seemed to 18 be certain information which was of a -- it related to 19 a police investigation, a police interview, and some 20 politicians. This frequently became public, and the 21 question was: where was this information coming from? 22 It didn't seem to be in the politician' interest for 23 this information to have emerged, so I simply asked 24 Sir Paul Stephenson: would he kindly look into the 25 issue? Because I didn't believe the leaks were</p> <p style="text-align: center;">Page 86</p>	<p>1 lawyer, but nonetheless they are authoritative. 2 You say in paragraph 42: 3 "We have tried self-regulation and I think it's 4 clear that it has not been satisfactory." 5 We won't ask you to develop that. 6 "Regulation should be independent and compulsory." 7 Can I ask you, please, to explain what you mean by 8 "independent" in particular?</p> <p>9 A. Yes. I would say "independent" meaning there should 10 be -- if you imagine a body being set up. The chair of 11 that body that would have certain powers would be 12 someone who's appointed in a fair and open competition 13 and would not have any conflicts of interests. So in 14 that sense they might have had a previous media 15 background, but they would now not be employed by any 16 media. They would -- if they had financial interests, 17 they'd put them in blind trusts or they'd find a way not 18 to be conflicted so that they would be, as it were, 19 truly, clearly independent, not a current member of 20 a newspaper or a broadcasting organisation.</p> <p>21 LORD JUSTICE LEVESON: But you have to be a bit careful 22 about that, haven't you, because one of the criticisms 23 made of the present system is that although the 24 chairpersons of the PCC have been independent, they've 25 been appointed by a body which is anything but</p> <p style="text-align: center;">Page 88</p>

<p>1 independent.</p> <p>2 A. Exactly. So it's a necessary, I say, but not sufficient</p> <p>3 condition, so that's why I mentioned the point about</p> <p>4 fair and open competition, and I think you'd need to</p> <p>5 think very carefully about how that was handled. We</p> <p>6 have various ways -- using the Commissioners, for</p> <p>7 example, would be a good way of doing it, and getting</p> <p>8 together a panel that would have credibility and trust</p> <p>9 to put people of standing in there who would be -- have</p> <p>10 the courage, I think, to actually take on various</p> <p>11 newspapers, regulators, whoever it turned out to be,</p> <p>12 politicians, civil servants, when they felt that they</p> <p>13 needed to. So it would have to be quite a strong body.</p> <p>14 MR JAY: Then you say:</p> <p>15 "It should be principles-based regulations ..."</p> <p>16 LORD JUSTICE LEVESON: Hang on, you've omitted the word</p> <p>17 "compulsory".</p> <p>18 A. Well, I do feel very strongly the bit about compulsory,</p> <p>19 in the sense of, you know, if this is something for</p> <p>20 people to opt in and you have one or two that opt out,</p> <p>21 I just don't see how that works, I'm afraid.</p> <p>22 LORD JUSTICE LEVESON: But how can one arrange that?</p> <p>23 I appreciate this is probably what you've asked me to</p> <p>24 do, so it's not terribly helpful, you might think, that</p> <p>25 I should throw it back at you. How can one arrange it</p> <p style="text-align: center;">Page 89</p>	<p>1 Code is based on that concept, designed to protect</p> <p>2 privacy and ensure accuracy and swift redress and</p> <p>3 correction. Then you say:</p> <p>4 "... with any corrections having the same prominence</p> <p>5 as the original error."</p> <p>6 Can I come back to the fact/comment dichotomy which</p> <p>7 is in clause 1 of the code? Indeed, it's a point this</p> <p>8 afternoon's witness is keen on. Would you expect the</p> <p>9 regulator to be able to properly differentiate between</p> <p>10 fact and comment and if comment is intruding into fact,</p> <p>11 to segregate the two? How do you see that issue panning</p> <p>12 out?</p> <p>13 A. I may be being idealistic about this, but I would</p> <p>14 genuinely like to have a situation where you could have</p> <p>15 a newspaper and be absolutely clear that in its leader</p> <p>16 columns and its opinion pieces, it could portray its</p> <p>17 particular stance, its particular political stance, its</p> <p>18 view, but when it came to reporting a news story, it</p> <p>19 would, as it were -- there would be a strong belief that</p> <p>20 it -- I mean, in a sense, the code that civil servants</p> <p>21 operate to -- honesty, objectivity, integrity,</p> <p>22 impartiality -- if you could try and impose that as</p> <p>23 a kind of rule of thumb as to how you should write</p> <p>24 a news story, then wouldn't newspapers be better, more</p> <p>25 respected and more trusted? And then you'd give them</p> <p style="text-align: center;">Page 91</p>
<p>1 in such a way that it is not in any sense seen to be</p> <p>2 government-led, government-controlled?</p> <p>3 A. Absolutely.</p> <p>4 LORD JUSTICE LEVESON: Either expressly or implicitly, so</p> <p>5 that it is seen to be independent in the true sense, not</p> <p>6 merely its appointment but its operation.</p> <p>7 A. And I think for that -- there are various ways we've</p> <p>8 tried it in areas. For example, establishing a fairly</p> <p>9 long term of office for individuals who are appointed so</p> <p>10 that they're not thinking about being reappointed by</p> <p>11 someone, but actually, I suppose that's not so difficult</p> <p>12 here where you're trying to have an appointment system</p> <p>13 which isn't run by government. But I think we just have</p> <p>14 to think very hard about how you deliver true</p> <p>15 independence of mind and courage, and then basically</p> <p>16 establish the incentive structure such that if you're</p> <p>17 not part of this system, then you're really not to be</p> <p>18 regarded as serious or as having some of the kind of</p> <p>19 legitimacy that we give to various news outlets.</p> <p>20 I haven't myself worked out quite how you do that in</p> <p>21 detail, but I suspect that -- with the resources you've</p> <p>22 got, I expect you to come up with a great answer to</p> <p>23 this.</p> <p>24 LORD JUSTICE LEVESON: I suppose I deserved that. Yes.</p> <p>25 MR JAY: Principles-based regulation. Well, the Ministerial</p> <p style="text-align: center;">Page 90</p>	<p>1 plenty of scope to write their opinion pieces, you know,</p> <p>2 and express their political views in leader columns.</p> <p>3 That, I think, would be a very healthy situation to get</p> <p>4 to.</p> <p>5 LORD JUSTICE LEVESON: Do you think that aspiration</p> <p>6 fundamentally changes the culture of the press in this</p> <p>7 country?</p> <p>8 A. Yes.</p> <p>9 LORD JUSTICE LEVESON: Well, there's a big ask.</p> <p>10 A. Yes, indeed, but I think there are a number of</p> <p>11 journalists who actually would welcome it and I think</p> <p>12 it's a culture change that we may now be ready for. If</p> <p>13 not now, then when?</p> <p>14 MR JAY: Paragraph 43, you've already dealt with, I think.</p> <p>15 Paragraph 44:</p> <p>16 "It might be worth considering whether the role of</p> <p>17 a regulator could be undertaken by the Information</p> <p>18 Commissioner."</p> <p>19 Can we understand clearly what you have in mind</p> <p>20 there, please?</p> <p>21 A. I think I have this in the sense that there are lots of</p> <p>22 options out there. I wouldn't rule any out. The</p> <p>23 Information Commissioner looks at information across the</p> <p>24 board. It seems to me it solves one of the issues that</p> <p>25 they're set up -- they're independent, they're set up to</p> <p style="text-align: center;">Page 92</p>

<p>1 look at broadcast media, newspapers, online -- you know, 2 they can look at anything. So that's an advantage, 3 I would say.</p> <p>4 The Information Commissioner is, at the moment, 5 provided through a process by a minister, so you might 6 want to think about how you might want to modify that. 7 You know, it would -- you can't simply translate it 8 across, but it's -- some of the points about the role of 9 the Information Commissioner, the fact that they have 10 this scope across all media I think is worth exploring. 11 Nothing more than that. I think I put this forward in 12 a somewhat tentative fashion.</p> <p>13 Q. Because the Information Commissioner evidently has 14 a privacy role --</p> <p>15 A. Yes.</p> <p>16 Q. -- in the context of the DPA, antithetical role in 17 relation to Freedom of Information Act, with the public 18 interest always being weighed. Do you see an enhanced 19 ICO -- it would have to be significantly enhanced to 20 accommodate out this press regulatory function.</p> <p>21 A. Absolutely. It would have to be a very significantly 22 enhanced ICO. But, much as I have my disputes with 23 them, I regard them as a very credible and independent 24 body, and I have a lot of time for the Commissioner, who 25 I think does a very good job.</p> <p style="text-align: center;">Page 93</p>	<p>1 A. I don't remember it being my idea, but I would have to 2 check the records.</p> <p>3 Q. I'm sure you weren't involved in the detail of the 4 meetings which gave effect to the compromise and then 5 Section 77 and 78 of the Criminal Justice and 6 Immigration Act of 2008, but the philosophy behind it, 7 namely put it into the statutory instrument which can 8 then be enacted in due course, did that come from you?</p> <p>9 A. Yes, well --</p> <p>10 LORD JUSTICE LEVESON: It's in a statute, but it's just not 11 implemented. So at the moment it sits there with nobody 12 doing anything about it.</p> <p>13 A. Indeed. Absolutely, and I think -- the question was, 14 I think, that was as far as ministers were prepared to 15 go at the time.</p> <p>16 LORD JUSTICE LEVESON: It's abundantly clear that that was 17 the subject of lobbying from press interests.</p> <p>18 A. Oh absolutely, yes. The press were very, very against 19 that clause, and the question was: could you go any 20 further? And in the end, I think it's quite clear -- 21 and I'm sure you'll be talking to Jack Straw about 22 this -- what ministers would accept was that compromise.</p> <p>23 MR JAY: Because of the obvious political risks?</p> <p>24 A. Indeed. Again, if you were, as an Inquiry, to suggest 25 that that might be revisited --</p> <p style="text-align: center;">Page 95</p>
<p>1 Q. Were you involved at all with the aftermath of Operation 2 Motorman, in particular the two "What price privacy?" 3 reports in 2006?</p> <p>4 A. Not enormously. I was aware of it. I mean, this was 5 very much a Jack Straw issue, if I remember rightly. 6 There were disturbing reports, and I know that there was 7 a question of what should we do about them, and there 8 were some discussions -- I think Richard Thomas went 9 into discussions he had where I think there was 10 a difference of view between the press on the one hand 11 and Richard Thomas on the other, as Information 12 Commissioner, as to precisely how strictly -- should 13 there be a criminal sentence and all the rest of it? 14 And in the end, a compromise was brokered.</p> <p>15 Q. Weren't you instrumental in the broking of that 16 compromise?</p> <p>17 A. Instrumental? I wouldn't say I was, knowing that 18 I didn't have any of the meetings with the different 19 parties. I certainly felt that we needed to find a way 20 of moving forward on this, because the alternative was 21 nothing happening. So -- and people got stuck, so 22 I suggested a process, which I didn't take part in 23 myself, whereby different people talked to the MoJ and 24 in the end, we got to a solution.</p> <p>25 Q. Yes, but was the solution your idea?</p> <p style="text-align: center;">Page 94</p>	<p>1 LORD JUSTICE LEVESON: I'll certainly be considering whether 2 the implementation of those provisions should not now 3 take place.</p> <p>4 A. That would be a perfectly reasonable thing for you to 5 consider.</p> <p>6 MR JAY: Mr Brown, as prime minister, was involved in some 7 the discussions with Mr Dacre and Mr Thomas, and in that 8 context presumably you would be advising him, wouldn't 9 you?</p> <p>10 A. Yes, that's right.</p> <p>11 Q. Although the greater detail would be within the province 12 of Mr Straw, self-evidently?</p> <p>13 A. Indeed.</p> <p>14 Q. Context of regulation. Can we consider whether there 15 might be further possible amendments to the Ministerial 16 Code and try and look at it in this way: as you rightly 17 say, transparency is the key but we need to find where 18 the balance should lie, in particular in the context of 19 the relevance of personal interaction and politicians 20 having journalists as friends. It's clear that the 21 Ministerial Code is interested in ministerial 22 interactions and to some extent political interactions, 23 but then, on the other end of the spectrum there are the 24 personal social interactions which may or may not be 25 relevant depending on how suspicious one might be. Do</p> <p style="text-align: center;">Page 96</p>

<p>1 you feel there is a case for expanding transparency 2 further to go right into the domain of the personal 3 area? 4 A. I think my advice to the Prime Minister was very clearly 5 in that area and lays out what I think we should do and 6 it's in that letter which we've referred to already. 7 I think we've covered that issue, didn't we, that 8 I think that the social side does have to be there but 9 subject to the detailed discussion we had earlier. 10 Q. So your final position, as it were, is set out in that 11 advice of 15 July of last year, and nothing you've heard 12 or seen since would cause you to suggest anything 13 further? 14 A. Well, I would strongly recommend to my successors that 15 in the light of whatever this Inquiry comes up with, 16 that they should consider whether that requires any 17 amendments to the Ministerial Code. So if, in your 18 deliberations and the evidence you've heard, you think 19 that actually the advice that I've suggested to the 20 Prime Minister needs to be supplemented or changed in 21 any way, then I'm -- that was my attempt, given the 22 information I had at the time, to think of how to come 23 to a sensible view, proportionate view, given the issues 24 we discussed about how you handle the social side of 25 things. If, in the light of all the evidence you've</p> <p style="text-align: center;">Page 97</p>	<p>1 you do have some further ideas, I would be very grateful 2 to receive them. I hope that's not too impertinent. 3 A. This is certainly not impertinent. I fell for that one, 4 didn't I? Yes, of course I will happily provide my 5 thoughts, but I should stress, really -- I mean, in 6 a sense, the issue of amending the Ministerial Code is 7 for the Prime Minister and on the basis of advice from 8 my successor. 9 LORD JUSTICE LEVESON: Don't get me wrong. Anything I do in 10 this area will be in the form of a recommendation. 11 Ultimately, everything that this Inquiry generates will 12 be for the government to consider, I hope on the 13 cross-party basis that set up the Inquiry in the first 14 place. 15 A. Yes. 16 LORD JUSTICE LEVESON: Because if it ceases to be 17 a cross-party effort, it becomes much, much less 18 valuable. It's important that everybody feels that the 19 process has been full, open, everybody can take a view 20 and then everybody can decide what to do. I will have 21 views but I would want them to be as informed as they 22 can be. 23 A. I strongly support that. I think cross-party support is 24 really crucial. 25 MR JAY: Some specific questions now. Could you go back</p> <p style="text-align: center;">Page 99</p>
<p>1 heard -- and that will give you access to a lot more 2 information than I had in preparing that advice -- you 3 decide that actually the line should be drawn in 4 a slightly different way, I think that would be 5 a perfectly reasonable thing to do and then I would like 6 to think that my successors will take that into account 7 in amending the Ministerial Code. 8 LORD JUSTICE LEVESON: You've walked yourself into some work 9 there, Lord O'Donnell, because -- 10 A. Surely not. 11 LORD JUSTICE LEVESON: Well, because I readily recognise 12 that your recommendations, when they were made, were 13 based on the information which you had available. Of 14 course, it seems to me that this area of the terms of 15 reference can only be governed by guidance in reality. 16 A. Uh-huh. 17 LORD JUSTICE LEVESON: And therefore, although I will 18 obviously take account of all the evidence I've heard 19 and reach conclusions, I will not have the expertise 20 that is available to you, from your experience, to 21 calibrate how that could best be changed. So 22 I appreciate that you gave it your best shot when you 23 gave it but I can't believe that you're ignorant of the 24 material that has come out in this Inquiry, and 25 therefore if, in the fullness of the next month or so,</p> <p style="text-align: center;">Page 98</p>	<p>1 kindly to your statement. Starting at page 05357, you 2 deal with what happened after the Select Committee 3 report in February 2010 and the call for a possible 4 public inquiry. You state that the Prime Minister's 5 principal private secretary, who then was Mr Heywood, 6 informed you orally that the Prime Minister would be 7 grateful for advice on the merits of establishing 8 a judicial inquiry to explore the findings of that 9 report, specifically those relating to phone hacking and 10 blagging. 11 You received, in that context, advice from the 12 Treasury Solicitor, which is under tab 2, at our 13 page 05324. 14 A. Mm-hm. 15 Q. Within the covering email, the Treasury Solicitor refers 16 to the "not inconceivable risk of a successful JR", then 17 says: 18 "I think there is actually quite a significant risk 19 that if an inquiry was limited to News International and 20 the motivation was seen as political, the judge would 21 require a lot of persuasion that the inquiry is being 22 held for proper reasons." 23 Is that a factor which you took into account or not? 24 A. No, I think the biggest factor for me was the question 25 of the absence of evidence at the time and the various</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 inquiries that had taken place. That was the overriding 2 aspect in providing my advice, but I stress it was 3 advice. It was for the Prime Minister to decide whether 4 to hold an inquiry or not. 5 Q. The Treasury Solicitor's advice referred -- and you 6 picked this up -- to CMS Select Committee's findings 7 about a culture existing in the News of the World, 8 et cetera. Wasn't that a factor which very strongly 9 weighed in the balance? 10 A. It was a factor. That's absolutely right. But as you 11 can see, we published the notes and there are various 12 arguments in favour and various arguments against, and 13 in the end, I came down on the line which I would still 14 do now: on the basis of the evidence we had at that 15 time, that wasn't the right point to do it. I, as is 16 very well known to everybody here, very strongly took 17 the view when more evidence emerged that it was 18 absolutely right that we have this inquiry, and I'm 19 delighted that it's happening. Sorry for all the work 20 we've imposed, but I think you are going to provide an 21 answer to a question that we've long struggled with. 22 Q. The advice you gave is on 19 March 2010, which was about 23 two months before the General Election, which I suppose 24 wasn't ideal timing on one version of events. We have 25 it at 05530.</p> <p style="text-align: center;">Page 101</p>	<p>1 decision to hold such an inquiry could be challenged by 2 judicial review ..." 3 The answer is yes, in theory. 4 "... particularly if the inquiry were extended to 5 the media in general." 6 So that at least was under contemplation, but the 7 fear was that if we include the media in general, 8 someone would say it's political, it's a motive ulterior 9 to the 2005 Act, it's JR-able. Was that the thought 10 process, do you think? 11 A. I think you've referred to the covering note that I had 12 from the Treasury Solicitor, which explained that he 13 thought -- his views about JR -- what I've said is 14 actually not as strong as what was said there. I just 15 said "not inconceivable" that such a challenge might 16 succeed, which is quite a lot weaker than the legal 17 advice that was put to me. 18 Q. But this was just advice, wasn't it? The Prime Minister 19 would act appropriately. We know there wasn't a public 20 inquiry, but Mr Brown, now in opposition on 7 September 21 2010, six days after the New York Times article -- 22 page 05337 -- was now clearly of the view that there 23 should be a public inquiry? 24 A. Yes. 25 Q. But of course, the political situation from his</p> <p style="text-align: center;">Page 103</p>
<p>1 A. Yes. 2 Q. This is advice to the Prime Minister, isn't it? 3 A. This is advice going to Jeremy Heywood, who at the time 4 was the Number 10 permanent secretary, who would then 5 give it to the Prime Minister, that's right. 6 Q. It very much reflects the Treasury Solicitor's analysis. 7 The summary at 05334, you see that? 8 A. Yes. 9 Q. "From the limited information available ..." 10 That was quite cautious, wasn't it? There was quite 11 a lot of information in that report, wasn't there? 12 A. Well, I felt there were still a number of unanswered 13 questions at that time. A number of people were saying 14 that there was no evidence. If you look at -- I mean, 15 the police had investigated -- the Crown Prosecution 16 Service had decided that they weren't going to bring any 17 charges, so it was against that background. Now, there 18 were stories that there was more information out there, 19 and there was -- I think there was still a question mark 20 as to whether more would emerge, but at that time I felt 21 that on the basis of what we knew then I would stick 22 with that recommendation. 23 Q. You say: 24 "It is doubtful whether this case would merit the 25 holding of a public inquiry under the 2005 Act. Any</p> <p style="text-align: center;">Page 102</p>	<p>1 perspective has changed rather dramatically. 2 Then you write back saying, well, it's not 3 appropriate for you to -- 4 A. Well, a number of inquiries were then under way and 5 I think a process which inexorably led to this Inquiry 6 was already in train. 7 Q. Was there any sense, back in March 2010, that 8 a manifestation of the sort of issue that paragraph 1(d) 9 of the terms of reference of this Inquiry requires us to 10 investigate, that it was simply too big a political hot 11 potato, therefore let's not pick it up? 12 A. Well, I would say it's clearly a big potato, if you 13 like, to use that phrase. The timing wasn't ideal. If 14 you're going to do this, actually it would be good to 15 have -- where stated, all-party agreement, and it would 16 be much better to do that -- trying to broker such 17 a thing in the weeks running up to a General Election 18 was always going to be very difficult. So I think it's 19 quite good that we have something set up now with all 20 party agreement and hopefully, when we come to the 21 recommendation stage, you can get all parties to agree 22 to that. I think that will give us something secure and 23 lasting in what is a very, very difficult task, I admit, 24 you have been given. 25 MR JAY: You're right to emphasise the timing wasn't ideal</p> <p style="text-align: center;">Page 104</p>

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<p>1 on 19 March 2010. I'm sure that's entirely accurate. 2 Those were all the points I have. 3 LORD JUSTICE LEVESON: All right. Can I just ask one thing, 4 going back earlier in your evidence. You've rightly 5 said -- I think, rightly -- that it is of very great 6 importance to devise a system that works for the future, 7 which has a dimension which is as yet unknown. 8 A. Mm. 9 LORD JUSTICE LEVESON: But do you believe that we will have 10 to think about a system -- that is I and the Inquiry, 11 but then more fully, the government -- that encompasses 12 organisations beyond those traditionally understood to 13 represent the media? You've identified the dichotomy 14 between the BBC and television and the print media, 15 which is for historical reasons of bandwidth, which have 16 long since gone. 17 A. Mm-hm. 18 LORD JUSTICE LEVESON: The Inquiry is not encompassing the 19 concept of regulation of the broadcasters. But there 20 are many others, like Internet providers, others who are 21 using the Internet in the same way that the press have 22 used both print and online journalism, and I'd be 23 grateful for any thoughts, first of all as to where the 24 lines could be drawn as to how you devise a system that 25 does encompass everybody who should be encompassed</p> <p style="text-align: center;">Page 105</p>	<p>1 phone hacking or look at the 70-odd terrorist threats 2 that we are confronting? I think I used the phrase 3 "it's a comparative no-brainer". Whether the 4 information was all available there is another question. 5 So those are two different questions, and on each of 6 them I would be grateful for your view, either now or again 7 in due course, because actually they seem to me to be 8 absolutely at the very centre of some of the more 9 difficult problems that I have to confront. 10 A. And I will be happy to provide more input later on those 11 questions because it strikes me that a lot of the 12 information you're gathering at the moment will be 13 relevant to that, and I don't think you've finished that 14 process by any means yet. 15 LORD JUSTICE LEVESON: No, you're right. 16 A. I'm very happy to input into that. 17 I think in terms of lines drawn, I've always thought 18 that it might be possible to think about individual 19 things like Facebook and Twitter in one sense, and 20 covered by general laws as they are -- I mean, making 21 the point that disclosing the names of victims of sexual 22 assault, that's covered by existing law and that's -- 23 people need to understand what the law is. 24 LORD JUSTICE LEVESON: And the consequence of breaching t 25 and I believe that there's an investigation into that.</p> <p style="text-align: center;">Page 107</p>
<p>1 without straining too far in such a way as to attempt to 2 regulate that which is probably incapable of 3 regulation -- and one of the examples that have been 4 bandied around the Inquiry, of course, has been Twitter, 5 Facebook, personal communications of that sort -- which 6 then can achieve very, very wide publicity in 7 circumstances not only which are beneficial -- and the 8 Arab Spring is the oft-cited example -- but also 9 potentially damaging -- for example, providing the 10 details of injunctions that have been held not to be in 11 the public interest to divulge -- or alternatively to 12 name, if I give another example, those who have been the 13 victims of sexual attack, notwithstanding the anonymity 14 provisions of the law. 15 So there's that, and also there's the balance 16 between -- as a separate question -- regulation on the 17 one hand and police activity on the other. It's very 18 well saying, "Well, that's a crime, therefore we 19 shouldn't touch it", without having regard to the 20 enormous pressures on the police and the inevitable 21 decisions that have to be made between what the police 22 should do and what they shouldn't. The best example, 23 which we've heard a lot of and which I've already 24 commented upon to the then Deputy Assistant Commissioner 25 Peter Clarke, is a decision about: do we go further into</p> <p style="text-align: center;">Page 106</p>	<p>1 A. Yes, and I think that's a set of rules that should apply 2 there. I think it would be very dangerous to get into 3 the world where you're trying to apply certain rules 4 towards newspapers that would drift into covering 5 Twitter, for example. 6 The interesting case seems to me blogs, where you 7 now have a number of political journalists who are 8 giving up working on a newspaper and going to run their 9 own blogs, very successfully, with quite wide 10 circulation. It raises the issue for me about whether 11 you can do something which has a circulation or 12 a readership number, where if you're in the mass market, 13 as it were. 14 LORD JUSTICE LEVESON: The question I've sometimes asked 15 people about that is whether -- if you're in the course 16 of a business; in other words, if you're seeking to make 17 money from the activity. 18 A. Yes. 19 LORD JUSTICE LEVESON: So, for example, if you're carrying 20 advertising, which obviously will pay and might pay, 21 depending on the number of people who enter the blog. 22 Of course, that has potential extra-territorial issues. 23 A. Indeed. 24 LORD JUSTICE LEVESON: As Mr Staines was the very first to 25 point out to me.</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 A. Indeed.</p> <p>2 LORD JUSTICE LEVESON: Well, not the first but one of the</p> <p>3 most vocal to point out to me.</p> <p>4 A. Yes, and none of these things are easy because once you</p> <p>5 set up a set of regulations for one sphere, then you</p> <p>6 create an enormous incentive for people to get into the</p> <p>7 sphere that isn't quite covered by that, so whatever</p> <p>8 rules you get, people will try and just move the other</p> <p>9 side of the line. So it's one reason why I've been</p> <p>10 hesitant to come forward with more details on solutions,</p> <p>11 is that it's not easy.</p> <p>12 LORD JUSTICE LEVESON: I understand that, and I'm very happy</p> <p>13 for you to caveat whatever. All I'm seeking to do is to</p> <p>14 input into your experience so that whatever I come up</p> <p>15 with has the greatest possible degree of relevance and</p> <p>16 cannot immediately be shot down as the rather confused</p> <p>17 thoughts of a judge taken entirely out of his normal</p> <p>18 operating sphere.</p> <p>19 A. I would be more than happy to get involved in that</p> <p>20 process in whatever way is appropriate. I'm just kind</p> <p>21 of nervous about precisely how that should happen.</p> <p>22 LORD JUSTICE LEVESON: What will happen is this: this</p> <p>23 module -- as you know, we split it into four -- concerns</p> <p>24 effectively politicians and that's essentially what</p> <p>25 you've been dealing with, but in July, for a much</p> <p style="text-align: center;">Page 109</p>	
<p>1 briefer period of time, I shall be looking at the</p> <p>2 future, and I will be calling back some witnesses who</p> <p>3 have had ideas and some witnesses who have proffered</p> <p>4 ideas, so that they can be explored. It won't</p> <p>5 necessarily require further oral evidence, but I will be</p> <p>6 very willing to put into the public domain, as part of</p> <p>7 the record of the Inquiry, any submission that's in</p> <p>8 writing. So that's one mechanism. If there's something</p> <p>9 that you feel you'd like to elaborate upon, then I can</p> <p>10 assure you I will make time for you to be able to do it</p> <p>11 but I don't commit you to that. I'm conscious that to</p> <p>12 some extent you are entitled to say, "Actually, this was</p> <p>13 the job that I was party to giving you to do, so</p> <p>14 therefore I shouldn't have it back", and I understand</p> <p>15 that, but I'm sure you see why I would value your</p> <p>16 perspective.</p> <p>17 A. I do, and I would be very happy to help.</p> <p>18 LORD JUSTICE LEVESON: Thank you. Thank you very much</p> <p>19 indeed. 2 o'clock.</p> <p>20 (1.00 pm)</p> <p>21 (The luncheon adjournment)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 110</p>	

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