

<p>1 Tuesday, 24 July 2012</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: Yes, Mr Jay.</p> <p>4 MR JAY: The statements we were going to read in yesterday,</p> <p>5 which add up to 81. Some of them are replies by editors</p> <p>6 to recent Section 21 notices. Others are more</p> <p>7 heterogeneous, but I haven't been notified of any</p> <p>8 objections.</p> <p>9 LORD JUSTICE LEVESON: In relation to the editors, these are</p> <p>10 the responses to our request for comments on the</p> <p>11 suggestions before the Inquiry from Lords Black and</p> <p>12 Hunt?</p> <p>13 MR JAY: That's right.</p> <p>14 LORD JUSTICE LEVESON: Thank you. Right.</p> <p>15 Has anybody devised an order of batting for today?</p> <p>16 Mr Jay?</p> <p>17 MR JAY: Yes. It's Mr Sherborne, I think, then Mr Caplan</p> <p>18 and Mr Rusbridger, and then finally Mr Rhodri Davies.</p> <p>19 LORD JUSTICE LEVESON: Thank you very much.</p> <p>20 Closing submissions by MR SHERBORNE</p> <p>21 MR SHERBORNE: Thank you, sir, and thank you again for</p> <p>22 agreeing to accommodate me personally today.</p> <p>23 When I rose to my feet back in November of last</p> <p>24 year, I outlined a picture of a press, or at least</p> <p>25 certain sections of it, which, through a catalogue of</p> <p style="text-align: center;">Page 1</p>	<p>1 latitude.</p> <p>2 At the heart of this sits not just the continuation</p> <p>3 of a system of self-regulation, with the same old mantra</p> <p>4 that, "The press will behaviour this time, honest",</p> <p>5 based on an irrational fear, we say, of any kind of</p> <p>6 statutory underpinning, but also the widening concept of</p> <p>7 public interest.</p> <p>8 As the Inquiry will recall, a critical part of my</p> <p>9 opening submissions was the demonstration of how the</p> <p>10 culture, practice and ethics of the newspaper industry,</p> <p>11 especially in the more commercially successful area of</p> <p>12 the market, had led to routine invasions into the</p> <p>13 private lives not just of those well-known and those</p> <p>14 connected with them, but also those who have found</p> <p>15 themselves thrown into the public spotlight, often</p> <p>16 unwittingly.</p> <p>17 The public concern which this has caused was, as</p> <p>18 I said, the very reason why this Inquiry was set up in</p> <p>19 the first place. The answer to this concern is</p> <p>20 certainly not to be found either in greater press</p> <p>21 freedom or in the dilution of the test for public</p> <p>22 interest as being the justification for the publication</p> <p>23 of material which interferes with the rights of</p> <p>24 individuals to respect their private lives.</p> <p>25 Let me not be Delphic about this. I'm here neither</p> <p style="text-align: center;">Page 3</p>
<p>1 wrongs, systemic, flagrant and deeply entrenched as they</p> <p>2 are, had lost the confidence of the British public</p> <p>3 entirely. That is why this Inquiry was set up, let us</p> <p>4 not forget.</p> <p>5 It wasn't simply the fact that one newspaper group</p> <p>6 had authorised its journalists to hack into the private</p> <p>7 messages of a murdered teenager's telephone, an act</p> <p>8 which had caused public outrage, but rather this was the</p> <p>9 final straw in the groundswell of public opinion which</p> <p>10 saw the press as being out of control, a press which had</p> <p>11 become so complacent in the belief that freedom of</p> <p>12 speech has given them carte blanche to disregard or</p> <p>13 sacrifice the rights of those whose private lives they</p> <p>14 choose to write about in the interests of selling</p> <p>15 newspapers.</p> <p>16 Indeed, if you read the written submissions, as</p> <p>17 I did, of one of the biggest media organisations, you</p> <p>18 would think that nothing wrong had been done at all,</p> <p>19 apart from the hacking of some phones.</p> <p>20 Despite the powerful account given by just a sample</p> <p>21 of those who have suffered the most blatant of</p> <p>22 intrusions into their private lives, or whose characters</p> <p>23 have been assassinated by the press, all too eager to</p> <p>24 become judge, jury and executioner, the print media</p> <p>25 still advocates a law or framework of greater press</p> <p style="text-align: center;">Page 2</p>	<p>1 to bury nor certainly to praise the media. That's not</p> <p>2 to say there are not good and responsible journalists:</p> <p>3 there are, lots of them. This Inquiry has heard</p> <p>4 evidence from some of them and you don't need me to tell</p> <p>5 you who they are. But we are not here to focus on the</p> <p>6 good journalists, we don't need an Inquiry for that. We</p> <p>7 are here to consider the bad ones, or the bad examples</p> <p>8 of journalism right across the board and what they show</p> <p>9 about the culture, practices and ethics of the press as</p> <p>10 a whole.</p> <p>11 Sir, I know you're at pains not to say this, but we</p> <p>12 do: the press is on trial here, and not simply in this</p> <p>13 room but also out there in the court of public opinion.</p> <p>14 After all, that is where the demand for this Inquiry</p> <p>15 started, and they know that. Of course they do. That</p> <p>16 is why they're so scared of what evidence has been heard</p> <p>17 here, and most importantly, how it will be perceived</p> <p>18 outside. That is why they've employed the megaphone of</p> <p>19 the pages of their newspapers rather than the serried</p> <p>20 ranks of lawyers sitting here dutifully day in, day out,</p> <p>21 when a particular egregious example of misconduct has</p> <p>22 meant that the best behaviour they've tried to present,</p> <p>23 whilst under the microscope of this Inquiry, has</p> <p>24 slipped, and I'll refer to some examples in due course.</p> <p>25 The charge sheet is one which I read out in my</p> <p style="text-align: center;">Page 4</p>

<p>1 opening, and I have one or two things to say about it 2 shortly. Although understandably, sir, you've 3 repeatedly said you are not concerned so much with the 4 specifics of who did what to whom and when, the fact is 5 that it is only through examples such as that that one 6 can assess what the culture, practices and ethics of the 7 press, or at least a certain section of them, are. 8 I will remind you of some of those examples we have 9 seen, memorable as they were, because to some extent 10 over the last eight months, what has been lost is the 11 voice of the victims, as is often the way in any trial. 12 No doubt the press have breathed a sigh of relief 13 as, with intermittent exception, for the last several 14 months this Inquiry has focused more on what the press 15 want to say, what they want and what they don't want to 16 happen. 17 Some eight months have passed since this Inquiry 18 started, and whilst it is clear to those such as myself 19 who practice in this field that the media have had one 20 eye on what has gone on here and the fact that the 21 spotlight is so intensely on them, nothing has in fact 22 really changed. 23 So part of my task, with the small voice that we 24 have as victims, as representatives, in one sense, of 25 the public, the only voice here in that respect, is to</p> <p style="text-align: center;">Page 5</p>	<p>1 Module 1 of this Inquiry, for that is all that it was, 2 will agree, it is no exaggeration to say that the 3 evidence which was heard from the selection of victims 4 who came here to recount their personal and often very 5 painful experiences at the hands of the press was truly 6 chilling. And those are not my words. That was the 7 description which the Prime Minister gave in his 8 evidence, and indeed he was right. Perhaps not quite in 9 the way he intended it, though, because it is this 10 evidence which we say should serve to have a chilling 11 effect, a positive chilling effect, on the press. 12 I'm sure we were all struck by a number of things 13 about this evidence, in particular perhaps by the fact 14 that many of these victims were not well-known. They 15 were ordinary members of the public, people such as Kate 16 and Gerry McCann, Christopher Jefferies or Sally and 17 Bob Dowler; people who had found themselves caught in 18 the crosshair of a press baying for more and more 19 stories, and were so devastated by the result. 20 I'm not going to repeat the roll call of individuals 21 who sat in that chair over there and who described how 22 their lives had been permanently scarred in the pursuit 23 of a good story, often where personal and private 24 tragedy had been compounded in the most public, 25 sensational and intrusive manner.</p> <p style="text-align: center;">Page 7</p>
<p>1 remind everyone in this room, as well as those watching 2 it outside, who have become so accustomed to some of the 3 outrageous behaviour which brought us to this point, 4 that it has no longer the capacity to cause outrage, why 5 it is, as I say, we are all here and what the point of 6 it is. 7 Because we must not forget, unless something is 8 done, unless real change happens, as I said at the 9 outset, and someone, whoever that may be, takes a grip, 10 a very firm grip, on the tabloid press, we will be back 11 in the same position as soon as the spotlight in this 12 room is turned off and the ink has dried on your report, 13 sir. 14 And it may be worse, because we are all concerned 15 that it might be payback time. Payback for those who 16 have sought to stand up against certain newspapers, who 17 have sought to exercise the very freedom of speech which 18 the press themselves invoke to justify the great 19 privileges which they enjoy. We have already seen signs 20 of this during the course of the Inquiry, but hopefully 21 the press will resist the temptation once it is over. 22 Anyway, that is a glimpse of the future, or one 23 possible future. Now let us remind ourselves of some of 24 the examples of the evidence we have heard. 25 As those who witnessed the first seven days or so of</p> <p style="text-align: center;">Page 6</p>	<p>1 Each of us will have our own very vivid memory of 2 this, a particular example, for that is all they were. 3 For each one, we could have brought many, many more, as 4 I said in my opening submissions. 5 Whether it was watching the dignified but genuinely 6 distressing testimony of Kate and Gerry McCann, in whose 7 shoes none of us would walk, who were portrayed as the 8 murderers of their missing little girl, and who had to 9 listen as a succession of journalists came to try and 10 justify some of the most woeful journalism. 11 I say "justify". I don't imagine anyone here 12 thought that those hapless individuals who added so much 13 to the grief of already grieving parents came even close 14 to explaining how they could have written what they 15 wrote. 16 But perhaps even worse than that was the episode 17 which the Inquiry thought it important to probe in 18 a little more depth, and that was the front page News of 19 the World story revealing sections of Kate's personal 20 diary written to Maddie. So personal not even Gerry, 21 her husband, had read it. 22 It was clear from the evidence we heard that the 23 editor deliberately tried to avoid telling the McCanns 24 that they had bought her diary, despite the so-called 25 "good relationship", despite how friendly they</p> <p style="text-align: center;">Page 8</p>

<p>1 apparently were with the McCanns. And one does wonder, 2 if that is the press' idea of a good relationship and 3 that is what they do to their friends, I ask 4 rhetorically.</p> <p>5 They bought it to publish, even to procure and to 6 pore through her innermost fears, hopes, things she 7 wishes she said or hadn't said. Can one think of 8 anything more intimate and more private than that?</p> <p>9 Sometimes there are just no words which will do.</p> <p>10 And this was the editor who had been brought in as 11 the new broom to sweep away the troubles of the past, we 12 heard, the regime that had brought you such journalistic 13 high points as hacking into people's private voicemails 14 or making corrupt payments to police officers, 15 et cetera, et cetera. An interesting insight into the 16 corporate culture of an organisation whose idea of 17 housekeeping is to sweep as much as possible under the 18 carpet.</p> <p>19 What about the evidence of Christopher Jefferies, an 20 English schoolteacher, a man of dedication and 21 distinction, whose life, like the reputation he'd taken 22 years to build, was ransacked by journalists drunk on 23 the taste, as I said, of a story too good to be true, 24 and certainly too good to check properly. Who could not 25 have been impressed with the fair and even generous</p> <p style="text-align: center;">Page 9</p>	<p>1 should do. Sometimes not even a "no shoot" list, if one 2 really needed something so obvious in this case, would 3 do. Sometimes, as we will see, even the microscope of 4 this Inquiry is not enough to prevent.</p> <p>5 As the Dowlers told us, somehow the newspaper knew 6 their movements, perhaps through listening to their 7 voicemails, and not just Milly's. After all, if you can 8 listen to the voicemails of a missing teenage girl, why 9 not also do so to her distraught parents? And what does 10 that tell you about the ethics of this section of the 11 media?</p> <p>12 There are other individuals we heard from, whose 13 lives had also been turned upside down, some of them 14 without even knowing why. For example, 15 Mary-Ellen Field, an impressive and loyal adviser who 16 was even bundled off to a rehabilitation clinic by her 17 employer who could not explain the leak of stories about 18 her private life in the press other than by the fact 19 that this trusted worker must have been responsible and 20 her denials must have been the result of some illness or 21 condition.</p> <p>22 There was no condition and there was no leak. It 23 was just the friendly neighbourhood hacks down at the 24 News of the World doing what they called "screwing over 25 the phones" of a supermodel who was no doubt good for</p> <p style="text-align: center;">Page 11</p>
<p>1 manner in which he dealt with having been monstered in 2 the most public and devastating manner possible?</p> <p>3 Perhaps his account was all the more powerful for 4 having been told in that way. He certainly showed more 5 circumspection than those that trashed his life and 6 everything he held dear, without so much as a second 7 thought, or so it appeared from the individual reporters 8 who came here to defend the indefensible.</p> <p>9 Or finally, perhaps, the raw emotion and pain of the 10 Dowlers, Sally and Bob, who not only found that their 11 missing daughter's mobile phone had been accessed by 12 a newspaper desperate to obtain an exclusive, regardless 13 of the fact that as the Surrey Police report shows, they 14 were prepared to trample all over a current police 15 investigation to do so. Someone also deleted her 16 messages as well once the police had secured the phone, 17 and there are only so many possible culprits.</p> <p>18 But what perhaps was less known to those within the 19 Inquiry, and equally shocking, was the way in which 20 their private moment of grief, retracing the last 21 footsteps of their murdered daughter in an impromptu 22 attempt to obtain some form of respite from the public 23 gaze, because a photo opportunity for one newspaper, 24 which was too damn good to resist.</p> <p>25 If it sounds a familiar theme to this Inquiry, it</p> <p style="text-align: center;">Page 10</p>	<p>1 a story or two. Lots of public interest there, you 2 might feel, and definitely a great advertisement for 3 freedom of speech.</p> <p>4 And who paid the price for this? A woman who had 5 done nothing wrong but has had to live with the legacy 6 of this for years and years, and has had to fight to 7 have her claim recognised.</p> <p>8 Or poor HJK, who just happened to be involved with 9 a well-known person, someone the tabloid media wanted to 10 know all about because he happened to be in the public 11 eye, which in this country apparently makes you fair 12 game, or so some of the journalists in that section of 13 the media clearly believe, given the evidence they gave 14 to this Inquiry.</p> <p>15 And HJK also paid a heavy price for this. It is no 16 wonder that he asked for and was given anonymity, brave 17 as he was to come in the first place.</p> <p>18 All of these people, ordinary members of the public, 19 if they don't mind me describing them as such, who came 20 to explain to you, sir, to all of us how their lives 21 were shattered by being caught in the crosshair of 22 a press which had so lost its moral compass.</p> <p>23 And then what about those who by virtue of their 24 particular skill or talent have become well-known and 25 who figure in the public spotlight? Their lives have</p> <p style="text-align: center;">Page 12</p>

<p>1 also been made, to lesser or greater degree, difficult 2 or had serious impact on them by the behaviour of the 3 press in this country. And I make no apology for 4 mentioning them, however unfashionable or unpopular that 5 makes me.</p> <p>6 Is this, as I said, the price which they have to pay 7 for their success? For being good at singing or acting 8 or running fast or kicking a football and so on, as 9 opposed to being good with numbers, skilful with their 10 hands or even consummate at constructing legal 11 arguments?</p> <p>12 Whilst there are those who vehemently deplore the 13 hacking of Milly Dowler's voicemails or the phones of 14 Sean Russell, Josie Russell's father, or the victims of 15 the 7/7 bombing, or even Sarah Payne, a woman whose 16 cause, ironically, the News of the World even championed 17 in its last edition, full as it was with a final burst 18 of faded glory.</p> <p>19 There seems to be less sympathy, however, with 20 people like Sienna Miller. She understands that, as 21 others in her position do. They will always be seen, 22 somehow, as whingeing celebrities.</p> <p>23 But remember this, sir: she was one of the first to 24 take on the weight of News International in her 25 groundbreaking hacking claim, and look how many far more</p> <p style="text-align: center;">Page 13</p>	<p>1 And whilst this Inquiry will remember the 2 description which a number of well-known figures who 3 were brave enough to come here to give evidence gave, of 4 the highly intrusive way in which the media had treated 5 them, it was perhaps the account of how those near and 6 dear to them were made to suffer for the fact that they 7 happened to be related or close to someone who was in 8 the public eye.</p> <p>9 The appalling story of Charlotte Church's parents, 10 for example, her poor mother, who despite the fact that 11 the News of the World were well aware of her 12 depression -- well aware because they'd listened into 13 her messages from her hospital visit when she tried to 14 commit suicide -- how they not only published the 15 graphic account of her husband's infidelity, but in an 16 act of the greatest compassion, blackmailed her into 17 giving an interview, making her bare the arms which 18 carried the marks of her self-harming with the promise 19 that this would avoid a far worse follow-up story about 20 her family.</p> <p>21 I do wonder, sir, what sort of code, what sort of 22 self-regulation, would prevent that kind of journalism?</p> <p>23 And then there was the story of Garry Flitcroft, the 24 relatively unknown Blackburn footballer, who shot to 25 fame at least in the legal world because of the</p> <p style="text-align: center;">Page 15</p>
<p>1 influential people failed to have the courage to do 2 exactly the same. Module 3 was full of them. Unlike 3 the police or the politicians, she was not scared to 4 take on News Group.</p> <p>5 It is people like her who were prepared to do what 6 they did, or journalists, good journalists, like 7 Nick Davies and others, who wrote about what had really 8 taken place in the dark days in Fleet Street, which led 9 to the rubbishing of the oh so convenient lie pedalled 10 by News International's most senior executives, that 11 this was the isolated work of one rogue reporter, and 12 led, therefore, to Sally and Bob Dowler discovering the 13 final outrage which provoked this Inquiry.</p> <p>14 But it was other evidence which Miss Miller gave, 15 about what people in this country, whose talents lie in 16 a medium which the public want to watch, have to endure, 17 that is perhaps the legacy which she has left. Who can 18 forget her description of being abused, of being spat 19 at, of being chased down a road by a gang of men, who, 20 if they weren't carrying cameras, would have been 21 immediately arrested for assault? Freedom of speech, 22 you say? Licence to carry a weapon, more like.</p> <p>23 This is nothing to do with public interest. Indeed, 24 so little of what we've heard about really is, although 25 again that makes me very unpopular for saying so.</p> <p style="text-align: center;">Page 14</p>	<p>1 injunction he won and then lost, but should not have 2 done, to prevent his infidelity being splashed across 3 the print media.</p> <p>4 Whatever you think of the rights or wrongs of what 5 he did, does anyone who heard his testimony truly 6 believe that the disclosure of this fact really served 7 any form of public interest, let alone the hounding of 8 his poor family?</p> <p>9 Then there was his father, who we heard had come to 10 watch his son play football, something he had trained 11 for over years and years, not because Mr Flitcroft 12 wanted to be famous or to be a role model, but because 13 it's what he loved doing and was really rather good at. 14 We heard how, as a result of the abuse which followed 15 his son across the terraces, his father stopped watching 16 his son play, after 20 years of doing so. How his 17 depression worsened and he later committed suicide.</p> <p>18 As I said before, uncomfortable for the press to 19 listen to? Well, then good, I hope it still is, because 20 nothing we say has changed.</p> <p>21 Yes, these are just, as I say, examples of the sorts 22 of practices which are prevalent throughout the 23 commercial end of the print media. What did we hear 24 about? We heard about voicemail interception, of 25 course, but was this a practice, I ask, which was</p> <p style="text-align: center;">Page 16</p>

<p>1 hermetically sealed within News of the World? Of course 2 it wasn't. 3 Evidence of this is difficult, I appreciate. 4 Mr Mulcaire only acted for News Group Newspapers, and 5 thank God he kept notes, albeit not particularly legible 6 ones. But anyone out there who believes it was just the 7 News of the World only needs to think about the other 8 evidence which this Inquiry heard, evidence from 9 a number of quarters about how the practice was 10 widespread amongst tabloid journalists. So widespread, 11 for example, it was an in-joke between the editors of 12 the two leading daily tabloids, the Sun and the Mirror, 13 at a press awards ceremony. 14 Mr Mohan, the editor of the Sun, was candid enough 15 to admit that the practice could not have been ruled 16 out, and the same was true of Mr Wallace, more recent 17 editor of the Mirror. 18 Whether, as I say, other newspapers were engaged in 19 it or not, or whether, more importantly, we can prove 20 now that they were, is not something you need to answer 21 necessarily for part 1. But you do have enough evidence 22 that everybody knew it was going on throughout the late 23 1990s and 2000s, and at best, turned a blind eye to it. 24 It was part of the tabloid journalists' armoury, of 25 which I'll say more in a moment. Part of tabloid</p> <p style="text-align: center;">Page 17</p>	<p>1 in the face of News Group's criminality speaks volumes. 2 But then, as I said, News Group's downfall was 3 Mulcaire's note-keeping. There are other Mulcaires, 4 other Goodmans, other newspapers, most of whom will be 5 breathing a sigh of relief, especially if part 2 of this 6 Inquiry doesn't happen. 7 But before those who say all the Inquiry has really 8 seen in terms of press malpractice is the hacking of 9 phones -- and believe me there are media organisations 10 that do -- let us not forget the other tricks of the 11 trade we've seen. 12 To add to hacking into private voicemail messages, 13 there are incidences of email hacking. We've only seen 14 the tip of the iceberg here. Operation Tuleta starts to 15 move into full swing, as DAC Akers said to this Inquiry 16 yesterday. We have seen now the use of messages even 17 taken from stolen mobile telephones, which appears to 18 relate to 2010, long after the so-called lessons should 19 have been learned. 20 And what self-respecting tabloid journalist would be 21 without the products of blagging? We have numerous 22 examples of it in Mr Mulcaire's notes. And then there, 23 of course, was the uncovering of Mr Whittamore's 24 activities, another man who thankfully kept a detailed 25 note of what he did and for who. Only he acted for</p> <p style="text-align: center;">Page 19</p>
<p>1 culture. It had its own name: screwing phones. We 2 heard about it from Paul McMullan, we heard about it 3 from James Hipwell, we even heard about it from 4 Piers Morgan, although, in his characteristically 5 fabricic(?) style, he denied any personal involvement, 6 despite the words that he'd written about Heather Mills, 7 who was forced to come and appear here in order to 8 explain. 9 And if her evidence wasn't enough to demonstrate the 10 personal knowledge of those in senior places, then 11 perhaps Mr Paxman added weight to that suggestion. 12 But, really, does there need to be any clearer 13 signal that this was rife amongst that area of the 14 industry than the fact that, unlike the Guardian, which 15 led the good old-fashioned journalistic investigation 16 into the scandal and was monstered for it by the tabloid 17 press, not to mention our friends at the Press 18 Complaints Commission, unlike the Guardian, the red tops 19 ran a million miles from the story, as they did from 20 reporting the findings of the Information Commissioner's 21 "What price privacy now?" report. Funny, that. 22 If nothing else, it tells you something about the 23 culture. In a dog-eat-dog world, where rival titles 24 fight a constant battle in a brutally competitive 25 market, the deafening silence of the tabloid newspapers</p> <p style="text-align: center;">Page 18</p>	<p>1 every title, practically, and we know the league table 2 of offenders, or more euphemistically, should I say, the 3 users of his services. I will turn to what was said 4 about Operation Motorman briefly in a moment when I look 5 at Module 2. 6 Then we have the equally covert skills of 7 surveillance men like Derek Webb, of whom we had the 8 almost comical suggestion that he was a journalist 9 because he was handed a press pass. Seriously. You can 10 give anyone a wig, but that doesn't make them 11 a barrister. 12 Then there are the more obvious visible practices 13 we've seen: blackmail and intimidation, doorstepping, 14 harassment. All of which are designed to interfere in 15 the most intrusive way possible with the private lives 16 of their targets, often at a time when they're at their 17 most vulnerable. 18 And while we're on the subject of harassment, it is 19 worth a word or two about one of the suggestions in this 20 regard which came out of the paparazzi agencies who came 21 to give evidence to this Inquiry, namely that the whole 22 problem of camping outside people's houses, chasing them 23 down the street, following them menacingly around, 24 driving recklessly through the streets of London and 25 thrusting cameras into their faces, all of that would</p> <p style="text-align: center;">Page 20</p>

<p>1 end, they say, if people signed up to a "no shoot" list. 2 Nonsense. 3 I'm not against some voluntary acceptance by the 4 picture agencies that there are people whose names 5 appearing on such a list should mean they're off limits, 6 but with the greatest of respect, having been 7 responsible for all of the anti-harassment injunctions, 8 I can say with certainty that the individuals who 9 obtained these injunctions all made it plain before that 10 they did not want to be photographed, with lawyers 11 letters and so on. 12 There isn't any piece of paper which will stop this 13 type of photojournalist if that's what you want to call 14 them. If they think there is a good photo to be had, 15 they will take it. If they think there is a story which 16 needs to be illustrated, they will do so, and the 17 pressures of that are simple. 18 I can say that there isn't a piece of paper which 19 will stop them, let alone a voluntary one, because if 20 they will literally tear up an order of the court in 21 front of you as you hand it to them, as they do, they 22 are hardly going to take any notice of a "no shoot" 23 list, and if you don't believe me, then just look at 24 what happened to Tinglan Hong, one of a number of 25 examples of where we've seen over the last nine months</p> <p style="text-align: center;">Page 21</p>	<p>1 Really, I ask, in 2012, is this still what the press 2 think is a practice that should be protected? 3 But there have been other examples of this during 4 the ongoing Inquiry which I should mention. In the face 5 of the contempt convictions relating to the 6 investigation of Christopher Jefferies, there was also 7 the contempt of court in relation to the reporting of 8 the Levi Bellfield trial. There was the sale of 9 evidence information from Virgin Atlantic to 10 Big Pictures, and perhaps one of the most memorable 11 pieces of evidence was the way in which certain 12 newspapers dealt with the Belgian coach crash. 13 Yes, I'm sure there are those sitting in this 14 Inquiry which hoped I would not mention the indefensible 15 way in which a family's grief was intruded upon. 16 Publishing the photograph of a child in pain at the 17 funeral of her brother would be singularly appalling if 18 it were an isolated lapse of judgment, but it isn't. 19 We've heard many examples of other similar instances in 20 other newspapers over the years. 21 Have they learnt nothing, though, from the number of 22 people who came to give evidence to this Inquiry about 23 the appalling way in which the press can compound an 24 already tragic situation by the most intrusive and 25 sensational of reporting? Apparently not.</p> <p style="text-align: center;">Page 23</p>
<p>1 that despite the microscope of this Inquiry under which 2 the newspapers are putting on their best behaviour, 3 there are still examples of the same kind of misconduct 4 I have just outlined, because a story sometimes is too 5 good to miss. 6 Ms Hong made it plain, "no shoot" list or not, that 7 she did not want to be photographed. She wanted to be 8 left alone. After all, what had she done, other than 9 have a baby with Hugh Grant? Of course, presumably that 10 is justification enough to terrify this poor pregnant 11 woman. And what about her mother, who some paparazzo 12 even tried to run over when she tried to gather the 13 necessary evidence by turning the camera on the 14 cameraman? Another theme, you might feel, of this 15 Inquiry. 16 And if you think there isn't good business in this, 17 then look at the evidence of Matt Sprake of the Newspics 18 agency, whose evidence came very late in this Inquiry 19 but which demonstrated that all of our favourite tabloid 20 newspapers had been using this form of covert 21 surveillance right through 2011 and 2012, snooping 22 around trying to find a photo which could catch out 23 a well-known person smoking a cigarette when she 24 shouldn't, or leaving a flat maybe they shouldn't have 25 been at.</p> <p style="text-align: center;">Page 22</p>	<p>1 What a fitting end to the evidence about the 2 relationship between the press and the public. 3 And what about Module 2? 4 LORD JUSTICE LEVESON: Just before you move on, 5 Mr Sherborne, Mr Dingemans yesterday tried to summarise 6 in seven propositions the issues, and one of his 7 propositions, which you might have read, was that it was 8 possibly appropriate to conclude that the press have 9 a tendency to see news as divorced from the individuals 10 involved, in other words to commodify the people and, as 11 it were, put that to one side purely because of the news 12 value of a story. Would that be a fair way of 13 summarising the effect of what you've been saying? Or 14 is that not strong enough? How would you put that? 15 MR SHERBORNE: Sir, we'd say it's not strong enough, but it 16 is a pattern which is familiar from the evidence we've 17 heard, the dehumanisation, in effect, of the victims, 18 certainly in terms of stories which involve the 19 intrusion into grief, but. I would put it higher than 20 that. You've heard me put it higher. And the evidence 21 justifies us putting it higher than that because one can 22 see the very real damage it does to people in those 23 circumstances. 24 LORD JUSTICE LEVESON: Oh yes, but if you're not thinking 25 about the people involved, then you're certainly not</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 thinking about the harm that it causes to those people.</p> <p>2 MR SHERBORNE: Of course not, sir.</p> <p>3 LORD JUSTICE LEVESON: Yes.</p> <p>4 MR SHERBORNE: But we say there are circumstances, there are</p> <p>5 examples, where it's not simply a question of failing to</p> <p>6 see how there are human beings involved. We say there</p> <p>7 is a deliberate turning of a blind eye. And the</p> <p>8 examples I've given can't possibly be explained simply</p> <p>9 by the fact that there are individuals within</p> <p>10 a newspaper who haven't stopped to think of the very</p> <p>11 real damage they are doing to people. Particularly</p> <p>12 given the fact, for example, with the McCanns, that this</p> <p>13 sort of campaign lasted over months and months, and</p> <p>14 lasted despite the fact that the McCanns themselves were</p> <p>15 begging the PCC and anyone else who would listen to stop</p> <p>16 this kind of reporting.</p> <p>17 We say, in the face of that, it can't possibly be</p> <p>18 maintained that this was simply the failure to do</p> <p>19 anything other than not take into account what the human</p> <p>20 dimension was to these stories which are just too good</p> <p>21 to resist.</p> <p>22 What about Module 2, sir, the relationship between</p> <p>23 the press and the police? What did we really learn?</p> <p>24 From my clients' point of view, from the public's</p> <p>25 point of view, perhaps very little, and I don't say that</p> <p style="text-align: center;">Page 25</p>	<p>1 I mean in relation to the hacking of thousands of</p> <p>2 people's mobile telephones by just one newspaper. We</p> <p>3 heard how, despite having uncovered an Aladdin's cave of</p> <p>4 evidence, of serious wrongdoing on a scale which at</p> <p>5 least involved hundreds of victims and encompassed</p> <p>6 a number of journalists, rather than open it up and</p> <p>7 properly investigate, the police shut the cave up as</p> <p>8 firmly as they could.</p> <p>9 And despite what it seemed to suggest, whether out</p> <p>10 of abundance of caution or not, all of the evidence was</p> <p>11 there in that cave in 2006, as it is now. They had</p> <p>12 Mulcaire's notebooks, they had worked out there were</p> <p>13 over 400 potential victims, they had pages of PIN</p> <p>14 numbers, passwords, unique direct dial numbers, they had</p> <p>15 call data from Mr Mulcaire and from within the News of</p> <p>16 the World, from its Bat phone, they had the corner names</p> <p>17 of a number of journalists, the same ones as those who</p> <p>18 had been arrested, they had the "for Neville" email and</p> <p>19 they knew about payments for stories and so on.</p> <p>20 So why did they shut the cave? Was it pressure of</p> <p>21 resources? Well, perhaps. But that doesn't explain the</p> <p>22 reluctance of the senior investigating officer to reveal</p> <p>23 the full extent and nature of the evidence to the CPS or</p> <p>24 to prosecuting counsel, or to pursue the agreed strategy</p> <p>25 of informing the victims.</p> <p style="text-align: center;">Page 27</p>
<p>1 to diminish the exercise. Far from it.</p> <p>2 The Inquiry has a lot to think about in terms of</p> <p>3 what it suggests is the way to deal with the obvious</p> <p>4 problems which the at times nauseating closeness between</p> <p>5 certain members of the police and press has led to,</p> <p>6 a culture which is at the very least evocative of a type</p> <p>7 of leniency or impunity, or at least the appearance of</p> <p>8 such, neither of which is healthy.</p> <p>9 We've made recommendations about these, detailed and</p> <p>10 lengthy recommendations, which I'm afraid Mr Garnham has</p> <p>11 to some extent misunderstood, and I don't blame him for</p> <p>12 doing so. There are more pieces of paper in this</p> <p>13 Inquiry even than there are in Mr Mulcaire's notebook,</p> <p>14 and I will deal with this very briefly in a moment.</p> <p>15 But as well as the closeness of relationships, there</p> <p>16 are other issues such as leaks to the media,</p> <p>17 particularly surrounding prominent arrests. There is</p> <p>18 a very lengthy and comprehensive document, as I said,</p> <p>19 prepared by Ms Mansoori and Ms Alan, and I leave you to</p> <p>20 read that, especially in terms of the recommendations it</p> <p>21 contains.</p> <p>22 But the real reason I said that my clients have</p> <p>23 learnt very little from Module 2, as far as they are</p> <p>24 concerned, is simple: we already knew perfectly well</p> <p>25 that the police had failed the public. And by that</p> <p style="text-align: center;">Page 26</p>	<p>1 The somewhat incredible claim to the CPS in 2006</p> <p>2 that there was no evidence that any other journalist was</p> <p>3 involved simply doesn't make sense, and to test the</p> <p>4 police's position, look at it in this way: say the</p> <p>5 police seized 11,000 pages of notes from a burglar</p> <p>6 containing home addresses and safe codes and so on, with</p> <p>7 the names of a series of antique dealers, for example,</p> <p>8 on the corner of the numerous pages, antique dealers who</p> <p>9 had presumably commissioned the information and were no</p> <p>10 doubt using it to get pieces they might want to sell;</p> <p>11 would the police in those circumstances have stopped at</p> <p>12 prosecuting just the burglar and one such dealer? Of</p> <p>13 course they wouldn't.</p> <p>14 Would they not have warned each and every house</p> <p>15 owner whose safe code or similar was in that book that</p> <p>16 they were potentially at risk? Of course they would</p> <p>17 have done. I'm sure you see the point.</p> <p>18 By sealing up the cave, what they allowed News Group</p> <p>19 to do was not just to escape the full consequences of</p> <p>20 the criminality which they had perpetrated, they allowed</p> <p>21 News Group to peddle the lie of one rogue reporter, and</p> <p>22 they failed the victims, the thousands of victims who</p> <p>23 might have done something more about it if they'd been</p> <p>24 told in 2006 and not had to try and wait years to piece</p> <p>25 together what had happened as best they can, despite the</p> <p style="text-align: center;">Page 28</p>

<p>1 deliberate destruction of millions of emails by News 2 Group Newspapers. 3 What about Operation Motorman? The investigation 4 which uncovered a widespread illegal trade in the 5 purchase of private information on a scale which 6 rivalled phone hacking and involved all of the press, 7 practically, but especially the tabloid newspapers? And 8 yet, despite the sheer volume of criminal records, 9 friends and family numbers, DVLA checks and so on, which 10 Mr Whittamore was paid significant sums to supply to the 11 press, not a single journalist of any of those named in 12 his notebooks was ever charged, a fact which the 13 newspapers now rely on, rather unsurprisingly, to try 14 and diminish the obvious significance of what was 15 uncovered, and I will return to this shortly. 16 For the moment, it is sufficient to say that this, 17 Operation Motorman and Operation Glade, was yet another 18 failure, another blot on the copy book. It is no wonder 19 that the failure properly to investigate and punish 20 journalists has led to a sense of impunity, which did 21 nothing to expose these illegal practices. 22 Coupled with the evidence we've heard of the overly 23 close relationship between the press and police, the 24 accounts of excessive hospitality, is it any wonder that 25 there was the perception of bias or conflict of</p> <p style="text-align: center;">Page 29</p>	<p>1 required more manpower as a result. As I'll explain 2 shortly, we are still at the tip of the iceberg. 3 Whilst we're looking at unsatisfactory 4 relationships, let's move to Module 3. 5 The lessons of Module 3 seem clear, certainly to the 6 victims. Everyone admits the relationship between the 7 press and the politicians was one which was and has been 8 particularly unhealthy. Not because it was too cosy, 9 perhaps, but because politician after politician of 10 every colour, creed and class, sought to obtain the 11 support of one of the most powerful media barons we have 12 ever seen. Does it really need to be pointed out how 13 unhealthy it is? The great irony that the elected 14 representatives of this country, representatives at the 15 highest level, have been under the influence, whether 16 direct or indirect, and it matters not, of an unelected 17 few? 18 Well, apparently it does. The culture of fear and 19 favour which the relationship between our politicians 20 and the press seems based on, cannot possibly be right. 21 You've heard evidence, sir, from some of the biggest 22 names in politics, individuals of stature, serious 23 politicians who have admitted to the fact that it was 24 easier perhaps to prostrate oneself at the feet of the 25 Sun king, or rather the king of the Sun, if only to</p> <p style="text-align: center;">Page 31</p>
<p>1 interest? 2 Let me take an example, one which Mr Garnham 3 referred to, I think, yesterday when I wasn't here. At 4 a key moment in the hacking investigation, when the 5 police had uncovered evidence of how widespread the 6 practice was and were deciding what to do about it 7 within News of the World, Messrs Hayman and Fedorcio 8 attended a meal with Andy Coulson and Neil Wallis at an 9 exclusive London members' club. Whether they discussed 10 it openly or not, which they deny, it doesn't matter. 11 But I wonder, would you have described the decision 12 to meet and to have that dinner as a wise or a foolish 13 one? And do you really need me to answer that question? 14 Real bias or just the appearance of such, either 15 way, the relationship came across as a desperately 16 unhealthy one, we say. 17 Whilst it is right that there should be recognition 18 that the officers of Operation Weeting under DAC Akers 19 have done much to restore the confidence of the public, 20 the fact is that their predecessors, the lurching 21 classes at the top of the tree, have so lost the trust 22 of the public that the task of Operation Weeting is at 23 best a damage limitation exercise and not just because 24 the delay in not investigating in 2006 has made the task 25 much more difficult for the officers now and has</p> <p style="text-align: center;">Page 30</p>	<p>1 ensure that they would be in power and could push 2 through policies which they believed, genuinely 3 believed, would benefit the many. 4 A small sacrifice, perhaps. 5 No one is saying to politicians like Mr Cameron that 6 they can't be friends with editors, journalists whoever, 7 and I know you aren't saying that either, sir. One 8 isn't even saying, "Don't go to Santorini". I'm sure 9 it's a beautiful holiday island. But that's what it 10 should be. Not a place where those we elect should seek 11 hospitality from the rich and powerful unelected few in 12 return for political support and favours. After all, as 13 Virgil taught us: Be wary of those in Greece bearing 14 gifts. 15 It is not rocket science, any more than police being 16 wined and dined by editors of newspapers who they were 17 investigating for criminal offences. 18 Finally, it needs to be said that the evidence we 19 have heard certainly demonstrates the importance of 20 plurality and other similar checks and balances which 21 have been recommended by many of my clients, who have 22 either come here to give evidence or provided helpful 23 papers. Sir, I'm sure you have and will read them, and 24 will take their comments on board. 25 Before we leave the evidence we've heard, can I say</p> <p style="text-align: center;">Page 32</p>

<p>1 one or two things briefly? Yes, there have been lots of 2 individual examples, but the who did what to whom and 3 when, tempting as it is to dwell on, really provides an 4 insight, we say, into the culture, practice and ethics 5 of the press as a whole. 6 What it has shown us, for example, is that right at 7 the heart of the problems is perhaps a failure of 8 governance. It is not the journalist that is simply to 9 blame, or even the editors. The problems stem right 10 from the top. You have proprietors worried about 11 commercial sales, editors worried about pleasing 12 proprietors, journalists who take their moral compass 13 from those above them. We've seen clear examples of 14 this in the Inquiry. 15 Take the News of the World as just one example. We 16 have seen a succession of editors starting with Kelvin 17 McKenzie, moving on to Piers Morgan, then 18 Rebekah Brooks, Andy Coulson and finally the new broom, 19 Colin Myler; and when one looks at this list, one can 20 see the nature of the individuals, some of the most 21 powerful people in Fleet Street, people who have shaped 22 popular culture, but have also shaped the culture, 23 practice and ethics of the press. We have seen each of 24 them up close, giving evidence here, and, sir, you will 25 reach your own conclusions. Page 33</p>	<p>1 it applies to other newspapers in the industry too. 2 Sir, I'm going to move on next to consider how the 3 press have responded to all this evidence, because we 4 say again: this is indicative of the culture. 5 While it would be good if the reaction of the core 6 participant media organisations to this evidence was 7 a full acceptance of what had been done that was wrong, 8 or at least a large, large measure of mea culpa, what we 9 have seen in some areas, particularly to my right -- and 10 I don't just mean my immediate right, before there is 11 a shifting of chairs -- what we've seen is a culture -- 12 and I use that word advisedly -- of plausible 13 deniability rather than openness and candour. A culture 14 of cover-up rather than clean-up. 15 While certain newspaper groups are more 16 representative of this culture than others, of their: 17 "If we shout and protest long enough, avoid making any 18 concessions and dispute everything, even in the face of 19 strong evidence, that will wear down any criticism, let 20 alone condemnation". We say it is an example of what is 21 prevalent across the board, and if anything needs to be 22 given to support this, let us look at Operation 23 Motorman. 24 I don't need to repeat the sections of the 25 Information Commissioner's reports "What price privacy?" Page 35</p>
<p>1 But if these are the generals, what about the foot 2 soldiers? Men like Paul McMullan, the parody of a 3 tabloid journalist. His evidence would have been 4 comical with great tabloid headlines such as, "Privacy 5 is for Paedophiles", if it weren't for the fact that 6 many of us here suspect that this wasn't just his view, 7 but reflected a newspaper which fed the public a steady 8 diet of salacious stories. 9 Mr McMullan, the tabloid world's guilty pleasure, 10 a dirty secret that everyone was so quick to disown as 11 journalist after journalist came from the News of the 12 World and said that they didn't recognise what he was 13 describing. It's funny, isn't it, that a man who no one 14 seemed to recognise was responsible over the years for 15 countless News of the World exclusives. 16 Or you have Neville Thurlbeck, the chief reporter 17 and senior figure within News International, the classic 18 journalist who made his exclusives and left. The man 19 who seemed incapable of recognising a blackmail demand, 20 no matter how clearly it stared him in the face. Or 21 perhaps he was just unwilling, as he was to admit having 22 written the emails in the first place, despite the 23 equally glaring evidence that he was responsible. 24 How much does this tell us about the personalities 25 of those people who are running these newspapers? And Page 34</p>	<p>1 and "What price privacy now?", in which he outlined the 2 catalogue of personal information illegally obtained at 3 the request of newspaper after newspaper. On any scale, 4 it was industrial. It was blindingly obvious to us, 5 certainly on this side of the room, that in view of the 6 travesty which the failure to prosecute any journalist 7 represented and the absence of any proper investigation 8 of the material in this Inquiry, which had been released 9 to the core participants, there was every chance that 10 a newspaper group would try to avoid any suggestion it 11 must have known that the information it obtained, in 12 large volume, must have been illegally obtained. 13 And so it came to pass, or almost came to pass, with 14 a misunderstanding over precisely what position was 15 being adopted by one of the core participants. 16 Being right, as I tell my children, is no 17 consolation. Much better if it never happened in the 18 first place. We all know the significance of what was 19 disclosed by Operation Motorman: the widespread use of 20 Mr Whittamore's services, which continued, in the case 21 of one newspaper, until 2010, after he was convicted. 22 It has always been the position of the core 23 participant victims that it is hardly credible for the 24 press to claim that they were blissfully unaware that 25 this type of personal information which they would buy Page 36</p>

<p>1 had been obtained or might have been obtained illegally. 2 The sheer number of criminal record checks, friends and 3 family numbers, DVLA checks and so on and so forth is 4 a testament to this. But as important was the fact that 5 some of the newspapers simply refused properly to 6 investigate and respond to the complaint. 7 Despite the newspapers' mantra, these activities 8 could hardly be described as historic. For example, if 9 the same journalist was still there at these newspapers 10 and remained unrepentant or ignorant at all of what the 11 fuss was all about, as it appeared some believe, or 12 worse still, the information was still being processed, 13 then, as we say, it is hardly historic. 14 And what have the newspapers done to investigate 15 this? Well, some have been pretty candid, like Trinity 16 Mirror for whom Sly Bailey came to give evidence. She 17 said they'd asked no real questions of anyone in the 18 wake of the report, and it wasn't because of the 19 difficulty of doing so that they hadn't investigated. 20 She said it was because they were only interested in 21 a forward-looking approach. And who can blame Trinity 22 Mirror for only looking forward? With a track record 23 which Operation Motorman shows about the practices of 24 the press, who on earth would want to look backwards? 25 And take Associated Newspapers. They stated that</p> <p style="text-align: center;">Page 37</p>	<p>1 forward-looking exercise. If it was, after all, you 2 wouldn't be examining the past if one couldn't learn 3 lessons from the history of it. 4 We say there is strong evidence to infer that the 5 journalists who used Mr Whittamore knew they were 6 gaining information illegally. As such, buying personal 7 information was just another tool in the trade, rather 8 like phone hacking; and the number of victims is 9 similar, as are the lists of names in some cases. 10 Talking of victims, when considering the response of 11 the media core participants to the evidence as we've 12 seen it, it's important to recognise the bravery of 13 people who have come here to tell their account, 14 distressing as it has often been, of what they've had to 15 go through. 16 Of course, they've not only done this with nothing 17 to gain, no compensation, no judgment in their favour, 18 no promise it won't be repeated and so on. Instead, 19 they've opened themselves up to more publicity, and even 20 on occasion, to attack. And attack it has been, in some 21 cases, which is illustrative of another aspect of the 22 culture. 23 You will recall, sir, even before the Inquiry 24 started, the Mail's journalists started a series of 25 curtain raisers to attack the credibility of those who</p> <p style="text-align: center;">Page 39</p>
<p>1 they had banned any further use of the services of 2 Mr Whittamore once they had discovered they were top of 3 the table of his clients, and the Inquiry has recognised 4 that they've done so. 5 Mr Dacre, at least, said he would carry out 6 a further investigation. That was in March. It is 7 now July, and perhaps Mr Caplan will outline, when he 8 makes his closing speech, what has been done and what 9 has been discovered as a result. 10 You will also recall what the editors said to Mr Jay 11 about the individuals who might have been involved and 12 whether they might still have the information in their 13 contact books and so on. He said it's so long ago that 14 most of the people involved have actually left the 15 newspaper, are working elsewhere or emigrated. 16 Sir, this might be an answer that might be given by 17 any number of the newspaper editors. The Inquiry knows, 18 however, that there are journalists, some of whose names 19 appeared in the Inquiry for other reasons, who carried 20 out numerous requests of Mr Whittamore, who are alive 21 and well in senior positions within newspapers still. 22 One doesn't need to worry about getting their 23 ex-directory numbers or doing area searches in relation 24 to them. 25 Unlike Ms Bailey, yours is not an entirely</p> <p style="text-align: center;">Page 38</p>	<p>1 had agreed to come and give evidence, despite the 2 warnings you gave in this regard. 3 One such article was the one which bemoaned the fact 4 that the McCanns and Dowlers were being sullied by the 5 suggestion that they were giving evidence with the likes 6 of Max Mosley, Hugh Grant and Sheryl Gascoigne, and 7 you'll recall that I mentioned that in my opening 8 submissions. 9 Mr Mosley and Mr Grant were both strong enough to 10 weather this kind of nasty comment. It was just the 11 sort of intimidation that they suspected. But it's the 12 intimidation of the integrity of the Inquiry which we're 13 worried about. It's an interesting postscript that 14 Ms Gascoigne has recently forced an apology and 15 statement in open court in relation to that very 16 article, but it is a shame that it took the highlighting 17 of it in this room to get that. 18 Anne Diamond was not so lucky. You recall how she 19 was attacked by Mr McKenzie as being an unreliable 20 witness because she could remember word for word 21 a conversation she'd had many years ago which showed 22 she'd been effectively blackmailed into not complaining 23 about a photograph the newspaper wanted to publish on 24 its front page of her carrying the coffin of her son. 25 As you yourself said, sir, is it that surprising,</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 given the nature of it, that she would remember such 2 a conversation for the rest of her life? It didn't stop 3 Mr McKenzie's attack, though, but then one wonders what 4 would for a man who told this Inquiry he'd only checked 5 his sources once in his entire career, and that was once 6 too often.</p> <p>7 Perhaps the clearest example of this tactic of 8 a certain section of the press, that attack is the best 9 form of self-defence, came with the evidence of 10 Hugh Grant.</p> <p>11 I'm not going to rehearse what happened. We all 12 remember it. Mr Grant in his evidence in answer to 13 Mr Jay, based on a number of extraordinary coincidences 14 between the article which the newspaper published about 15 an alleged affair with a plummy-voiced executive and 16 messages that were left on his voicemail, together with 17 what he'd been told by Mr McMullan in a taped 18 conversation, led him to believe that it could have been 19 the product of someone listening to his mobile phone 20 messages. That was all. It was his belief, as he said. 21 But that was enough to have an associated newspaper not 22 respond within this Inquiry but to reach for its website 23 and to issue a public statement accusing one of the 24 witnesses of not simply being mistaken or wrong, but 25 deliberately lying.</p> <p style="text-align: center;">Page 41</p>	<p>1 equality of arms with the most wealthy organisations in 2 this country.</p> <p>3 The attack on CFAs is just another example of 4 a culture which rubbishes anyone well-known who 5 complains as a "whingeing celebrity", any lawyer who 6 takes them on as "greedy", any judge who supports them 7 as "amoralistic and lofty", and any law which they don't 8 like as "strangling the media" or being introduced by 9 the back door. Is it any wonder why self-regulation 10 doesn't work?</p> <p>11 Before we explore that, I want to turn to one other 12 topic, one which again I submit the press will do their 13 best to rubbish, and that is the prospect of part 2 of 14 the Inquiry.</p> <p>15 Sir, I don't know if that's a convenient moment to 16 take a short break.</p> <p>17 LORD JUSTICE LEVESON: I think an hour is probably 18 sufficient. Yes, let's do that. 19 (11.03 am)</p> <p>20 (A short break)</p> <p>21 (11.10 am)</p> <p>22 MR SHERBORNE: Sir, I'm moving on to the need for part 2 of 23 this Inquiry. And it's worth reminding everyone of what 24 part 2 is intended to be about. 25 Again, before I do so, I'm asked actually to clarify</p> <p style="text-align: center;">Page 43</p>
<p>1 It's a shame that instead of this very public 2 accusation of perjury, they didn't reach for 3 a dictionary, given that there was a singular failure to 4 comprehend what the word "mendacious" meant, namely: 5 lying.</p> <p>6 Whatever else may be said about this episode, and 7 there is much more I could say, what it does show is how 8 the press, time and time again, goes on the attack, 9 rubbishing those who run the gauntlet as a way of 10 instantly deflecting criticism away from itself.</p> <p>11 This culture of intimidation, where people become 12 too afraid to speak out about the press, is not only 13 unhealthy, but is surely as much a curtailment of free 14 speech as anything which the press itself complains 15 about.</p> <p>16 Let us not confuse this with the freedom to bully, 17 to intimidate, to set the agenda. After all, the media 18 have all the resources. And whilst on this subject, let 19 me say a word about conditional fee agreements, which 20 the media again bitterly complained about here in this 21 Inquiry, how well-known individuals have used them to 22 help fund actions against the press.</p> <p>23 Remember, of course, that it was this ability to 24 bring a claim which allowed the McCanns, 25 Christopher Jefferies, Sally and Bob Dowler to have</p> <p style="text-align: center;">Page 42</p>	<p>1 something I said earlier, which I'm happy to do.</p> <p>2 When I described Heather Mills as being forced to 3 come to this Inquiry, I wasn't by that description 4 referring to the fact that she may have been served with 5 a Section 21 notice. What I was referring to, and I've 6 been asked to make clear, is that she felt compelled, 7 self-compelled, to come and explain her position as 8 opposed to being required to be here by the Inquiry. 9 I hope that makes the position clear.</p> <p>10 As I say, part 2 of this Inquiry is not just about 11 hacking and it's not just about the News of the World. 12 It is meant to enquire, as the terms of reference show, 13 into illegal practices of all kinds, no doubt similar to 14 those that have been investigated by Operations Tuleta 15 and Elveden, and not just Weeting.</p> <p>16 And it is meant to cover other newspapers, not 17 simply the now defunct News of the World. As we've 18 heard from DAC Akers yesterday, the net is wider, and 19 what it will reveal, we believe, is a section of the 20 press, rather than simply one misguided newspaper, which 21 is far more rotten than many people had realised.</p> <p>22 I understand, as we all do, why it was necessary 23 here to put the cart before the horse, to look at the 24 generality of the culture, practices and ethics before 25 considering the prime reason the Inquiry was started,</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 namely the specifics of the phone hacking scandal. 2 It was necessary because of the criminal 3 investigation, and could this be a more auspicious day 4 to say that and to say also that we should continue with 5 the work of part 2 as soon as this is possible? 6 Further charges, even in the break that we have just 7 taken, have been announced against those suspected of 8 being involved, at least at the News of the World. 9 I anticipate that a very significant part of the 10 media machine, which will grind into action once part 1 11 of the Inquiry ends, will be to say that part 2 is 12 unnecessary. The public have had enough, the 13 recommendations mean that this is all historic, so why 14 the need to drag this all up? That is no doubt what 15 will be said by the self-interested few, who will be 16 anxious to avoid any further inquiry into the sordid 17 details of precisely how corrupt this section of the 18 press was, how far to the core this rot had spread or 19 how high up the tree this went. 20 It can be answered in two ways. The first is by 21 recognising, as we must do, the unsatisfactory nature of 22 parts of Module 1, the spectacle of journalists coming 23 to the Inquiry to give evidence about culture, practices 24 and ethics, but not being asked about their direct 25 knowledge or involvement in an episode which perhaps</p> <p style="text-align: center;">Page 45</p>	<p>1 in relation to this practice, one which he had so 2 resolutely refused to be tested in this room. 3 It was a farce. A piece of astonishing hypocrisy 4 that no politician, for example, would survive. 5 So that is the first reason why part 2 must 6 continue: to do the work that is necessary to complete 7 part 1. 8 The other is that what we've seen so far, as DAC 9 Akers speculated, is only the tip of the iceberg. 10 Whilst much of what lies beneath the surface relates to 11 practices which were taking place in the early 2000s and 12 up until 2006, the story by no means ends there. The 13 News Group cover-up of the truth carried on well into 14 2010 and beyond, and more is coming to light with 15 Operation Tuleta. 16 DAC Akers even mentioned the fact that there were 17 payments, we're told, by one of the newspapers to 18 a prison officer, the last of which took place 19 in February 2012, during this very Inquiry. 20 When I stood here even in November, in many ways we 21 were only starting to scratch the surface of what went 22 on during the phone hacking scandal, through the civil 23 proceedings with the restrictions that it has. We have 24 now begun to piece together with the help of what little 25 disclosure we can still find, or drag out of News Group,</p> <p style="text-align: center;">Page 47</p>
<p>1 best exemplifies those very matters. 2 It was the constant question left hanging in the 3 room, the one thing no one could ask as a series of News 4 of the World executives and journalists gave evidence 5 here, gave evidence about their views on regulation, 6 articles they'd written, some important, some 7 peripheral, or told us about their good deeds, the 8 public awareness they've raised on issues of varying 9 weight, such as road safety, abortion or wheelie bins; 10 but not a word spoken about a culture of illegality, 11 criminality or unlawful practices on an industrial 12 scale, which we say was known about and then concealed 13 by senior executives within the organisation. 14 As I say, we all know why that had to be the case, 15 but perhaps it was the acts of one journalist which 16 demonstrated how in one sense, one very real sense, the 17 work of part 1 was compromised, how it can and will only 18 be properly complete once part 2 is also completed. 19 The News of the World reporter who sat over there 20 and refused to answer any questions even remotely 21 relating to the issue of phone hacking, not to mention 22 anything else which he didn't like. 23 He claimed or was entitled to claim the privilege of 24 not answering anything, and yet, within hours, he went 25 on Radio 4 vehemently, publicly protesting his innocence</p> <p style="text-align: center;">Page 46</p>	<p>1 the sheer scale of information which was being obtained, 2 not just voicemails, not just PIN numbers, but a whole 3 host of other personal details: friends and family 4 numbers, utility bill information, texts, medical 5 information, credit card entries and so on. 6 It is clear that Mr Mulcaire, or those working with 7 him, blagged a horde of information similar to that 8 which Mr Whittamore did for all the other newspapers. 9 And we now know that what Mr Mulcaire did was only 10 a fraction of what News Group's own journalists did 11 themselves, in order to obtain colour for their stories, 12 to corroborate tip-offs they might have had, to use them 13 as a means to intimidate individuals into disclosing 14 details about their private lives which they would never 15 have wanted to reveal voluntarily. 16 We now have an internal instruction email passing 17 between a senior executive and a journalist relating to 18 a well-known individual's phone. Perhaps the smoking 19 gun we have been looking for. 20 And most interesting of all is the evidence we have 21 of the cover-up, the deliberate destruction by 22 News International of millions of emails, which took 23 place whilst the newspaper's executives were still 24 peddling the line in public that this was just the work 25 of one rogue reporter.</p> <p style="text-align: center;">Page 48</p>

<p>1 We now know what was happening behind the scenes, 2 that this email deletion policy was being discussed and 3 approved of at the highest, at the highest of levels 4 within the company, despite the evidence which has been 5 given to this Inquiry. 6 And when did this mass deletion take place, you may 7 ask. Well, at two critical times, as we can now tell. 8 First, within days of the letter of complaint 9 received from us in the Sienna Miller case landing on 10 the desk of News International, asking to preserve all 11 documents, as one does in civil litigation. And what 12 about the second time that there was another mass cull? 13 It was the day, the very day after the 14 Director of Public Prosecutions, Mr Stamer, announced 15 that he was conducting a comprehensive assessment into 16 News International's voicemail interception activities. 17 I need say nothing more. 18 To return to my point, part 2 is not just about News 19 of the World and what it did throughout the period. It 20 would look at other newspapers as well, the same ones 21 DAC Akers was talking about. 22 The simple point is this, sir: how do the public 23 really know that this won't happen again? How do we 24 know this wasn't rife, as we suspect it was, throughout 25 not just the News of the World but a whole section of</p> <p style="text-align: center;">Page 49</p>	<p>1 aware, is that News International finally made a series 2 of admissions in relation to the case, as best as it 3 could be put by the individual claimants, given, as 4 I say, the fragmentary disclosure which they've been 5 able to obtain. 6 Once those admissions were made, 7 News International's argument is that there is no need 8 then to provide further disclosure. There is nothing 9 more in terms of being able to really get at what we say 10 is the full picture of what took place. Furthermore, 11 there are no witnesses that they will call to give 12 evidence to explain what took place. That's an entirely 13 different position to what happens in this Inquiry. 14 LORD JUSTICE LEVESON: I understand that. 15 MR SHERBORNE: Where you can compel people to give evidence, 16 as you have done. 17 LORD JUSTICE LEVESON: I understand that, but the scale of 18 the events is manifesting itself by the number of people 19 who have joined the ranks of those who are seeking 20 damages. 21 MR SHERBORNE: We only have names, sir. We don't have the 22 underlying acts that took place in relation to them. We 23 have simply Mr Mulcaire's notes. 24 As I say, thank God he kept notes, illegible as they 25 are, but the fact is, what went on, what took place</p> <p style="text-align: center;">Page 51</p>
<p>1 the press and carried on right up until the doors of 2 this Inquiry? How do we know this unless the stables 3 are properly cleaned out? The civil litigation won't do 4 this, unfortunately. The criminal proceedings won't do 5 it either, I suspect, any more than the prosecution of 6 Mr Mulcaire and Goodman revealed much in the light of 7 their guilty pleas. 8 So on behalf of the victims, I urge this Inquiry to 9 proceed to part 2 as soon as it is possible to do so. 10 LORD JUSTICE LEVESON: I've not said anything that 11 undermines the commitment to address the terms of 12 reference which were set for the Inquiry, but I would be 13 interested to understand why you submit that the civil 14 proceedings and the criminal prosecutions, which we now 15 know are due to take place, and the criminal 16 investigations which are still ongoing, will not 17 themselves generate an enormous amount of material 18 available within the public domain, which will explain 19 and elucidate those parts of the terms of reference that 20 are contained within part 2, particularly bearing in 21 mind that part 2 could not commence in any event, until 22 all the prosecutions had been concluded. 23 MR SHERBORNE: Sir, can I take them in order, the civil 24 proceedings first? 25 The way in which they've progressed, as you'll be</p> <p style="text-align: center;">Page 50</p>	<p>1 within News International as opposed to what took place 2 with the hired gun that they used, Mr Mulcaire, is 3 something we may never find out unless there is somebody 4 that has the power to compel the sort of production of 5 documents and the giving of evidence which no civil 6 court can or will do. 7 LORD JUSTICE LEVESON: That takes you on to the criminal 8 court. 9 MR SHERBORNE: Then I will move on to the criminal court. 10 One only needs to look at what took place in 2006 to 11 see that although there were convictions, although 12 Mr Mulcaire and Mr Goodman were convicted, we learnt 13 precious little during the course of those proceedings 14 about what really took place within News International. 15 In the light of it, News International were still able 16 to peddle the lie: it was simply Mr Goodman and simply 17 Mr Mulcaire. 18 LORD JUSTICE LEVESON: I'm not so sure it's a fair analogy 19 to compare that which happened in 2006 with that which 20 is presently happening in Operation Weeting. 21 MR SHERBORNE: The answer is that -- 22 LORD JUSTICE LEVESON: I'm not challenging the proposition 23 that you make, I'm merely testing the extent to which we 24 will learn very much more if, as I anticipate, given the 25 recent announcements and the investigations that are</p> <p style="text-align: center;">Page 52</p>

<p>1 ongoing, criminal proceedings are going to be wending 2 their way through the courts for some very considerable 3 time.</p> <p>4 MR SHERBORNE: Sir, it's not Operation Weeting or the 5 activities of Operation Weeting that won't result in 6 this, it's the fact that if, as one suspects, there may 7 be guilty pleas, by virtue of the process, one will 8 learn so little.</p> <p>9 At the moment there is nothing in the public domain, 10 or very little, because of the fear of prejudicing the 11 criminal investigation. Once charges are brought, that 12 isn't going to change; and if those who are charged 13 plead guilty, we will never find out.</p> <p>14 LORD JUSTICE LEVESON: I understand that, but isn't that, 15 therefore, a reason to say, "We have to wait and see"?</p> <p>16 MR SHERBORNE: Of course we have to wait.</p> <p>17 LORD JUSTICE LEVESON: I am not in any sense seeking to 18 advance an argument that part 2 should not happen. 19 Although it's been suggested that I've said that, 20 paragraph 65 of my ruling of 1 May doesn't actually say 21 that.</p> <p>22 MR SHERBORNE: It doesn't, sir, but the way it's been 23 interpreted by those who have an interest in doing so is 24 that it means that there may well not be part 2.</p> <p>25 We understand the limitations, as I said. We ask</p> <p style="text-align: center;">Page 53</p>	<p>1 definition, be walked away from. We've seen such 2 organisations do similar things in the past.</p> <p>3 What, of course, is to stop this contract being torn 4 up five years from now? Or all of those who sign it to 5 leave en masse? Hardly a sound footing, we say, for the 6 future.</p> <p>7 And it is not independent. It is run by the 8 industry, and the Code Committee still appears to be 9 made up of a majority of serving editors.</p> <p>10 Perhaps most important of all its features is it is 11 to be self-regulated and not underpinned in any way by 12 statute.</p> <p>13 Have these organisations here really learnt nothing 14 from the lessons of history? Those who are old enough 15 to do so -- and although I thankfully don't count myself 16 as one of them, we've had the benefit of some of them 17 give evidence to this Inquiry -- can list the catalogue 18 of events which have brought this issue into the public 19 eye over the years, and the previous answers given by 20 the media, the attempts at self-regulation in the past, 21 which one by one have failed and have brought us to this 22 point.</p> <p>23 The Royal Commissions in 1947-9, 1961-2, 1974-7, the 24 Younger Committee Report in 1972, Calcutt one, which set 25 up the Press Council, Calcutt two, which set up the PCC,</p> <p style="text-align: center;">Page 55</p>
<p>1 that the Inquiry can continue with the work it's 2 undertaking as quickly as it possibly can, the 3 "possible" being obviously a reference to the ongoing 4 criminal investigation. We understand that.</p> <p>5 Let me move on then to the future and to regulation.</p> <p>6 In the face of all that I have described, what has 7 the press itself come up with as a solution? It appears 8 to be the proposals which have recently come out of the 9 still surviving, but only just breathing, Press 10 Complaints Commission, Lord Hunt and PressBoF.</p> <p>11 I could devote my entire allotted time, which I've 12 probably come close to overrunning, to explaining why we 13 say that however well intentioned it may be, as 14 a proposal to deal with the practice, culture and ethics 15 we've witnessed, it is hopeless.</p> <p>16 I will restrict myself, therefore, to making just 17 a few general observations. After all, it is tempting 18 to add, it seems somewhat pointless dealing with the 19 detail since even the media organisations who support it 20 say they can't sign up to the detail of it yet.</p> <p>21 So what about the key features of this proposal? It 22 is, after all, a contractual document, a fixed-term of 23 five years proposed. Well, you don't need the lawyers 24 in this room representing the core participant media 25 organisations to tell you that contracts can, by</p> <p style="text-align: center;">Page 54</p>	<p>1 the outrage over what happened to Diana, the late 2 Princess of Wales, the Information Commissioner's 3 report, the phone hacking scandal and so on. All of 4 these demonstrate, if proof is needed, that 5 self-regulation doesn't work and hasn't worked.</p> <p>6 The press have been merrily drinking away in the 7 last-chance saloon, so-called, for years and years now, 8 and while they've been doing so, we have witnessed 9 possibly the most outrageous, largest criminal 10 malpractice this country's press has ever known. Hardly 11 an advert for self-regulation.</p> <p>12 I leave the last word on self-regulation to 13 Rebekah Brooks, perhaps fittingly, who said to the House 14 of Commons Select Committee in 2003, in what has now 15 become a rather infamous piece of evidence: 16 Self-regulation, she said, under the guidance of the 17 Press Complaints Commission, has changed the culture in 18 Fleet Street and in every single newsroom in the land.</p> <p>19 If that is the press' own assessment of 20 self-regulation, then it is no wonder, I say, that this 21 is what is responsible for the culture of complacency, 22 the culture of intrusiveness and illegality which we've 23 spent months considering. When will the press, I ask, 24 learn that enough is enough?</p> <p>25 And they won't agree to any form of statutory</p> <p style="text-align: center;">Page 56</p>

<p>1 underpinning, something which will bind the newspapers 2 into this new regulation, something which we say would 3 keep the regulator accountable. 4 What is the answer of Lord Hunt and his colleagues? 5 And he has colleagues who say the same thing, to be 6 fair. What is their answer to this? They say there is 7 a fear that this is a slippery road. Any statutory 8 control might be used by a future Government to control 9 the press. 10 Given the evidence we've heard in Module 3 about how 11 it is the politicians who live in fear of an 12 unaccountable and unelected media, this seems a somewhat 13 laughable suggestion. But it's hard to take it 14 seriously anyway, as Mr Jay put it. These fears are 15 irrational, since even if there is no statute, what is to 16 stop any Government at any stage in the future passing 17 a statute if it chooses? Nothing. 18 But more importantly, this can be dealt with, as 19 Mr Jay suggested or you yourself, sir, recommended, by 20 writing into the statute express statements disavowing 21 any suggestion there should be Government control of 22 editorial content or judgment, and so on and so forth. 23 The simply fact is that Lord Hunt's proposal is not, 24 as the Inquiry has heard, what the victims would 25 require. Its starting point, its whole premise, is what Page 57</p>	<p>1 should rule upon complaints as to media conduct and 2 serving editors should have no role in that. 3 This adjudicator could deal not only with issues 4 covering libel, privacy and harassment, but broader 5 standards concerning accuracy, news information 6 gathering and so on. And it can also cover matters for 7 which there may be no existing legal course of action, 8 to deal with complaints that the law cannot deal with, 9 at least presently. And perhaps that's where one of its 10 benefits lies. 11 Take, for example, Bob and Margaret Watson, who 12 travelled down from Scotland to share with all of us the 13 extraordinary pain that they'd suffered because the 14 memory of their daughter had been so terribly and 15 tragically traduced, whose evidence, so beautifully 16 elicited and simple, was hard not to sympathise with. 17 Maybe where the law currently fails to protect the 18 reputation of those who are no longer around to defend 19 it themselves is precisely where an industry regulator 20 might bring some satisfactory answer. One can only hope 21 so, for their sake and all families like them. 22 It should involve rules or guidance about prior 23 notification, we say, on which point we've already made 24 detailed submissions. 25 Let me just say this. It is clear from the Page 59</p>
<p>1 is acceptable to the industry. But forgive me, we're 2 not here solely to decide what is acceptable to the 3 industry. We're here because the industry is not 4 acceptable to the public, with whom there seems to have 5 been no consultation by Lord Hunt's team. 6 The public wants more objective standards, and the 7 starting point for that is an independent, 8 statute-backed regulator, which is created for the 9 public and is not run by serving editors, and one which 10 can hold this enormously influential body to account, as 11 they hold us to account in turn. 12 As you know, sir, the core participant victims have, 13 as a group, as well as individually, made submissions 14 about the future and what regulation should look like, 15 and you have those; and you have, or will no doubt, read 16 them, so I won't repeat the detail of them now. 17 Can I just say something about their shape and their 18 salient features? 19 We say there should be an entirely new regime, 20 a clean break, not just in name but in substance, from 21 everything that has come before and failed. There 22 should be separate mechanisms for rule-making, for 23 investigations, including investigations of the 24 regulator's own motion, and most importantly for 25 adjudications. A body of independent adjudicators Page 58</p>	<p>1 evidence, both of the core participant victims and even 2 those from the media and social commentators, that there 3 is considerable support for this requirement. And it is 4 hardly surprising. 5 There really is no answer to the argument that the 6 only effective remedy for the breach of an individual's 7 right to respect for his or her private life is an 8 injunction to stop the unwarranted intrusion before it 9 happens. 10 Simply put, once the information is published to the 11 world at large, it is by definition no longer private. 12 So unless an individual is notified in advance of an 13 intention to publish, there is no opportunity to seek 14 the all-important remedy. 15 Before I move away, this is not a problem which, 16 some have suggested, is irremediable. Arguments against 17 it such as the chilling effect it might have on 18 investigative journalism are specious. No one really 19 believes -- no one who practices in this field -- that 20 such a story like the expenses scandal would ever have 21 been stopped by a judge, even if an MP was mad enough to 22 make such an application. It is Alice in Wonderland 23 territory, but I've already dealt with this in writing. 24 And the rules may also say something again, 25 something clearer perhaps, about public interest, Page 60</p>

<p>1 another topic you'll find dealt with in my written 2 submissions. 3 It's perhaps no wonder, though, that attempts at 4 a more comprehensive definition of this concept have 5 never been that successful, but perhaps it isn't 6 necessary. It is one of those things where it is easy 7 to spot but difficult to define. 8 Let me say this, though: very little, if any, of the 9 stories which we've heard relating to the victims who 10 came to give evidence here about shocking press 11 behaviour involved even the hint of public interest. 12 The vast majority of tabloid stories are about the 13 rich and famous or the just famous, and there is 14 a critical distinction which has been drawn in these 15 courts between the press' role, its vital role as 16 a public watchdog, holding politicians and other elected 17 officials or large corporations to account, and on the 18 other hand its role as a reporter of the private lives 19 of the well-known. This is all the fine print, as we 20 say, we've covered in our written submissions. 21 But perhaps the most important other way in which 22 a regulator, or rather its adjudication arm, could be of 23 real benefit to the public is in providing a fast and 24 preferably free way of obtaining redress in those cases 25 which seem relatively straightforward in terms of the Page 61</p>	<p>1 us, but not the law. 2 It was those terrible English laws of libel which 3 gave Mr Jefferies a remedy, which gave the McCanns 4 a chance to properly vindicate themselves, not a form of 5 regulation or a tribunal. 6 And it was not a tribunal or regulator which 7 uncovered hacking, whether or not this regulator is 8 contractually or statutorily underpinned. They could 9 never, for example, have compelled News Group to tell 10 the truth. It would never have sufficient disclosure 11 powers and it would never be free enough, we say, from 12 self-interest. 13 It would never, say, have been able to get to the 14 bottom, at least to some extent, as the civil process 15 has done, with all the costs that the disclosure process 16 involves and which ultimately News Group will have to 17 pay. 18 It is that which has led to the gradually uncovering 19 of the enormity of this scandal. It was legal actions 20 by the so-called rich and famous, such as Sienna Miller 21 and so on, which forced News Group to crack finally, or, 22 to use the evidence of some of those who sat over there, 23 for the scales to finally fall from their eyes. 24 It was the legal process and the so-called chilling 25 effect of legal proceedings, as I've said, which made Page 63</p>
<p>1 merits involved or the issues raised, without the need 2 for expensive litigation. A fast, fair and easily 3 accessible system available to all, especially in the 4 absence of conditional fee agreements. 5 But let us be clear. It is important to remember 6 that an integral part of keeping the press in check is 7 the rule of law. There is a real need here to recognise 8 the importance of the courts, the importance of the 9 court system. 10 Yes, it is expensive, but after all, let's be honest 11 for a minute, it's the wealthy who are of real interest 12 to the most relevant section of the press. Not, to 13 borrow a phrase from Jarvis Cocker, the rest of us 14 common people. 15 It is the well-known and successful who these 16 newspapers want to write about. And it is these 17 individuals who can and should still have a right to the 18 courts, and I won't take the opportunity here to explain 19 why we say Article 6 requires this. 20 Why, you ask, perhaps? Because a tribunal or an 21 adjudication body will never work effectively as 22 a sanction or deterrent to the press. It is no complete 23 substitute. It is not the law that has failed here, 24 it's the press that have failed us, it's the police that 25 have failed us, it's the politicians that have failed Page 62</p>	<p>1 the newspapers pay Mr Jefferies a sum which he could 2 hold up as demonstrating that what they did was 3 viciously and wholly untrue, and the same applies to the 4 McCanns. The public have been left in no doubt of the 5 truth of those allegations, and we say that is a product 6 of the rule of law, which has proved time and time again 7 that it works, and, thank God, in this country one thing 8 we can rely on; and it's certainly not self-regulation. 9 Since we're talking of the future, let me see if 10 I can predict what may happen over the summer in the 11 days after the report comes out. We will see the 12 machine, the powerful and hugely influential press 13 machine, swing into action, and the Inquiry and those 14 who represent it will no doubt be undermined or their 15 recommendations rubbished, maybe even before they're 16 published, on past performance. 17 Of course, I don't claim any special powers of 18 clairvoyance, much as I'd like to. The fact is we've 19 seen it starting already. It happened right at the 20 outset with the seminars, where we all recall Kelvin 21 McKenzie attacking the competence of the Inquiry by 22 rubbishing its chairman. And it's nothing new. It's 23 like how the same newspaper sought to rubbish the 24 judgments in the Mosley case. An attack that was taken 25 up in common cause by other editors in Fleet Street, one Page 64</p>

<p>1 of whom described it in words which should trouble this 2 Inquiry: 3 "The judgment in Mosley was arrogant and amoral. It 4 was the product of one man: a judge with a subjective 5 and highly relativist moral sense." 6 Is this the shape of things to come? I ask. 7 Remember, it was the same editor who dismissed the 8 entire board of assessors here by saying that none of 9 them had the faintest clue about how newsrooms operate, 10 and there were further echoes of this culture in the 11 articles which drew this Inquiry's attention only weeks 12 ago. 13 If one was being cynical, one might ask how 14 effective to undermine the Inquiry at a critical time by 15 suggesting that behind the scenes the chairman had 16 threatened to quit for having been accused of trying to 17 gag free speech, something which anyone who has sat in 18 this room will know, sir, you have repeatedly explained 19 you have absolutely no intention of doing, on an almost 20 daily basis. 21 And effective it was, too, since it turned the 22 political debate back again in favour of the press. 23 After all, if this Inquiry has told us anything, it is 24 that those in power seem to be oh so susceptible to the 25 influence of the media and their interests.</p> <p style="text-align: center;">Page 65</p>	<p>1 came to assist; and not just them but a number of other 2 interested parties as well. 3 The public want reassurance. They want their 4 confidence restored. If the recommendations which you 5 propose to deal with this crisis of confidence are not 6 implemented, or at least actively and seriously debated, 7 then this was all just words on the part of politicians 8 across the political divide, of great rhetorical 9 phrases, such as that any solution has to satisfy the 10 "Dowler test", or the "McCann test". 11 However quickly this Inquiry has moved, it has been 12 a long process. The public are tired. They're tired of 13 listening to stories of politicians who fawned to the 14 rich and powerful few who own newspapers in return for 15 support. 16 They're tired of the policemen who are meant to 17 protect the system of law, instead wining and dining 18 with editors or accepting money for favours. And they 19 are tired of the press, which claims the privilege of 20 freedom of speech to write largely the sort of stories 21 which have zero public interest. 22 They're tired, for example, of listening to 23 News Group apologise for phone hacking, not because 24 they're sorry for what they've done, but just because 25 they're sorry that they got caught.</p> <p style="text-align: center;">Page 67</p>
<p>1 Let us not be any under illusions here. Following 2 the end of this stage of the Inquiry, the preparation 3 and production of the report, the counterattack will 4 start, as will perhaps the settling of old scores. The 5 press has a big megaphone and it will be employed 6 outside this room in the way that only they can. 7 But that only serves to emphasise my point, sir, 8 that this is an industry which should be accountable. 9 That's what the public believe. Accountability. The 10 word which the press are so quick to apply to 11 politicians, to the police, to the judiciary, to anyone 12 else, but which they're so allergic to when it comes to 13 their own position, privileged as it is. That is the 14 challenge that you face, sir. 15 Perhaps the most important point is that whatever 16 you recommend, it should be supported by the very people 17 who charged you with this task in the first place. 18 After all -- if this even needs saying -- otherwise what 19 is the point of all of this? Why did we all even bother 20 coming? By that I'm not so much concerned with the 21 members of the press. They had to, and I don't mean 22 because of Section 21 notices, but rather because they 23 were driven by fear, and rightly so, of what might 24 happen to them when the spotlight was turned on them. 25 I meant the members of the public, the victims who</p> <p style="text-align: center;">Page 66</p>	<p>1 And they're tired of other newspaper groups 2 pretending it wasn't them. The press, whose culture is 3 to deny liability in a deeply moralistic tone, sit so 4 poorly with the way in which they've trampled over other 5 people's rights. They are tired of those who represent 6 the press claiming they'll behave better if only they're 7 given one more chance to do so. 8 I say this to Mr Cameron: the public is tired of 9 promises; it's tired of the politics of popularity over 10 principle, of its elected representatives kowtowing 11 under the influence of the unelected few, which is what 12 the history of media ownership has proved. 13 I accept that his predecessors have not shown the 14 necessary courage to do this, how they have succumbed to 15 the real chilling effect, the one which certain sections 16 of the media have exerted over our politicians. 17 Mr Cameron, if you really want to know what the 18 Dowlers want or the McCanns want, they want you to have 19 the courage to take a firm grip on certain sections of 20 the press which are so powerful and yet so unaccountable 21 that even our politicians have been too afraid to stand 22 against them, and to implement the recommendations of an 23 Inquiry, which you yourself set up and vowed to support. 24 Sir, may I say this in closing: you've managed with 25 considerable success to land the jumbo jet, as you</p> <p style="text-align: center;">Page 68</p>

<p>1 described this Inquiry, within the year, and that is 2 clearly no small feat.</p> <p>3 But from the victim's point of view, if the result 4 of the sort of culture, practices and ethics which we 5 have heard about here, and which the victims have been 6 brave enough to recount and relive, if the result of the 7 shocking examples of intrusions into grief, character 8 assassinations of the innocent and the dreadful 9 invasions of people's privacy results in the closure 10 finally of the much talked about last-chance saloon, 11 only for the press, through special pleading of 12 self-interest, to end up being invited instead into 13 a first class lounge. The answer does not lie, we say, 14 in a system which is created by the press, for the press 15 and regulated by the press. That would be a failure. 16 Not just on the Dowler or the McCann test, but for the 17 general public, for everyone except the privileged few 18 who are represented here by the core participant media 19 organisations.</p> <p>20 Thank you, sir. That's all I wanted to say on 21 behalf of the victims.</p> <p>22 LORD JUSTICE LEVESON: Thank you very much, Mr Sherborne. 23 I think we'll take just three minutes just to allow 24 everybody to stretch their legs. 25 Listening is rather more arduous than just dealing</p> <p style="text-align: center;">Page 69</p>	<p>1 to have been moved by the evidence of witnesses like the 2 Dowlers and the McCanns, disturbed by the behaviour of 3 some journalists or concerned about the closeness of the 4 relationships between some politicians and 5 News International. Equally, no one can fail to accept 6 that the regulatory procedures for the press need 7 strengthening.</p> <p>8 But although the Press Complaints Commission has 9 been found wanting, the failure to investigate fully 10 what happened with regard to phone hacking at 11 News International lies with the Metropolitan Police, 12 and we must remember that it was ultimately the work of 13 journalists at one newspaper, the Guardian, that exposed 14 the true situation.</p> <p>15 Sir, the gloomy prospect must exist that history 16 could look back on your Inquiry as reading the last 17 rites on an industry which sees circulations falling 18 year after year, provincial papers closing every week 19 and very few of the national papers making any profit.</p> <p>20 One of the main reasons for that decline is the 21 enormous and increasing proportion of the public's 22 leisure time that is consumed by electronic media, which 23 is controlled by vast global corporations based in 24 California.</p> <p>25 When Sir David Calcutt delivered his reports 20</p> <p style="text-align: center;">Page 71</p>
<p>1 with witnesses. 2 (11.49 am) 3 (A short break) 4 (11.55 am) 5 LORD JUSTICE LEVESON: Yes, Mr Caplan. 6 Closing submissions by MR CAPLAN 7 MR CAPLAN: Sir, on behalf of Associated Newspapers, we have 8 submitted to you in writing detailed submissions and -- 9 LORD JUSTICE LEVESON: 45 pages. I've got them and I've 10 read them. 11 MR CAPLAN: Thank you. 12 I was going to say today I can say to you that I do 13 not expect to be any longer and properly shorter than 20 14 minutes. 15 LORD JUSTICE LEVESON: You take the time that you think it's 16 appropriate to take, Mr Caplan. 17 Although we asked people to identify how long they 18 wanted, it was merely so that we had an indication of 19 what time to allocate. It's very important that 20 everybody has the opportunity to say that which they 21 want to say at this important time. 22 MR CAPLAN: Thank you. I'm certainly not going to repeat 23 the detailed submissions we've already given to you. 24 Sir, the scope of your Inquiry has been vast. 25 Looking back over the last eight months, no one can fail</p> <p style="text-align: center;">Page 70</p>	<p>1 years ago, voicemails did not exist, nor did Facebook or 2 Google or Twitter. Those that run these American 3 corporations have a fundamental philosophical objection 4 to any restraint on the free dissemination of 5 information, and they live in a society where the First 6 Amendment gives an absolute guarantee of freedom of 7 expression. Public figures there submit their private 8 lives to substantial scrutiny as the price for enjoying 9 fame and wealth.</p> <p>10 And, sir, as the audience for British newspapers 11 migrates online, this is the world in which their 12 publishers have to compete.</p> <p>13 Whatever recommendation your Inquiry makes for 14 future regulation, great care, we suggest, will need to 15 be taken to ensure that it does not jeopardise the 16 19,000 jobs still remaining in British newspaper 17 journalism, or drive publishers in the great growth area 18 of the Internet to move their operations to another, 19 sunnier jurisdiction because the conditions here mean 20 they are unable to compete on equal terms with other 21 global players.</p> <p>22 If they are prevented from being commercially viable 23 UK businesses, their employees and investors will 24 suffer, and so too will the public interest in 25 a diverse, vibrant and properly regulated press.</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 It is because of these vital interests at stake, and 2 others, that my clients have sought to play an active 3 role in this Inquiry to provide what assistance, sir, 4 they can and suggestions for reform, including a paper 5 by my client's editor-in-chief, Paul Dacre, and the 6 speech he made last October, which set out a range of 7 proposals to improve standards and self-regulation.</p> <p>8 Your Inquiry was conceived in the wake of the phone 9 hacking affair, and in particular the interference with 10 and claimed deletion of Milly Dowler's voicemail 11 messages by newspaper journalists. But although these 12 events formed the trigger for the Inquiry, the risk of 13 prejudice to possible criminal trials has meant that the 14 Inquiry has in fact been unable to examine this issue, 15 and your terms of reference instead asked you broadly to 16 inquire into a culture and a practice.</p> <p>17 Sir, we suggest this task is exceedingly difficult. 18 Unlike most public inquiries, you cannot make findings 19 of fact about the particular incidents in question and 20 then proceed to make consequential recommendations. You 21 have had to devise or choose your own areas for enquiry 22 and decide which witnesses to hear from among 23 a potentially vast number of persons who are qualified 24 for many different reasons to assist you.</p> <p>25 The establishment of a general inquiry into culture, Page 73</p>	<p>1 as an overdue opportunity to take the popular press and 2 its content in hand. But the fact is that about 3 18.5 million people read the mid-market and red top 4 papers, and about 4.7 million read the broadsheets.</p> <p>5 Sir, you will recall my clients having expressed at 6 the beginning of your Inquiry a great concern that your 7 panel of six assessors did not include anyone with 8 experience of actually working in the popular press. 9 One of the six is a founder, director and trustee of the 10 Media Standards Trust, a core participant of module 4, 11 and also a member of the Hacked Off campaign, which are 12 both critics of popular journalism, but you were not 13 given any assessor from the popular press. That's 14 something we mentioned at the beginning and it's 15 a concern of my clients that I express again today.</p> <p>16 This view was echoed last week by Peter Preston, the 17 former longstanding editor of the Guardian and the 18 distinguished press commentator, who said in stark terms 19 that the middle market and the red tops were not 20 represented on the panel of assessors.</p> <p>21 Sir, the Inquiry has received evidence from various 22 academic witnesses about the importance of journalism in 23 the public interest, but it is important, we suggest, to 24 understand that in order to produce public interest 25 journalism, you need to have journalism that interests Page 75</p>
<p>1 practices and ethics creates, we suggest, two particular 2 difficulties. First, it tends to invite an emphasis on 3 what is wrong with the press to the possible exclusion 4 of all the good things. It is also worth recalling that 5 although we have heard from many individuals who have 6 complaints regarding their treatment by the media, there 7 are countless individuals and organisations who have 8 been helped by the press when the authorities have let 9 them down.</p> <p>10 The role of the popular press is to speak up for 11 those who are abused, whether by the State, the rich, 12 powerful or possibly corrupt. There are numerous cases 13 in which newspapers have overturned miscarriages of 14 justice or campaigned for the ordinary people of Britain 15 on issues ranging from the treatment of Alzheimer 16 patients to the many failures of our banking system.</p> <p>17 The press have exposed oppressive or unfair 18 treatment. The family of Stephen Lawrence, the victims 19 of the Omagh bombing, people like Garry McKinnon are all 20 people the State has in one way or another abandoned and 21 newspapers have helped, and overall my clients feel that 22 we have heard too few speaking up for the popular press.</p> <p>23 Instead, the vacuum has been filled by people with 24 axes to grind, prejudices to air, some ideological 25 scores to settle, and some undoubtedly see this Inquiry Page 74</p>	<p>1 the public.</p> <p>2 There are millions who want to know from their 3 newspapers a little more about the lives of sportsmen, 4 actors and other celebrities whom they admire and may 5 even see as role models. It is important that there is 6 not a groundswell of elitism, where the minority dictate 7 what the majority can read.</p> <p>8 As Lord Judge recently commented, we need a press 9 which responds to the demands of everyone who buy 10 newspapers, and of course it is part of the exercise of 11 our constitutional freedoms that we should be able to 12 choose for ourselves the newspapers we buy and read. We 13 are not cut from identical cloth.</p> <p>14 Or, as Peter Preston has written: 15 "No inquiry can or should turn off the demand for 16 a mixed diet of news, gossip and entertainment for the 17 mixed bag of democratic voters. Freedom of the press 18 includes the freedom to publish things that some people, 19 maybe refined, discriminating people, don't relish. 20 Let's not forget towards the close that our press is 21 there for everyone. Something too narrow, too 22 restrictive, won't endure because it will leave the rest 23 of Britain out. And something clearly elitest won't 24 work either." 25 Sir, the rules to which your Inquiry has been held Page 76</p>

<p>1 have been dictated of course by the terms of the 2 Inquiries Act 2005. We suggest it is a matter of 3 concern that those rules provide no right for core 4 participants to cross-examine witnesses who make serious 5 allegations against them, and we would suggest for the 6 future that it is important that such allegations, if 7 serious, should be tested at the time by the party whom 8 they affect. That obviously would require an amendment 9 to the statute and the rules.</p> <p>10 The Inquiry will no doubt consider carefully what 11 weight to accord to evidence given anonymously or to 12 witnesses who have made allegations based on supposition 13 or hearsay. Many of those who have attacked the Mail 14 titles have done so because they object to the paper's 15 political or ideological views, which are often robustly 16 articulated. For example, the Daily Mail was the most 17 robust critic of the Blair/Campbell regime and 18 Mr Blair's claim of a vendetta needs to be viewed 19 against this background.</p> <p>20 In fact, of the 30 letters of complaint referred to 21 by Mr Blair, only two resulted in legal proceedings, one 22 was withdrawn and the other which did result in an 23 apology and damages was based on a well-sourced or 24 apparently well-sourced report published by the 25 Spectator.</p> <p style="text-align: center;">Page 77</p>	<p>1 that those investigators can perform a useful service 2 providing they comply with the law, and suggested that 3 the Government consider a licensing system that would 4 give private investigators access to some prescribed 5 databases, such as the DVLA.</p> <p>6</p> <p>7 The future of press regulation is the fundamental 8 issue, clearly, for your Inquiry. My clients' position 9 is that they accept the need for a new, strengthened 10 regulatory system, but it must be self-regulation.</p> <p>11 They support the proposals put forward by Lord Black 12 on behalf of the industry. Those proposals would, for 13 the first time, set up a standards and compliance arm 14 with powers to investigate allegations of systematic 15 wrongdoing, it would enforce good practice and would 16 have the power to impose fines for breaches of the 17 standards of up to £1 million.</p> <p>18 Under the proposed industry scheme, there would be 19 an arbitral arm as well as a standards and compliance 20 arm. The arbitral arm would assist members of the 21 public to pursue complaints against the press in an 22 effective, proportionate and economical way.</p> <p>23 The Inquiry has asked Lord Black and Lord Hunt why 24 the scheme should not be statutory, suggesting that 25 there can be no real objection to some form of statutory</p> <p style="text-align: center;">Page 79</p>
<p>1 My clients have nothing but sympathy for those whose 2 lives have been hurt by errors made by the press, but it 3 must be recognised at the same time that news is 4 reported at great speed against hard deadlines and 5 thousands of stories are published every week without 6 complaint. It is sadly inevitable that human errors 7 will be made, and no regulatory system will ever change 8 that.</p> <p>9 What matters is that a regulatory system should do 10 what it can to prevent mistakes happening and in 11 conjunction with the law provide access to meaningful 12 forms of redress to those affected.</p> <p>13 The Inquiry will no doubt ask itself if heavy 14 emphasis should be placed on the historic use of private 15 investigators by the press, especially as the current 16 Information Commissioner said in his evidence to the 17 Inquiry that he has seen no evidence of press 18 involvement in data protection offences since 2003.</p> <p>19 In stark contrast, the House of Commons Home Affairs 20 Select Committee in a report published this month found 21 that there are still as many as 10,000 individuals 22 working as private investigators for law firms, major 23 corporations, local authorities and Government 24 departments.</p> <p>25 More to the point, the Select Committee accepted</p> <p style="text-align: center;">Page 78</p>	<p>1 underpinning, and implying that there cannot now be 2 proper regulation of the press unless there is, at the 3 very least, some statutory backdrop.</p> <p>4 We suggest that there is a very clear and principled 5 objection to statutory underpinning, which is that it 6 let's the politicians in. It may be perfectly 7 appropriate to impose statutory controls on lawyers, 8 dentists, chiropractors and the like, but none of those 9 people, sir, seek to hold politicians and public 10 servants to account.</p> <p>11 The press cannot hold politicians to account if it 12 is simultaneously to be held to account itself by those 13 very same politicians, or by those who depend on those 14 politicians for their appointment and funding.</p> <p>15 It is not fanciful to suppose that the light touch 16 statutory control today could become heavy-handed 17 tomorrow or the day after.</p> <p>18 The Inquiry has heard, for example, from 19 Lord Patten, chairman of the BBC Trust, as to how 20 politicians throw their weight around with the BBC, even 21 though it is a supposedly independent organisation, 22 protected by charter and not statute.</p> <p>23 Politicians recognise this problem. The report of 24 the Joint Committee on Privacy and Injunctions, chaired 25 by Mr John Whittingdale and published in March this</p> <p style="text-align: center;">Page 80</p>

<p>1 year, made it clear. We do not recommend statutory 2 backing for the new regulator, said the report. The 3 report also warned against the dangers of trying to 4 define "privacy" and "public interest" by statute. It 5 said: 6 "There is danger that any list will be treated as 7 exhaustive, and so fail to cover information that should 8 be respected as private. Any list that purports to be 9 exhaustive will imply that anything not on the list 10 should not be covered. We do not recommend a statutory 11 definition of 'public interest', as the decision where 12 the public interest lies is a matter of judgment and is 13 best taken by the courts in privacy cases." 14 And even if some were tempted to go along the 15 statutory road, Lord Wakeham's submission makes it clear 16 why the legislative route is not, we respectfully 17 suggest, one to take. He wrote: 18 "In my judgment, even this slenderest of statutes 19 could be amended out of all recognition in a way which 20 seriously eroded free speech. The battle to get it 21 through would be extremely divisive. Just as many 22 Parliamentarians hate the press, a number, possibly 23 smaller, are equally passionate about press freedom, and 24 wholly opposed to any Government involvement in this 25 area. The battle would be so acrimonious no government</p> <p style="text-align: center;">Page 81</p>	<p>1 Professor Cathcart of Hacked Off, a megaphone, they 2 should be subject to compulsory, statute-based 3 regulation, whereas small publishers should not. 4 We suggest that that betrays a lack of understanding 5 as to how news gathering works. All news operations 6 borrow and develop information and ideas from other 7 sources, whether blogs or Tweets or local newspapers. 8 And so is the Media Standards Trust suggesting, 9 therefore, that a story published, for example, by 10 Guido Fawkes or the New Statesman could not be 11 reproduced or even referred to in the Daily Mail or any 12 other national newspaper? 13 We suggest the solution is not statutory. It is, we 14 advocate, the system proposed by Lord Black and 15 Lord Hunt. It has the support of the press. We believe 16 it should and will have the support of the public, and 17 we must now look to the future. 18 We would respectfully suggest to you it would be 19 a fitting achievement for this Inquiry if the result of 20 its work leads to a new and stronger system of press 21 regulation which clearly is fit for the 21st century. 22 LORD JUSTICE LEVESON: Thank you, Mr Caplan. 23 I take very much on board what you've said about the 24 First Amendment, but should I not be able to draw 25 a conclusion that the way in which regulation operates</p> <p style="text-align: center;">Page 83</p>
<p>1 in my view would willingly push ahead." 2 By the same token, the Inquiry has heard proposals 3 from Mr Ed Richards of Ofcom and others, that editors 4 should be removed from the new complaints body and 5 possibly from the new Code Committee. 6 Sir, for any regulatory system to work, we would 7 respectfully suggest that editors have to buy into it, 8 not only in the letter but in the spirit, and there is 9 a real danger if editors are forbidden to participate in 10 the new system, they will seek simply to challenge it at 11 every opportunity, which is clearly undesirable. 12 The Irish Press Council, which is held up by some as 13 an example, actually ducks these questions by making 14 membership voluntary. Not only does the government vet 15 the appointment of its chairman, but it fails to answer 16 what has been termed in this Inquiry "the Desmond 17 question", which is one of the key tasks the Inquiry has 18 set the industry. 19 Then there is the Internet: a global industry 20 populated by bloggers and Tweeters who follow standards, 21 as I have said, not set here but in California. 22 The Media Standards Trust, supported by various 23 professors, seeks to confront this problem by suggesting 24 that the right to freedom of expression is relative, and 25 because the national press possess, to quote</p> <p style="text-align: center;">Page 82</p>	<p>1 in this country at the moment does not necessarily, or 2 indeed particularly at all, reduce its commercial 3 effectiveness from the fact that the MailOnline has such 4 an enormous readership in the United States, where it is 5 commercially apparently successful, so I've been told? 6 MR CAPLAN: Yes, it is. 7 Sir, our point in saying what we have done about the 8 major players in the industry is that the large number 9 of readers of the British press are, as we have said, 10 migrating online to the online publications. One of the 11 issues you have to decide, obviously, in this case is 12 what is meant by "the press"? How are the press going 13 to compete in this new world of electronic media? That 14 was not something Sir David Calcutt had to worry about 15 at all -- 16 LORD JUSTICE LEVESON: Oh no, I appreciate that. 17 MR CAPLAN: It is a very real and difficult problem -- 18 LORD JUSTICE LEVESON: I appreciate that. I think I called 19 it an "elephant" very early on in the Inquiry. 20 MR CAPLAN: Yes. 21 LORD JUSTICE LEVESON: But I'm just interested by the fact 22 that Mr Clarke made it clear that the MailOnline does 23 indeed follow the requirements of the Editors' Code and 24 is subject to the PCC, and yet is indeed extremely 25 successful in America, where there is no such</p> <p style="text-align: center;">Page 84</p>

<p>1 regulation. So therefore the question is: does that not 2 lead one to the conclusion that the problem is not 3 necessarily sensible regulation? 4 MR CAPLAN: We're looking to the future. And we're looking 5 to the recommendations you're going to make. 6 Our point is that it is absolutely essential to have 7 regard to the whole marketplace, and to include not just 8 regulations for the British press, but to have regard to 9 the fact that Internet publishers really are going to be 10 the principal competitors of the British press, and are 11 at the moment. 12 LORD JUSTICE LEVESON: I understand. Thank you. Thank you 13 very much. 14 Right, Mr Rusbridger, you'll soon be taking silk. 15 Closing submissions by MR RUSBRIDGER 16 MR RUSBRIDGER: Thank you for this opportunity to address 17 you again. 18 Public Inquiries in Britain are comparatively rare. 19 They're called for at moments of crisis when something's 20 gone drastically wrong, when normal processes have 21 failed, where the truth is hidden, where wider issues of 22 national importance are engaged. 23 At the height of the Guardian's coverage of the 24 phone hacking scandal at the News of the World, we 25 didn't believe there could or would ever be a public</p> <p style="text-align: center;">Page 85</p>	<p>1 continue to ignore the revelations in court and in the 2 media, where, by now, other news organisations felt 3 emboldened. And finally, the Guardian's long 4 investigation into the story brought into public light 5 one of the most repugnant instance of phone hacking -- 6 the phone of a murdered teenager. 7 And so the impossible did happen: a public inquiry. 8 The hearings which began last year have been almost 9 cinematic in their scope. They started with a close 10 focus on the victims and gradually panned back. We have 11 seen just a handful of the potential thousands of people 12 who were subjected to systemic intrusion, and heard of 13 the effect such behaviour has on individuals and 14 families, often at moments of great trauma or personal 15 stress. 16 The gaze of the Inquiry then panned back to look at 17 the culture of newsrooms and the behaviour of some 18 individuals who ran those teams of journalists together 19 with their outsourced collaborators. Inevitably, 20 because of the risk of prejudicing any criminal 21 proceedings, this remains an area where it feels we 22 still know little. 23 As the focus has pulled back, we have seen the 24 police drawn into the frame and learned much about the 25 network of close media/police relationships and</p> <p style="text-align: center;">Page 87</p>
<p>1 inquiry. We had seen other news organisations fight shy 2 of what was being revealed. The police had sat on their 3 hands. Most politicians didn't want to know and the 4 industry regulator had turned a blind eye. 5 I had been an editor for more than 15 years at this 6 point. We had written aggressive exposes about lying 7 Cabinet Ministers, corrupt governments, arms companies, 8 security services, organised crime, drug dealers, 9 religious cults and powerful multinational corporations. 10 This was the first story where it seemed that we had 11 strayed into an area that felt in some way forbidden. 12 We could carry on writing it. No one would stop us. 13 But we were on our own. 14 There was talk of how a public inquiry would be the 15 only way of getting at the truth of what had happened 16 and why. But for obvious reasons, no one believed an 17 inquiry was remotely possible. The Murdoch influence, 18 power, money, dominance and reputation was such that it 19 seemed to confer a form of immunity from scrutiny. The 20 courage of a small number of victims of intrusion in 21 launching civil suits was a critical factor in prising 22 open the evidence. It took the intervention of 23 a foreign newspaper -- the New York Times -- to make the 24 story more difficult to avoid. 25 In time, it became impossible for the police to</p> <p style="text-align: center;">Page 86</p>	<p>1 something of the reasons why senior officers were so 2 reluctant to investigate these matters. 3 We have heard how the Press Complaints Commission, 4 supposedly a regulator, was no such thing. It did not 5 have the means, the appetite or the independence to do 6 the job. 7 Finally, there have been the politicians, where the 8 story becomes more complex. A few backbench MPs were 9 determined -- albeit belatedly -- to get at the truth. 10 Parliamentary committees are limited in the weapons at 11 their disposal, and initially at least, they made 12 limited progress. 13 It is clear that they were lied to. At least one 14 executive from News International simply refused to 15 appear, showing further contempt for Parliament. And we 16 have heard how some MPs felt threatened and were acutely 17 aware of the possible consequences of asking too many 18 questions. 19 In three years of involvement with this story, both 20 Nick Davies and I encountered numerous examples of 21 people who have lived, and in some cases still live, in 22 some fear of one particular newspaper company, including 23 those who worked for it. 24 That fear was rational. As that Inquiry has begun 25 to uncover -- although more will doubtless appear and</p> <p style="text-align: center;">Page 88</p>

<p>1 emerge in criminal trials and in part 2 of the 2 Inquiry -- the company, its executives and some of its 3 journalists were capable of behaving in a quite ruthless 4 way, employing any means, legal or criminal, to attack 5 or monitor its targets or critics.</p> <p>6 The extent to which the aggression was guided or was 7 simply the result of a lack of any meaningful corporate 8 governance is still unknown. Many people in different 9 walks of life believed it was a good thing to keep in 10 with this company and a bad thing to fall out with it. 11 That, it is now beyond doubt, was a reasonable belief.</p> <p>12 That belief suited News Corporation, which had 13 ambitious plans further to increase its immense and 14 unique dominance of media in this country.</p> <p>15 We have heard how the former editor of the News of 16 the World -- in disregard of all normal protocols -- 17 ended up, relatively unvetted, at the heart of Downing 18 Street. How the BSkyB bid was launched within weeks of 19 David Cameron becoming Prime Minister. And this Inquiry 20 has laid bare the literally thousands of covert 21 contacts -- texts, calls, meetings, drinks, meals, 22 emails -- that oiled the progress of the bid.</p> <p>23 Had that deal gone through, it would have had 24 immense implications for Britain. I do not believe the 25 Inquiry has fully explored the likely consequences for</p> <p style="text-align: center;">Page 89</p>	<p>1 organisations, for example, see encroaching privacy laws 2 and restrictions as the biggest threat to press freedom. 3 Others are more concerned about the chilling effect of 4 our libel laws on serious investigative and public 5 interest reporting. Some see press cards as 6 a sufficient incentive to join a regulatory system. 7 Others find the idea protectionist and possibly 8 unworkable in an age of social publishing. Many 9 regional and magazine publishers feel the old system was 10 perfectly adequate. So it is probable that there can be 11 no perfect consensus about the shape regulation should 12 take.</p> <p>13 That's healthy. It would be positively odd if 14 a media which boasts of its plurality and variety 15 appeared in front of you speaking with one voice on 16 every single issue.</p> <p>17 So here, very briefly, are some of our own thoughts 18 at the end of this long and exhaustive Inquiry, which we 19 expand on in our written closing submission.</p> <p>20 Firstly, state licensing of the press or individual 21 journalists was wrong when it was abolished in this 22 country more than 300 years ago, and few people could 23 want to see it reintroduced now, even it were legal and 24 workable. So, as you yourself have made plain, anything 25 that looks like direct statutory or political control is</p> <p style="text-align: center;">Page 91</p>
<p>1 other news organisations and for democracy itself if 2 News Corp had succeeded in its plan to create a really 3 giant media company, which, despite its public 4 protestations, was (we have learned in this Inquiry) 5 exactly its aim.</p> <p>6 That bid was finally halted on the eve of a vote by 7 Parliament. But there remains nothing in law to prevent 8 such a thing from happening again. While the Inquiry 9 has not had the time fully to explore the nature of 10 competition and plurality law, it is in our view 11 essential that its final report says something strong 12 about the effects of dominant media power on culture, 13 practice and ethics, and the resultant need for 14 a meaningful and enforceable plurality framework.</p> <p>15 So we have welcomed the Leveson Inquiry. It has 16 shone a sometimes uncomfortable light on all of us in 17 the press, but also on the police, politics and 18 regulation. The press, especially, should not complain 19 about transparency. There has been much welcome 20 discussion, both by the press and by others, and a 21 movement towards finding a reformed system of regulation 22 which would command more public confidence.</p> <p>23 Of course there remain many anxieties about the 24 nature and scope of your eventual recommendations, and 25 no clear consensus about some areas. Some news</p> <p style="text-align: center;">Page 90</p>	<p>1 undesirable.</p> <p>2 But a voluntary system of regulation would hardly 3 command public opinion and respect if one or more major 4 publishers decided to boycott the system. The Inquiry 5 has heard many suggestions for carrots and sticks so 6 that the benefits of being within the fold of regulation 7 and the disadvantages of being out would be 8 overwhelming, and we hope that you will give serious 9 consideration in particular to the notion that 10 participation in a system of independent regulation 11 would bring considerable cost and speed advantages to 12 both sides in cases of defamation and privacy.</p> <p>13 Secondly, our libel laws are, it's widely agreed, 14 bad for both claimants and defendants and are a real 15 chill on public interest journalism. No country has 16 a perfect solution, but few would dispute that 17 America -- with its First Amendment and so-called 18 Sullivan doctrine -- makes it easier for serious 19 journalism to flourish, while, it should be noted, 20 escaping the worst of the abuses and excesses that have 21 been revealed by this Inquiry.</p> <p>22 We propose that a new regulator should have the 23 means to deal with libel and privacy claims through an 24 arbitral system and that this should be a pre-condition 25 of fighting any claims through the courts.</p> <p style="text-align: center;">Page 92</p>

<p>1 Thirdly, we acknowledge that creating such an 2 arbitral system may have to involve some form of 3 statutory basis. So, despite our fears relating to 4 statutory licensing, we do not set ourselves against 5 specific and narrowly defined uses of the law to create 6 a system that may help public interest journalism as 7 well as inspire public confidence. This, despite 8 sharing the anxieties of colleagues who have voiced the 9 thin end of the wedge argument about proposing the use 10 of law in relation to regulation.</p> <p>11 Four. It is doubtful whether the Leveson Inquiry 12 would have existed were it not for the willingness of 13 people to tell the Guardian things that they were not 14 authorised to tell us.</p> <p>15 The Guardian does not pay public officials for 16 unauthorised information. We don't pay them for any 17 kind of information. But we do seek it out and consider 18 it the lifeblood of public interest journalism. We have 19 watched with dismay at some attempts to persecute, if 20 not actually prosecute, public officials who are not 21 corrupt, have taken no money and may have been acting 22 out of perfectly admirable motives in passing on 23 information.</p> <p>24 With great respect to the present 25 Metropolitan Police Commissioner, who has presided over</p> <p style="text-align: center;">Page 93</p>	<p>1 despite the egregious November 2009 report on phone 2 hacking, and we remain committed to independent 3 regulation and would be part of the proposed reformed 4 system of regulation proposed by Lords Hunt and Black. 5 It is, in many ways, a great improvement on the PCC. 6 I said at an earlier occasion: before we scrap voluntary 7 self-regulation, perhaps we should try it. Unlike its 8 predecessor, this does constitute a form of regulation 9 and it is much more independent.</p> <p>10 That does not mean that we agree with all aspect was 11 the proposed system. We have, for instance, 12 reservations about the prominence of serving editors, 13 the role of the financing bodies and the selection 14 methods for the press representatives. As in Ireland, 15 it might be refreshing to involve journalists who are 16 not editors, possibly even members of the NUJ, in the 17 Code Committee. But we recognise the progress that has 18 been made in seeking to find a consensus for reform.</p> <p>19 On privacy, we, along with other broadsheet editors, 20 have given evidence to this and other inquiries to the 21 effect that we have ourselves not yet been unduly 22 affected by the steps the courts have taken to recognise 23 the balance between Articles 8 and 10 of the Human 24 Rights Act. The language of the PCC Code of Conduct, 25 which virtually all editors endorse, exactly mirrors</p> <p style="text-align: center;">Page 95</p>
<p>1 determined if belated attempts to get to the bottom of 2 phone and computer hacking, and Dame Elizabeth Filkin, 3 we have serious concerns that people are not 4 sufficiently recognising the difference between 5 information which is unauthorised and that which is 6 corrupt. If the Inquiry is to truly encourage the best 7 practice as well as rooting out the worst, it must, we 8 believe, recognise that distinction.</p> <p>9 Fifth, readers' editors. We hope that you will 10 commend the truest form of self-regulation embodied by 11 the idea of a fully independent readers' editor or 12 ombudsman. At the Guardian and the Observer, any reader 13 can bypass the editor and complain directly to an 14 independent figure whose only interest is in 15 establishing the accuracy and truth of our journalism.</p> <p>16 In our view, it's the best way to transform newsroom 17 culture on larger newspapers, and we think that large 18 regional newspaper groups could appoint a readers' 19 editor to serve several smaller newspapers. The system 20 is commonplace in the US and elsewhere and there's no 21 reason why it wouldn't work here as well.</p> <p>22 Sixth, on regulation, the Guardian and Observer 23 belonged to the PCC, despite our reservations, which we 24 voiced at the time, about its flaws, which have been 25 widely acknowledged. We remained within the system,</p> <p style="text-align: center;">Page 94</p>	<p>1 that of Article 8, and the courts are obliged to take 2 note of any professional code.</p> <p>3 But there remains concern among some colleagues that 4 the courts are not the best place to resolve such 5 issues. The challenge for a future regulator is, 6 therefore, whether it can offer sufficient measures and 7 redress so that the courts are in future less engaged in 8 developing a law of privacy.</p> <p>9 For that to be true, the regulator must decide three 10 things: firstly, will it follow the general 11 jurisprudence of the courts or seek to develop its own? 12 If the gap between those is too great, claimants and 13 their lawyers will simply ignore the regulator, as many 14 have tended to do in the past. Secondly, will it offer 15 a hotline service, as the PCC did, to potential victims 16 of intrusion in advance of publication? And thirdly, 17 will it offer meaningful redress if a publication is 18 found to have intruded on privacy without a public 19 interest defence?</p> <p>20 We suggest that the new regulator should, as before, 21 offer a hotline service for the public, and we envisage 22 that the regulator would, if contacted, approach an 23 editor in advance of publication to check whether he or 24 she would justify any intrusion on the basis of the 25 public interest clause of the code. If so, the</p> <p style="text-align: center;">Page 96</p>

<p>1 regulator would not intervene, just as in libel there 2 can be no injunctive relief where an editor says he or 3 she will offer a defence of justification. If, 4 subsequently, the editor didn't argue the public 5 interest or if the regulator found there was no such 6 defence, that could be reflected in the redress.</p> <p>7 Eight. More specifically on prior notification, we 8 believe that several of the recommendations of the Joint 9 Committee on Privacy and Injunctions deserve serious 10 consideration. In particular, we endorse paragraphs 127 11 to 129, 134, 150 and 209, which we have attached for 12 ease of reference. These paragraphs reject a statutory 13 requirement to pre-notify, though the committee does 14 suggest real consequence for editors who do not have 15 a robust basis for failing to notify, including 16 exemplary damages. It also endorses an arbitral arm for 17 privacy.</p> <p>18 Nine, on prior consultation. We feel quite strongly 19 that prior consultation by editors on the public 20 interest would work counter to press freedom, although 21 we recognise that those who favour it have the opposite 22 intent. We do accept that gross invasions of privacy 23 create damage that cannot be undone. That's why, 24 through the combination of the code and the law, we must 25 raise the bar far higher for invasions of this kind.</p> <p style="text-align: center;">Page 97</p>	<p>1 democracy in allowing media organisations to become too 2 dominant, not least because they may, in a troubled 3 economic climate for news, stifle or destroy the ability 4 of others to hold them to account.</p> <p>5 Let me make it clear this is not just about 6 News Corporation. It is likely there will be movement 7 towards greater consolidation in our news media, and 8 that proprietorial dominance will become more 9 troublesome, as it currently threatens to do in, for 10 instance, Australia. If we do not now learn the lessons 11 from News Corp, we will fail to safeguard against the 12 need for future inquiries.</p> <p>13 12. You have previously noted in this Inquiry the 14 difference between the media and other sections in 15 relation to competition and plurality. Who owns the 16 news is different to who makes baked beans. News Corp 17 is a company that famously uses its might to outbid and 18 even destroy the competition. This is well-trodden 19 ground for anyone who follows their dominance in other 20 fields. There have been well-documented allegations of 21 crossing lines of legality, let alone ethics: 22 settlements in the United States over unfair trade 23 practices and corporate espionage; in the UK, claims 24 that a News Corp subsidiary company used a computer 25 hacker to sabotage Sky TV's biggest rival.</p> <p style="text-align: center;">Page 99</p>
<p>1 Newspapers ought to be able to demonstrate that they had 2 taken into account what we refer to as the Omand 3 factors, including considerations of harm, public good, 4 proportionality, authorisation and fishing expeditions. 5 Editors should, in our view, be able to make their own 6 decisions and be responsible for them.</p> <p>7 10. We welcome the fact that the DPP has, at the 8 suggestion of this Inquiry, clarified the guidelines for 9 prosecutorial discretion where a journalist or source 10 may be facing the possibility of criminal charges. More 11 broadly, we believe that it makes sense to achieve far 12 greater consistency for public interest defences in the 13 law. If an offence deserves a public interest defence, 14 it should have one.</p> <p>15 11. While the Inquiry has devoted much time and 16 care to the future shape of regulation of content, it 17 has not, as I said, had the opportunity to take much 18 evidence on the issue of plurality. But it seems to us 19 highly likely, firstly, that many of the abuses 20 uncovered by the Inquiry would never have happened had 21 News Corp not been allowed to achieve such a remarkable 22 domination of the media in the UK. Secondly, plurality 23 of the media was a pre-condition of the scandal being 24 exposed.</p> <p>25 There are, in other words, significant dangers to</p> <p style="text-align: center;">Page 98</p>	<p>1 Such tactics in other wings of the business are not 2 part of the remit of this Inquiry, even if they do 3 illustrate salient truths about the culture, practices 4 and ethics of that company. The problem with the news 5 business, as we've seen, is the very real consequences 6 for democracy: deliberately selling the Times at a loss, 7 according to the OFT; hidden proposals to integrate news 8 in the proposed BSkyB merger in 2010, according to the 9 private memo of the Culture Secretary; most recently and 10 cynically, in March 2012, reportedly launching a car 11 trading site to target the Guardian Media Group.</p> <p>12 These moves, some dramatic, others the mere flick of 13 appear giant's tail, have consequences of the kind we've 14 seen these past few months. That is why Parliament made 15 plurality the test, not competition. If you, like 16 Parliament, think a plurality of voices is needed in 17 news and that the best challenge to bad culture is more 18 scrutiny, then this is a question which, we submit, you 19 must tackle.</p> <p>20 There are, of course, other powerful media 21 organisations in the UK, including the BBC. In our 22 submission on plurality we set out a number of obvious 23 questions which should help any relevant authority to 24 judge the extent to which size or market dominance would 25 be likely to pose a wider threat to the democratic</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 installations and accountability.</p> <p>2 Sir, in closing, you have repeatedly said you don't</p> <p>3 need any lectures on the importance of press freedom, so</p> <p>4 you're not going to get one from me. You've also said</p> <p>5 that you understand the extraordinary challenging times</p> <p>6 that newspapers face as they make this transition from</p> <p>7 paper and ink to print and digital. I won't labour that</p> <p>8 point.</p> <p>9 You have listened to numerous voices, extracted and</p> <p>10 examined daunting volumes of evidence. Mr Jay and his</p> <p>11 team have skillfully tested that material. You have</p> <p>12 approached the issues with remarkable openness and</p> <p>13 patience and shown all witnesses great courtesy. The</p> <p>14 Inquiry process itself, through shining a light in dark</p> <p>15 places, has mirrored the purpose and product of public</p> <p>16 interest journalism at its best.</p> <p>17 LORD JUSTICE LEVESON: Thank you very much indeed,</p> <p>18 Mr Rusbridger.</p> <p>19 MR DAVIES: I'm the last man, I think, sir. I think I shall</p> <p>20 be about 40 minutes, so I'm in your hands as to</p> <p>21 whether --</p> <p>22 LORD JUSTICE LEVESON: Well, you can decide what you want to</p> <p>23 do, Mr Rhodri Davies. You can start and we'll come</p> <p>24 back, or we could start a little bit earlier this</p> <p>25 afternoon. I'm entirely in your hands.</p> <p style="text-align: center;">Page 101</p>	
<p>1 MR DAVIES: Let me enquire.</p> <p>2 LORD JUSTICE LEVESON: Please. (Pause)</p> <p>3 MR DAVIES: The vote is to start a little earlier this</p> <p>4 afternoon. I apologise if that disturbs people's</p> <p>5 lunches.</p> <p>6 LORD JUSTICE LEVESON: Right. We'll rise now and resume at</p> <p>7 1.50 pm. Thank you very much indeed.</p> <p>8 (12.40 pm)</p> <p>9 (The luncheon adjournment)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 102</p>	

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