Day 17 - PM  
Leveson Inquiry  
14 December 2011

(2.00 pm)

MR JAY: Mr Chapman, were you involved in the settlement of Mr Mulcaire's case?

A. Yes, I was.

Q. Could you help us, please, with what the amounts involved were there? According to Mr James Murdoch's letter to the Select Committee, approximately £246,000 was paid to Mr Mulcaire's lawyers; is that correct?

A. I don't have any first-hand knowledge of that. That would be a matter for Mr Crone.

Q. But the letter suggests that there those were payments paid on a continual basis until 20 July 2011, when they ceased. Are you aware of that?

A. Yes.

Q. Mr Mulcaire was an independent contractor, wasn't he?

A. I do not recall having any discussions about the merits of Mr Goodman's claim?

Q. You thought, is this right, that there was a risk that the employment tribunal would say that he was employed rather than self-employed; is that correct?

A. When the matter first came to my attention, which was probably April 2007, I hadn't realised what the relationship with Mulcaire was. Mr Crone passed me some papers which he had received from Mr Mulcaire's lawyers, an exchange of emails and correspondence, which indicated that it was rapidly becoming an employment claim, and that a claim of employment status was to be made.

When I analysed the position, based on the usual parameters, mutuality of obligation, control, right of substitution, it looked very much to me like Mr Mulcaire was an employee, and I understand that subsequently Farrers took that view as well.

Q. Yes. Was the reasoning process which led to alighting upon a settlement figure for Mulcaire more or less the same as that which applied to Mr Goodman?

A. Yes.

Q. Namely: we need to limit the reputational harm?

A. Yes. And I think to have done one without the other would have been strange, given the circumstances surrounding both of them.

Q. Thank you. In relation to another case, Mr Max Clifford's case, were you involved in some of the internal discussions concerning his case?

A. I was, yes.

Q. Were you made aware of Mr Silverleaf Queen's Counsel's opinion of 3 June 2008?

A. No, not that I'm aware of, no.

Q. Can I ask you, please, a little bit more about discussions you may have had with Mr Crone, that when you were investigating Mr Goodman's assertions, as put forward in his letter of 2 March 2007 --

A. Yes.

Q. -- I think you told us that Mr Crone and/or Mr Myler had carried out, in your words, "extensive interviews" of the other journalists involved; is that correct?

A. I think it was Mr Cloke, the head of human resources, to whom the appeal letter of 2 March was addressed, who carried out those interviews accompanied by Mr Myler.

Q. Was Mr Crone, though, involved in those interviews?

A. I'm not aware that he was, but that would be a question for Mr Myler or Mr Cloke.

Q. Did you have discussions with Mr Crone about the merits of Mr Goodman's claim?

A. I do not recall having any discussions about the merits of his claim, no.

Q. Did you have any, to be more precise, discussions about the one rogue reporter defence, which was News International's public line?

A. No, I did not.

Q. May I ask you whether you had a view as to whether that public line was correct?

A. I wasn't as closely involved, obviously, because of my role on the corporate commercial side, so I didn't really know about what had been happening. When the arrests were made in August 2007, it was a complete surprise to me. I have to say that my own view is that I knew there was rumours and I'm obviously aware of what was said in sentencing. When it came to my attention subsequently, that would be some time later, years later, that there were allegations that it went beyond them, I was very disappointed and a bit surprised,
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1 I have to say.
2 Q. Are you able to assist the Inquiry as to the culture
3 within News International, in particular the news desk,
4 in any way which might assist?
5 A. I would love to be able to help the Inquiry, but I'm
6 afraid to say it was outside my area of experience.
7 LORD JUSTICE LEVESON: If you were thinking about
8 employment-related issues, were you concerned by "What
9 price privacy"?
10 A. I looked at "What price privacy" after I arrived there,
11 and I thought it was because it was mentioned in CMS
12 Select Committee proceedings in 2009. I didn't have
13 anything to do with it at the time. But I did look at
14 it then but I didn't have any -- I wasn't asked to
15 advise on it or anything. I looked at it for my own
16 edification, really, because it had been mentioned and
17 it was obviously a very interesting investigation.
18 MR JAY: Were there any compliance issues which you felt
19 arose from the Information Commissioner's reports?
20 A. Not that I was aware of in my particular sphere of
21 responsibility.
22 LORD JUSTICE LEVESON: Well, you've made it clear that you
23 were only concerned with the commercial and not the
24 editorial.
25 A. That's correct, yes.

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1 MR JAY: Thank you very much, Mr Chapman.
2 A. Thank you, Mr Jay. Thank you, sir.
3 LORD JUSTICE LEVESON: Thank you.
4 MR JAY: The next witness is Mr Colin Myler.
5 LORD JUSTICE LEVESON: Very good. When are we going to hear
6 back or have we heard back from Mr Pike?
7 MR JAY: We haven't yet. We are chasing it.
8 LORD JUSTICE LEVESON: Thank you.
9 MR JAY: Maybe before Mr Myler arrives, Mr Rhodri Davies can
10 help us with Mr Silverleaf's advice.
11 LORD JUSTICE LEVESON: Yes, Mr Rhodri Davies.
12 MR DAVIES: It was the point on paragraph 6, sir. As
13 I said, the redacted part refers to the names of two
14 individuals. Those individuals were undoubtedly the
15 subject of enquiries by Mr Mulcaire.
16 LORD JUSTICE LEVESON: Thank you. That's what
17 I anticipated. Thank you.
18 MR DAVIES: Their surnames, it's fair to say, also appear in
19 the Motorman database.
20 LORD JUSTICE LEVESON: That doesn't surprise me either.
21 MR DAVIES: But we believe that those references are in fact
22 to different people with the same name.
23 LORD JUSTICE LEVESON: Oh, I see. All right. But the
24 important thing was, as Mr Jay and indeed I read the
25 advice, without knowing the bracketed part, I had also

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1 assumed it was Mulcaire-related concerns.
2 MR DAVIES: Yes. As I say, there's no doubt that they were
3 subject to enquiries by Mr Mulcaire.
4 LORD JUSTICE LEVESON: Thank you. I have no further
5 interest in the names. Thank you.
6 MR COLIN MYLER (sworn)
7 Questions by MR JAY
8 MR JAY: Mr Myler, please sit down and make yourself
9 comfortable. We have provided you, I'm afraid, with
10 quite a lot of material. Could you provide us, please,
11 with your full name?
12 A. Colin Joseph Thomas Myler.
13 Q. Thank you. You've given us or provided us with three
14 witness statements. If I could ask you to open up your
15 first file, can we just identify those statements?
16 A. I don't appear to have file 1, unless this is file 1.
17 It's not marked.
18 Q. It's not big enough to be file one. We might have to
19 provide you with another one.
20 A. I have two 3s. Unless this is 3 inside and 3 on the
21 outside and 3 on the inside.
22 Q. It's a different 3, I can see that. We might have to
23 provide you with a separate file 1.
24 LORD JUSTICE LEVESON: For the purpose of the present
25 exercise and to make progress, let Mr Myler use mine.

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1 I don't think it's marked. The only flags you'll find
2 are the flags to the other two statements which don't
3 follow on, they're at different parts of the file.
4 A. Thank you very much.
5 LORD JUSTICE LEVESON: You'll see quite clearly where they
6 all are.
7 A. Thank you.
8 LORD JUSTICE LEVESON: Right.
9 MR JAY: Mr Myler, under tab 1 --
10 A. Sorry, hang on. No, this is volume 1, I'm sorry. Yes?
11 Q. -- you'll see, I hope, your first witness statement,
12 which is dated 30 September 2011. There's a statement
13 of truth at the end and you signed it, so is this your
14 truthful evidence?
15 A. Yes.
16 Q. Under tab 3 --
17 LORD JUSTICE LEVESON: They're not tabbed, but by the first
18 yellow tab.
19 A. Yes.
20 MR JAY: -- you'll see your second statement. I don't know
21 why I'm blessed with tabs and others are not. I'm in
22 a highly privileged position, I can see.
23 A. This doesn't appear to be signed, but I'm sorry if I
24 didn't sign --
25 Q. Don't worry about that. Subject to that, is that your

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<td>1. Yes.</td>
<td>1. LORD JUSTICE LEVESON: Yes.</td>
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<td>2. A.</td>
<td>2. A. When the story was first presented to me, I said</td>
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<td>3. That wasn't my point. My point</td>
<td>3. I didn't want to see it, because I didn't believe we'd be able to publish it. And I sent my deputy and the</td>
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<td>4. be able to publish it. And I sent my deputy and the</td>
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<td>5. news editor away to make sure lawyers had seen it.</td>
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<td>6. I said I don't even want to read the story because</td>
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<td>7. I don't believe we'd be in a position to publish this.</td>
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<td>8. The jury had already been sent out by the judge, and</td>
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<td>9. that was, I think, the Friday.</td>
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<td>10. So on the Saturday at conference it was presented to</td>
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<td>11. me, where the in-house lawyer at the time had said he</td>
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<td>12. found the story okay to publish, which I still found --</td>
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<td>13. I was unsure of. I got a view from two further lawyers,</td>
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<td>14. and indeed on the Saturday afternoon, as I sat giving an</td>
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<td>15. idea about how I wanted to display the story, I called</td>
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<td>16. the duty lawyer over and sat him next to me and said,</td>
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<td>17. &quot;This is what I'm planning to do, this is roughly what</td>
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<td>18. it will say; are you absolutely sure that this is not</td>
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<td>19. going to prejudice or affect or impact the case?&quot; and</td>
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<td>20. I was given a very strict assurance that I couldn't and</td>
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<td></td>
<td>21. wouldn't.</td>
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<td>22. So I took responsibility and the rest is history.</td>
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<td></td>
<td>23. LORD JUSTICE LEVESON: Yes. That wasn't my point. My point</td>
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<td></td>
<td>24. was the extent to which that entire experience impacted</td>
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<td>25. upon your view of propriety and ethics and the approach</td>
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<td>1. A.</td>
<td>1. The Sunday Mirror.</td>
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<td>2. Q.</td>
<td>2. The Sunday Mirror. Did that follow issues which arose</td>
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<td>3. in a criminal trial involving two footballers, Mr Bowyer</td>
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<td>4. and Mr Woodgate?</td>
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<td>5. A. It did.</td>
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<td>6. Q.</td>
<td>6. Can you tell us about the circumstances?</td>
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<td>7. A. We had an exclusive interview with the father of the</td>
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<td>8. young man who had been attacked, and we published the</td>
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<td>9. interview, which resulted in the judge basically</td>
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<td>10. cancelling the trial. As a result of that, I left the</td>
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<td>11. company.</td>
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<td>12. Q.</td>
<td>12. Thank you. Can I take you, please, to the</td>
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<td>15. Q.</td>
<td>15. You tell us in paragraph 5 of your statement that:</td>
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<td>16. &quot;Strict compliance procedures were in place at the</td>
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<td>17. newspaper to cover almost every aspect of our</td>
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<td>18. business&quot; --</td>
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<td>19. LORD JUSTICE LEVESON: Just before we pass on from that,</td>
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<td>20. I just wonder whether it's worthwhile thinking for</td>
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<td>21. a little moment about that exercise. The problem was</td>
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<td>22. material entered the public domain which had not been</td>
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<td>23. part of the trial, and therefore may have caused</td>
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<td>24. potential prejudice? That was the issue?</td>
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<td>25. A.</td>
<td>25. Yes. May I explain the circumstances?</td>
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A. Oh yes.

LORD JUSTICE LEVESON: Not least because of your experience with the story that we've just discussed?

A. Yes. And it doesn't mean to say that you just take one legal view, if it's a legal view that you're seeking.

And certainly in the environment that we're producing and editing newspapers today, pretty well safe to say that I have almost leading counsel on speed dial. Or did.

LORD JUSTICE LEVESON: Lucky for leading counsel. All right.

A. That's what I used to say.

MR JAY: Paragraph 5, please, the reference to "strict compliance procedures were in place at the newspaper", were most of those the procedures which you introduced, Mr Myler?

A. No. I'm trying to make a distinction about -- that there was an existing set of protocols and systems when I came into the paper. And I began to review them and introduced more.

Q. So are these the existing protocols which you're referring to specifically at paragraph 6 of your first witness statement, page 02504?

A. Yes, they were sort of the News Corporation global standards of business conduct that would be in for every division within News Corporation as a business. As far as -- obviously the PCC code was in practice already, and the criminal law.

Q. So that we can be clear about this, as you rightly point out, News Corporation's standard of business conduct which we can see at the top of this page, this is giving very general global advice to everybody within the corporation, is that right?

A. I think everybody who joins the company gets a very large document showing the standards and ethics that the company expects individual employees to adhere to, and I think it is in one of the bundles.

Q. It is, at page 02520.

A. In fact I think it fills up mainly one of the bundles.

Q. I think the only point I was seeking to make on it is that having read it, it's very general. It doesn't really advise journalists or editors --

A. No.

Q. -- as to how they might comport themselves in individual situations, do you agree with that?

A. I would, yes.

Q. The global anti-bribery and anti-corruption policy is similarly wide, although it is right to say in the edition we see that there's reference to the Bribery Act 2010?

Q. Which is obviously particular to the United Kingdom?

A. Yes.

Q. There's general reference to data protection at page 02582.

A. Sorry, where am I looking?

Q. It might be a little bit difficult without tabs. It's probably going to come up nicely on the screen in front of you.

A. Oh, thank you.

Q. This is --

A. This is NI, actually, yes.

Q. This is in the -- which document is it in? Well, I know --

A. It starts off "The News International Group ..., so that's not News Corporation, News Corporation being the global controlling body of the business. NI was a subsidiary of News Corp.

Q. Yes. Again this, is admittedly specific advice about data protection, but it might be quite difficult for a lay person to understand, would you agree?

A. Yes.

Q. But you weren't responsible for this, this was a document which was already in place when you arrived?

A. No. I suspect that News Corp actually are updating the global policy as well as whatever is happening at News International, I suspect, in view of what's happened.

Q. In terms of the standards which might govern the conduct and behaviour of journalists and editors, you rightly point to the PCC code. At the time you arrived, was it an express term of journalists' employment contracts that they abide by the code?

A. It was. I think if you look at paragraph 26, the original reference in contracts just stated:

"The employer endorses the Press Complaints Commission code of practice and requires the employee to observe the terms of the code as a condition of his employment."

I didn't feel that that was strong enough or direct enough to cover what I think they needed to observe, be aware of, and apply themselves to.

Q. So you endorsed an amendment, which we see under paragraph 27; is that correct?

A. That's correct. And the significant difference was that it made it abundantly clear that the employee understands and accepts that failure to comply with the requirement, which was PCC, criminal law, will lead to disciplinary proceedings, which may result in summary dismissal.
In other words, it made it abundantly clear that if you fell foul of it, that you could be dismissed.

Q. I've been asked to ask you this question: do you agree that a journalist who is asked to breach the code should have the right to refuse?
A. Yes.
Q. Was that made clear to your journalists?
A. Probably -- probably then, I don't know the honest answer to that. But you may have noticed in the course of my statements that one of the things that I addressed was in 2008/9, I believe, for the first time the company introduced surveys, questionnaires, where individual employees were allowed to say what sort of an environment it was to work in, did I have permission to challenge my line manager, was communication good, social responsibility, ethics, legal aspects, HR issues, and it became very clear that we had a long way to go to meet the aspirations that they were looking for.

As a consequence of that, a lot of things were done to improve communication, to change an attitude that said that an individual within a department didn't have the ability to challenge the person who was running that department. And we sent -- it was done two ways, really. First of all, we took heads of department away and made them aware, by having seminars, you know, how...
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| Q. -- was given a written warning?  
A. Yes.  
Q. And of course a contract of employment, which we see amended. Were there any other documents which comprised the system of corporate governance?  
A. Not really. You know, journalists were by and large very experienced who worked at the News of the World and 4 they'd done their journalist training, they'd done law.  
They were aware of the very basic rules. We extended seminars that were a rolling programme when I joined, but we upgraded them, because it seemed to me that they needed to focus more on issues that were more relevant in 2007 than maybe they had been, and they were mandatory for all staff to attend.  
Q. But insofar as we're looking at a system, a direction from above, that would depend on the quality, initiatives and judgment of those in senior managerial and executive positions; is that correct?  
A. Yes.  
Q. Is this also correct, that journalists were given a broad range of discretion as to how to conduct themselves according to whatever training you gave them and their own best judgment?  
A. Yes, as long as they worked within the parameters of the law and the publication code and their own contract of employment.  
Q. In paragraph 19 of your statement you say:  
"Although I had ultimate responsibility, there was a culture of individual and collective responsibility that I also generated. It's impossible, as an editor, to be across every aspect of every part of the job.  
I was very much for delegating responsibility. I tried to ensure and make sure that departmental heads knew their responsibility and more importantly had accountability for their actions and the actions of their staff, so, if I'm not following your question, forgive me, but, you know, the culture of individual and collective responsibility is something that I encouraged."  
Q. Whether it was there before, I don't know.  
Q. This is the culture which it was your mission, as it were, to instill as best you could within the company; is that what you're saying in paragraph 19?  
A. Yes. And it would be wrong and unfair, I think, to suggest that, you know, the paper before I arrived didn't have protocols and systems in place, because they did, and that the members of senior staff clearly understood their roles and responsibilities.  
Q. In terms of what you did, I think I can take paragraphs 22 to 27 quite swiftly, if I may.  
A. Yes.  
Q. You wrote to everyone on 7 February 2007 drawing attention to the law and to the code, and the letter is for ensuring compliance with the PCC code and the law."  
First of all, was that a culture which you thought existed when you arrived in January 2007?  
A. It's difficult to try to explain what the culture was, because there was so much going on and there were quite a lot of changes. I think it's safe to say that, you know, the trauma of what had happened with the Goodman/Mulcaire trial left a very deep, as I say, trauma within the newspaper and the morale of the staff.  
So I think it was more important to improve the standards and the protocols and the systems that existed, rather than dwell on what was. I think it was more important to say, "From now on, this is how we're going to work and this is what it is".  
Q. Mr Myler, I see that in terms of the management style you were seeking to introduce in January 2007 and going onwards. One fully understands that. But I think my question was more directed to: what do you think the culture was when you arrived, please?  
A. Culture in what way?  
Q. Well, you tell us here "there was a culture of individual and collective responsibility for ensuring compliance with the PCC code and the law". That's quite a sweeping statement, if you don't mind me saying so.  
A. But Mr Jay, I think that's about -- that was a culture for ensuring compliance with the PCC code and the law."  
Pay attention to the law and to the code, and the letter is amended.
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Q. And the amendment was then on 16 February 2007, which we have already discussed. Can I ask you, please, to look at paragraph 28 of your first witness statement.

A. Yes.

Q. "During the same period [so this is early on], I also instigated a review of cash payments to contributors, freelances, and tipsters and adopted more rigorous procedures. Before any cash payment was processed and agreed, department heads had to satisfy themselves that the payments were lawful and legitimate, and that the person receiving them existed on an electoral roll."

Can you explain what you mean there by "lawful and legitimate"?

A. Meaning that the people existed that were being paid and that they were being paid for lawful and legitimate means.

Q. Yes, but I think you're just repeating what paragraph 28 means. What could you mean by lawful and legitimate?

A. That the payments were going to the person that had provided either the resource of a story, or they'd taken part in that story, and they were being paid for something that they'd actually done for the paper.

Q. Right. I think I understand, Mr Myler.

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A. In other words -- well, it's very simple. If you come to me with a tip that works, and it appears in the paper, you should get paid for it.

Q. But you're not suggesting there that there's any further exploration into the legitimacy, for example, of how the story's obtained or how the tip is obtained?

A. No, no, no.

Q. Fair enough.

A. This is purely and simply about how money is being taken out in cash and given to an individual.

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LORD JUSTICE LEVESON: So the important word in this sentence is cash?

A. Well, cash goes to the person that has done something to earn the cash, not to somebody who hasn't.

MR JAY: Yes. Was this response to a perception on your part that cash payments were going out to people who simply hadn't done the work?

A. I was more concerned about perhaps a lax system that allowed quite a lot of cash payments to be operated and I didn't feel that that was necessary.

LORD JUSTICE LEVESON: This is all a question in part about accountability?

A. Yes.

LORD JUSTICE LEVESON: So you would not agree that the concept described by Mr McMullan, of everybody padding their expenses to thousands and thousands of pounds, was one of which you approved?

A. No, no. I didn't quite recognise a lot of Mr McMullan's testimony, I'm afraid. In terms of -- the answer to your question, sir, is no, I don't recognise that.

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Q. Why have you said "up to 89 per cent"? Are you suggesting that they're divided between different categories of payment?

A. No, that was in total. So they added up the cash payments over that period earlier compared to the cash payments over the later period and did a comparison.

Q. Can we just try and see what the cash payments were for, as it were? They were for payment to sources and tips; is that right?

A. In the main, yes.

Q. Does that account for most of them?

A. Yes. In certain areas and certain cases you would have sources of information that didn't want any kind of illegal way.

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1 Q. You say in the celebrity world. Are these people connected with or close to celebrities --
2 A. Yes.
3 Q. -- who would wish to, as it were, keep under cover?
4 A. Yes.
5 Q. That's one way of putting it. So that accounts for the majority of --
6 A. I would say that was the majority.
7 Q. Yes. There are also payments for quite expensive sting operations people such as Mazher Mahmood were carrying out; is that right?
8 A. Yes, but that would be a different budget. It would -- you know, Mazher's operation was sort of almost -- not necessarily ring-fenced, because you didn't know from year to the next what kind of operations he would be working on, but in my view it didn't cater for that. I think you heard from his testimony a lot of the time sources for his information were longstanding exception, for example, of the spot fixing cricket scandal, where we had an outlay of a significant sum to the fixer, his operation was again agreed with whoever

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1 Q. If you don't name them, it's not a problem.
2 A. Well, it gets close to that area.
3 Q. Maybe we can take it shortly. Were funds disappearing in a way --
4 A. No, funds weren't disappearing. Funds weren't disappearing. Cash payments were being made on a very regular basis and there was certain issues that were addressed and changed.
5 LORD JUSTICE LEVESON: Well, the inference is pretty clear, isn't it? Even if you don't say it.
6 A. I think so.
7 MR JAY: Did you try and keep a handle on expenses as well, or was that Mr Kuttner's domain?
8 A. That was the managing editor's office, yes, primarily.
9 Q. Were there any discussions with Mr Kuttner about those matters? Expenses?
10 A. That was the managing editor's office, yes, primarily.
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25 Q. Were there any discussions with Mr Kuttner about those matters? Expenses?
in the media", you rightly point out in paragraph 37 that:

"Acting ethically is fundamental to establishing and maintaining trust between a newspaper and its readers."

You say in the last sentence:

"I consider this to cover such issues [that's the code] as acting honestly and decently, whilst ensuring accuracy and maintaining appropriate levels of privacy."

As a matter of generality, I'm sure we'd all agree with that as sensible and condign standards. Again, what do you mean by "appropriate levels of privacy"?

A. Well, working within the code.

Q. So weighing up the interests of the individual against any wider or overriding public interest; is that right?

A. As I say later on in the statement, you know, it's understanding whether or not a set of pictures invade an individual's reasonable expectation of privacy. Whether somebody goes on a holiday and goes on a public beach, or whether they choose an island where they believe that it's a private beach. That kind of privacy.

Q. By the time you've been a year in the job in 2008, and of course you had vast experience before then, did you have a certain perception of where privacy law was at, in particular the way in which judges were interpreting the law?

A. I was away in New York for five years, so I went in December 2001, I came back in January 2007, and I have to say that when I came back, I hardly recognised the landscape regarding privacy than it was before I left.

Q. Yes, so in terms of the changing landscape, in your own words could you describe it to us, or at least your perception of it?

A. I think it was more not just perception, but the reality. Whereas before you would get a set of pictures, you know, they would just almost automatically go in the paper. As a result of challenges and the change in the law, as it were, and verdicts, it was becoming very challenging to meet the requirements that the courts had laid down. And the almost explosion of celebrity lawyers, as it were, who just dealt with this issue time after time after time, case after case. It was almost as if they were fire-chasing and contacting the celebrities, saying, "Do you realise that the photograph that's been published here is in breach of your privacy and maybe we should do something about it".

LORD JUSTICE LEVESON: That might be a bit unfair. It might also be simply that they've seen the success that others have had.

A. Yes, that's what I'm saying, as a result of the verdicts and the courts.

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<td>37</td>
<td>Q. Was it your belief, Mr Myler, that had Mr Mosley got wind of the story, not merely would he apply for an injunction but his application was likely to be successful? A. Yes. Q. So what you did was take steps to ensure that the risk of that happening was reduced to as low a level as possible; is that correct? A. Yes. Q. And that entailed, amongst other things, not putting the story in the first edition, but putting it in a later edition; is that right? A. Yes. Q. Am I right in saying that you looked at the whole of the video? A. Yes. Q. Can I ask you, please, why the video was ever placed on your website? A. That was custom and practice at the time within limits of explicitness and sexual content. I mean, that's what -- that was the policy of the paper and the website at that time. Q. So in other words, that's what you systematically did; is that right? A. It was an extension of the paper, yes. At the same time, there was often more on the website than actually was contained in the newspaper, but that was something that was developing all the time. Q. Just without, I hope, expressing a prurient interest, you say that inappropriately sexually explicit material shouldn't be placed on the website, but a lot of this material was, wasn't it? A. Well, it was not as explicit as most of the stuff on it. It was very difficult to find clips that were appropriate to put up, actually. Q. I think my question is rather: was any of it appropriate to be put up, apart from to pander to people's prurient interest? A. I don't think it was pandering to prurient interest. It was an extension of the story. Online is very much video, and it was very difficult to edit that material. Q. If you're being proportionate, though, and confining yourself to what you say was where the public interest lay, you would meet both of those criteria simply by putting in an appropriately worded piece in the paper, rather than displaying lewd or other images, wouldn't you agree? A. Yes, but the video was, if you like, an intrinsic part of the whole story.</td>
</tr>
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</table>
Q. But in order to be loyal to the public interest, as you saw it, and publish a story which was in the public interest, why not confine yourself to the written word?
A. Why was it necessary to put any pictorial details up anywhere of what was going on, particularly in circumstances where you only needed those images to support you in any libel proceedings?
Q. A. Yes, I accept that. But that is how -- that is what we did. But we're going to do it because it's custom
A. All I can say is that that is what we did, and that's what happened.
Q. Without being absolutely crude, in a standard kiss-and-tell story, if you had a video, image, you wouldn't publish the video, would you, of what was going on? You'd simply publish --
A. We certainly wouldn't be publishing extreme explicit clips from it, no. Q. No. But not even a family-rated version, which is what you put on the website here in relation to Mr Mosley?
A. All I can say is that that is what we did, and that's what happened.
Q. We know from Mr Crone's evidence that you discussed these matters with him. Did you go any further with him than to say, "We're going to do it because it's custom
A. No. If I remember rightly, we had outside counsel's advice, too. I believe.
Q. I don't think Mr Crone told us that. Are you saying you had independent advice from counsel?
A. I believe. Again I would need to check that, but my recollection is that we did, but I'd need to check that from files.
Q. It may or may not have been relevant to the High Court proceedings, but you don't refer to that in the witness statement we're looking at.
A. I obviously haven't seen it since the trial.
Q. And then what happened is that the article, of course, was published on 30 March and you went away on holiday on 30 March, is that correct, for about ten days?
A. The second week, yes.
Q. So you weren't around for the follow-up piece, part 2, on 6 April, were you?
A. No, but I was the editor and I accept and take responsibility for what occurred, even though the deputy was in charge.
Q. So you weren't around for the follow-up piece, part 2, on 6 April, were you?
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<td>Did he say to you, &quot;Well, I didn't in fact write them&quot;?</td>
<td>Yes.</td>
<td>I think I had the conversation also with the person who did.</td>
<td>It was unnecessary to have written in those terms.</td>
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<td>Of course what Mr Thurlbeck did was clearly in breach of the PCC code. Did you not think it right that given the judgment of Mr Justice Eady and his assessment as a senior High Court judge that this was a threat, that really you should be taking this somewhat further and reprimanding Mr Thurlbeck for breach of the PCC code?</td>
<td>In hindsight, probably yes.</td>
<td>Why didn't you do that?</td>
<td>I don't know. You know, when I did reprimand a senior executive for the other example we've discussed, he felt that my letter to him and language was harsh, but understood why I did it, and looking back, I probably should have done the same thing with Mr Thurlbeck. But I said at the time I wasn't aware that somebody else had written it.</td>
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<td>On one other word in one of your answers?</td>
<td>LORD JUSTICE LEVESON: You see what concerns me, and I've said this and I'm very keen that everybody understands, I am looking at this in detail but not because I'm going to make some ruling in relation to Mr Mosley.</td>
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1. press you, but you understand why.
2. A. Yes.
3. LORD JUSTICE LEVESON: I may not be unfairly summarising Mr Thurlbeck's evidence to say that even now he doesn't quite get the point.
4. A. I'm surprised by that, because --
5. LORD JUSTICE LEVESON: You must have heard or maybe you haven't heard --
6. A. I think I heard most of it, but I'm surprised by that because as an experienced journalist that he is, he was well aware of the criticism of that.
7. LORD JUSTICE LEVESON: But, you see, the risk is that I then conclude, and I tell you so that you can deal with it, that the reason he doesn't understand is because the ethos of the place was: we're right, Eady is wrong, he doesn't know what he's talking about, and it's outrageous that we should be challenged in this way and this is good stuff.
8. A. No.
9. LORD JUSTICE LEVESON: I'm putting it graphically just so that you can respond because it troubles me.
10. A. No. Well, it troubles me too. It troubles me that you weren't perhaps quite as forthcoming as you might have been because you just --
11. Q. This is culture in a slightly different sense to which Mr Thurlbeck's evidence to say that even now he doesn't quite get the point.
12. A. Well, maybe I'm not understanding the question, Mr Jay.
13. Q. The reason I asked you a bit earlier on to identify us with the culture which you found on arrival in January 2007 was really to get the feel from you of what it was and you weren't perhaps quite as forthcoming as you might have been because you just --
14. A. Well, I --
15. Q. Just wait Mr Myler.
16. A. I'm sorry.
17. Q. You told us frankly that trying to change the culture was difficult, but I believe that I did change things, change a way of working, different way of approaching things, understanding that sometimes you had to say no and not yes, and I can give you examples. You know, it does take time to do that, but that was a serious lapse on both their part. A lapse of judgment that they should not have made.
18. LORD JUSTICE LEVESON: Well.
19. MR JAY: A number of questions from that, inevitably.
20. A. I'm sorry.
21. Q. The reason I asked you a bit earlier on to identify us with the culture which you found on arrival in January 2007 was really to get the feel from you of what it was and you weren't perhaps quite as forthcoming as you might have been because you just --
22. A. Well, I --
23. Q. Just wait Mr Myler.
24. A. I'm sorry.
25. Q. You told us frankly that trying to change the culture was difficult, which of course suggests that there was something which needed changing. I think I do need to ask the question again: what was the culture which you encountered on arrival?
26. A. Well, it was very laddish and very male dominated. When I sat in my office, there were I think 12 men and one woman. And when you consider that the News of the World is split almost half and half with the readership, 52 male, 48 women, I found it rather remarkable, but not surprising, that the product that was going out was very loustish, very laddish, and the language and the tone of the paper didn't reflect the audience that it had.

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1 LORD JUSTICE LEVESON: And that may be entirely fair enough.
2 A. Yes.
3 LORD JUSTICE LEVESON: -- being prepared to indulge in
4 conduct which you acknowledge frankly is outrageous, and
5 demonstrates that, however experienced they were, they
6 certainly weren't professional. And the question
7 therefore arises what you did about it.
8 A. That's a very fair point, and in hindsight I should have
9 reprimanded them and they should have received a letter
10 that probably should have gone in their personnel file,
11 which would have been part of the disciplinary process.
12 MR JAY: But was it you, Mr Myler, who was responsible for
13 applying for the scoop of the year award on the back of
14 the Max Mosley story?
15 A. I would have -- I would have judged the final entrants,
16 yes.
17 Q. So you decided that the News of the World's, as it were,
18 best scoop of the year was the Max Mosley story and you
19 put it forward on that basis, is that --
20 A. I don't know what the categories were, but if it was --
21 without being reminded what it was up against, I would
22 have had the final decision on what the entries would
23 be, yes.
24 LORD JUSTICE LEVESON: The dates are quite important.
25 A. That's a very fair point, and in hindsight I should have
26 thought more about the dates. I'm guessing.
27 LORD JUSTICE LEVESON: The dates are quite important.
28 A. It's a bit of a lengthy process. They are a matter of
29 record.
30 MR JAY: But after, of course, the outcome of the privacy
31 claim; is that right?
32 A. Oh yes.
33 Q. From which it might be possible to draw the inference
34 that you weren't merely completely uncontrite, you were
35 proud of all of this. Is that fair?
36 A. No. Let's be clear, Mr Jay. The News of the World was
37 humiliated by Mr Mosley's court victory. I was
38 humiliated. And it was a landmark in how tabloid
39 newspapers would have to approach those kind of stories.
40 So I wasn't gloating. At all.
41 Q. The final question before we have our break, and this is
42 a point which certainly Mr Sherborne made in opening the
43
case, and possibly Mr Mosley made in his evidence.

After the judgment from Mr Justice Eady was handed down, did you give a press conference outside the Royal Courts of Justice at the front?

A. I wasn't -- I don't think it was a press conference. I think I read a statement, I believe. I think I read a statement.

Q. Can you remember in general terms what that statement said?

A. I'd have to be reminded. I haven't refreshed my memory about what was said.

Q. Were you critical of Mr Justice Eady? You were entitled to be. It's your right.

A. I'd rather be reminded about what I said, I'm sorry.

Q. I don't have the text of it, so I can't put it to you, so I won't.

A. I mean, certainly we accepted the verdict. You know, it was something that we accepted.

Q. You didn't appeal it, did you?

A. We didn't appeal it because it was put to me that there were no grounds to appeal because of Mr Justice Eady not awarding exemplary damages. It was put to me that legally that was the only cause of appeal. That's how it was explained to me, legally.

MR JAY: Would that be a convenient moment to break?

LORD JUSTICE LEVESON: Yes. I'll go back and look at CPR59 or whatever it is. Okay.

(A 3.29 pm)

(A short break)

3.41 pm

MR JAY: May I ask you now, Mr Myler, please, about the use of private investigators?

A. Yes.

Q. When you arrived, did you change the News of the World's policy in relation to private investigators and the circumstances in which they might be used?

A. I said in the letter that went out to all members of staff that any use of private investigators had to be within the way in which the newspaper would work, within the PCC code, within the law, and that they could not be used for any improper means; in other words, sort of arm's length journalism.

Q. I think you said as well, but we can look at the letter at 02065 --

A. Sorry, which book are we in?

Q. I'm afraid, Mr Myler, we are in your witness statement file, which is file 1.

A. Yes. Sorry, the number again?

Q. It's your letter of 7 February which I hope is going to be 02065.
<table>
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<tr>
<th>Q.</th>
<th>Because the policy which you are apparently reiterating is that cash payments are only permitted in exceptional circumstances. First of all, was that the policy which you found on your arrival in January 2007?</th>
<th>Q.</th>
<th>Was that Mr Crone's advice or was it Mr Crone's advice backed by leading counsel?</th>
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<td>A.</td>
<td>Well, subsequent to what I discovered and was told, I didn't believe that was the case.</td>
<td>A.</td>
<td>I understood it was Mr Crone's advice, but he would have backed by leading counsel?</td>
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<td>Q.</td>
<td>No. Was it the policy which you in fact implemented at all material times after January 2007, namely cash payments should only be permitted in exceptional circumstances?</td>
<td>Q.</td>
<td>I didn't totally agree with it, no.</td>
</tr>
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<td>A.</td>
<td>Yes. With the caveats that I explained before.</td>
<td>A.</td>
<td>And I don't think I was on my own.</td>
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<td>Q.</td>
<td>To be clear, what were they?</td>
<td>Q.</td>
<td>Commissioning private --</td>
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<td>A.</td>
<td>That each departmental head would have to sign them off, be satisfied that they were real and proper, that the person that was identified as the recipient was on the electoral roll, and it was very clear what they were being paid for and they had delivered what they were being paid for.</td>
<td>LORD JUSTICE LEVESON: That was the point I was making about appeal, actually, because it's not just a question of fact, it's a question of law as well, and mixed law and fact can all be the subject of appeal. Anyway.</td>
<td></td>
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<tr>
<td>Q.</td>
<td>Because the policy went further: &quot;Every such payment requires a compelling justification and must be fully recorded.&quot;</td>
<td>MR JAY: Can you just confirm this, Mr Myler? Did leading counsel advise on an appeal or not?</td>
<td></td>
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<tr>
<td>A.</td>
<td>Was that the policy which you implemented and maintained at all material times after January 2007?</td>
<td>A.</td>
<td>My understanding was that without exemplary damages being awarded, we didn't have grounds to appeal. That is what I understood and what I was told.</td>
</tr>
<tr>
<td>Q.</td>
<td>Every cash payment was recorded, yes. Were recorded, yes.</td>
<td>Q.</td>
<td>LORD JUSTICE LEVESON: That was the point I was making about appeal, actually, because it's not just a question of fact, it's a question of law as well, and mixed law and fact can all be the subject of appeal. Anyway.</td>
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16 (Pages 61 to 64)
Mr Myler, could you help us, please, with what that occasion was?

A. Could you help us, please, with what that occasion was?

Q. The one occasion that you refer to in paragraph 39, I certainly don't regard it as being reckless.

A. It was a proposition that was put to me, and I actually thought that it was something that was being thoughtful and sensible of the executive who thought of it.

Q. The one occasion that you refer to in paragraph 39, Mr Myler, could you help us, please, with what that occasion was?

A. Yes.

Q. "I am aware that newspapers often use investigators ..."

"I am aware that newspapers often use investigators ..."

A. I'll give you time to find it. It's paragraph 39.

Q. Yes.

A. Yes.

Q. Did you regard him at all material times as being a private investigator?

A. Yes.

Q. Did you regard him at all material times as being a private investigator?

A. He was when I became aware of him. Shall I explain how I became aware of him?

Q. Yes.

A. I became aware of him when he was arrested and charged with an offence relating to, I think, a local journalist.

Q. Okay. I come back to paragraph 39 of your witness statement then, 02508. What you were telling us there, Mr Derek Webb, aren't you?

A. Yes.

Q. "I am aware that newspapers often use investigators to carry out legitimate investigatory work. I only have specific knowledge of a private investigator being used by the newspaper on one occasion. In that case, I was told that the investigator was being used to conduct surveillance activities."

Can we be clear, I think you make this clear in your second witness statement, you're referring there to Mr Derek Webb, aren't you?

A. Yes.

Q. Did you regard him at all material times as being a private investigator?

A. He was when I became aware of him. Shall I explain how I became aware of him?

Q. Yes.

A. I became aware of him when he was arrested and charged with an offence relating to, I think, a local journalist.

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Q. Yes.
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<td><strong>Q.</strong> But if you didn't know what he was doing, how could you make that judgment?</td>
<td><strong>Q.</strong> How often did you know the identity of the source?</td>
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<td>A. Well, there were practices in place, and very transparent practices in place, to find that out rather quickly. I assumed that Mr Webb would be invoicing monthly, weekly, I don't know. I don't know how often he was used.</td>
<td><strong>Q.</strong> Yes. Did you have Mr Crone on hand for difficult or hard cases?</td>
</tr>
<tr>
<td>He was used a lot. But someone else, the managing editor would approve his bills.</td>
<td><strong>A.</strong> Oh, in a lot of cases it was very transparent because with big set issues, ie page 1 stories, they tended to come pretty well from the same sort of circle of people. People like, you know, Max Clifford or other agents. They tended to be in the main very transparent. They would say the person is looking for X and I'm looking after them, and it often became a bidding war within market forces.</td>
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<tr>
<td>A. Yes. And if there was any suggestion of improper working, he would have raised it first of all with the person who commissioned Mr Webb and then with me if he felt it was appropriate to do so.</td>
<td><strong>Q.</strong> Can I ask you about public interest and the weighing of factors. Paragraph 47 of your first witness statement. You tell us there: &quot;The consequences of failing to meet these standards were significant and decisions on balancing the public interest in a free press and the private interests of individuals were not made lightly.&quot; Your experience in 2001 which you've told us about, did that cause you to be more cautious in terms of weighing up the public interest balance?</td>
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<td>Q. He was used a lot. But someone else, the managing editor would approve his bills?</td>
<td>A. It made me more cautious about taking legal advice, on the basis that three lawyers had told me that it was okay to publish it. But no. I mean, situations like that are a huge learning curve and you have to hope that you take that into account when you're making further decisions.</td>
</tr>
<tr>
<td>A. Yes.</td>
<td><strong>Q.</strong> Okay. Can I just test with you, if you don't mind, the Michael Phelps story and just see how far we get with it. Of course we clearly remember this, but just so we can be absolutely clear about it. Was the photography or the party in the United Kingdom or elsewhere?</td>
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<tr>
<td>A. It was very clear, tried and tested, and appeared to work the system that existed before a story even got to me</td>
<td><strong>A.</strong> It was in America, I believe. I think it was on a university campus.</td>
</tr>
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<td>Q. Can I ask you about public interest and the weighing of factors. Paragraph 47 of your first witness statement. You tell us there: &quot;The consequences of failing to meet these standards were significant and decisions on balancing the public interest in a free press and the private interests of individuals were not made lightly.&quot; Your experience in 2001 which you've told us about, did that cause you to be more cautious in terms of weighing up the public interest balance?</td>
<td><strong>Q.</strong> Yes. Did you have Mr Crone on hand for difficult or hard cases?</td>
</tr>
<tr>
<td>A. Always very clear. The relationship that existed and was he more definite or bold in the advice he gave?</td>
<td><strong>A.</strong> If he wasn't away, yes. And, you know, pretty well more often than not outside leading counsel, too.</td>
</tr>
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<td>Q. Were there many occasions on which you overrode or rejected Mr Crone's advice?</td>
<td><strong>A.</strong> Not many.</td>
</tr>
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<td>A. Not many.</td>
<td>Q. Did he express himself in terms of allocation of risk or was he more definite or bold in the advice he gave?</td>
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<td>Q. Did he express himself in terms of allocation of risk or was he more definite or bold in the advice he gave?</td>
<td><strong>A.</strong> Always very clear. The relationship that existed and the system that existed before a story even got to me was very clear, tried and tested, and appeared to work and did work. They knew -- they being the departmental heads -- and in some cases often reporters, I suspect, would have gone to him in the course of putting up a story or working on a story, irrespective of going to the news editor or the news desk. He was very, very experienced, very clear in his advice and very good.</td>
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<td><strong>Q.</strong> Okay. Can I just test with you, if you don't mind, the Michael Phelps story and just see how far we get with it. Of course we clearly remember this, but just so we can be absolutely clear about it. Was the photography or the party in the United Kingdom or elsewhere?</td>
<td><strong>Q.</strong> Yes. And he was photographed smoking cannabis at a university campus.</td>
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**Merrill Legal Solutions**  
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London EC4A 2DY  

18 (Pages 69 to 72)
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1. A private party. That was the basic background which you knew about?
2. A. I think it was a bong.
3. Q. I didn't catch that.
4. A. It was a bong. It was through the glass smoking pipe.
5. Q. Right. So even in the United States of America, I don't know what the law is in relation to the smoking of cannabis or the taking it in by the method you've described, we're at the very lowest end of criminality, aren't we, Mr Myler?
6. A. Taking drugs is at the lowest end?
7. Q. Smoking cannabis is at the lowest end of criminality?
8. A. It was against the law.
9. Q. Yes, well, we know that from your witness statement.
10. A. Yes. I think there's an element of false image there, yes. In that particular case. Doesn't mean to say that he was smoking and taking drugs every night, clearly.
11. Q. The false image was or is he's an Olympic swimmer at the very top of his sport and therefore a role model; is that right?
12. A. No, I mean he was -- I can't tell you immediately which products and which companies he was endorsing, but they were considerable, and I think as a result of the story being published, he lost some of those endorsements and he was suspended.
13. Q. But to be fair to the News of the World, the features editor, you tell us, did contact Mr Phelps' agent about this story in advance of publication?
14. A. Yes.

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1. I can't recall about the circumstances of how it specifically came to us, whether it came to us via the person directly who took the photograph and owned the copyright of it, or whether it came to us via another source, via somebody that that individual who took the picture went to and came to us.
2. Q. Did you at least have to pay for the photograph?
3. A. The records to the managing editor's office will show that, clearly. I assume payment was made, but either the source -- whether the source of the story was the person who took the photograph -- but I'm pretty sure that some money would have exchanged hands, yes.
4. Q. So in deciding whether to publish the story, there are two considerations in play, are there not? First of all, this was a private party and Mr Phelps, who after all is a world famous swimmer, at the very top of his profession and sport, is enjoying a quiet evening out but breaking the law?
5. A. I think that's stretching it, with respect, Mr Jay.
6. Q. Is it?
7. A. Yes. Michael Phelps was a huge Olympic champion, a role model for millions of people, and his endorsements as a result of that were clear for all to see. And I think you know the consequences of us going to his people and what they offered us in return for not publishing the story.
8. Q. Because, after all, here you had the hard evidence in the form of the photograph, and I suppose you were running the risk that he might apply for an injunction, weren't you?
9. A. I don't think we felt that that was measurably high.
10. Q. Okay. It was argued on his behalf that publishing the story would breach Mr Phelps' privacy. Well, evidently yes, but are there any other considerations or factors which came into play at that stage?
11. A. Not that I can recall.
12. Q. Of course, a consequence of publishing the story you set out there. You may be right about the public interest decision you took in this case, but can I just ask you this: was it proportionate in regard to the minor infraction of the law we're talking about here?
13. A. Well, we're not -- we're not arbiters of the law, Mr Jay. Michael Phelps was a huge sports star, known throughout the world. A very, very leading Olympic champion. And he and his team clearly understood the significance and the seriousness of the story becoming public knowledge.
14. Q. Fair enough. I just wanted to test that one with you and others will consider where we are in the public interest.
15. A. Can I ask you next, please, about your third Page 74
16. Q. I'll come to that.
17. A. Sorry.
18. Q. I'm just trying to go through the decision-making process.
19. A. Yes, sorry.
20. Q. On the one hand, there's his privacy. On the other hand, there are the public interest considerations which you've told us eloquently about, and you felt that the latter outweighed the former, is that correct?
21. A. Yes.

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Day 17 - PM  Leveson Inquiry  14 December 2011

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<td>A.</td>
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<td>Yes, I --</td>
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| Q. | You make it clear in paragraphs 5 and 6 of the statement, before coming on to other matters. This is dealing with the McCann diaries. |
| A. | Yes. |
| Q. | Amongst other matters. You make it clear in paragraphs 5 and 6 of the statement, 51874, Mr Myler -- |
| A. | Yes, I have it. |
| Q. | Do you have it to hand? The newspaper was very supportive of the McCanns, and you wouldn't adopt the stance that other national newspapers had taken by printing malicious stories which had no foundation and emanated largely from the Portuguese press. So that was your position. |
| A. | Yes. |
| Q. | You had a very successful appeal, which raised £1.5 million in 48 hours. In paragraph 7 you say that you spoke to Dr Gerry McCann on a frequent basis about developments in the case, "or more often than not just to catch up". About how often did you speak to him? |
| A. | Every maybe -- in the early stages, probably a little bit more regularly, but weeks, perhaps, depending on what was happening, what was developing, what we were aware of or what we were working on. But as I explained, the news desk in particular were in much more regular contact with their spokesman. |

| Q. | What is Mr Ian Edmondson on the one hand who was the news editor? |
| A. | Yes. |
| Q. | And the spokesman was Mr Clarence Mitchell, who we heard about on the other? |
| A. | Yes. And before that, I think it was Justine McGuinness, yes. |
| Q. | Did you have any direct dealings with Mr Mitchell? |
| A. | Not really, no. |
| Q. | Not really or at all? |
| A. | No, hardly at all. |
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| A. | Yes, I -- |

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| A. | Yes, I -- |</p>
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<td>Q. I think it's important to try and understand what material, documentary material, you had available to you in September 2008, rather than material which you've only seen subsequently, since only the former would have informed your thinking at the time, wouldn't it? A. Yes, but it's - we're now 2011. It's remembering. Q. Indeed. You tell us in your witness statement that the story was presented to you by Mr Edmondson, is that correct? A. It is. Q. And he made it clear to you that he had a copy of the diary. Did he let you know or tell you from where he had obtained it? A. I can't recall the conversation specifically, but I'm sure he would have done. Q. Well, we can be more precise. If you could pick up the Linklater file, if we can describe it in those terms, and look, please, at tab 2. A. Sorry, what number is it? Q. The papers which arrived from Linklaters which you mentioned three minutes ago. LORD JUSTICE LEVESON: Do you not have the file? A. If it's not here. MR JAY: We can provide you with another file. It's there. We'll get it to you. A. Yes.</td>
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<td>Q. Were you concerned by the fact that the diary had been obtained from the police in some way? A. Yes, according to this. MR JAY: We can provide you with another file. It's there. It has tabs, so it's easier to ... A. Thank you. Q. Tab 2. A. Yes. Q. Mr Edmondson to you, 5 September. So we are nine days before the story: &quot;We have got the Kate McCann diaries journalist at a meeting. They are in Portuguese, translated by cops.&quot; Official police document looks good. Don't think this is a set-up. We can take possession after paying a small deposit and pay the balance upon publication, 3,000 euros in total. Get it as great stuff for next week? Ian.&quot; So your source, as it were, was I think a Portuguese journalist? A. Mm. Q. I think it was a woman journalist, but it's not going to matter. Made clear to you that the Portuguese police had translated the diary and therefore they remained in Portuguese but they looked as if they were what they purported to be; is that correct? A. Yes. Q. But were you aware of some of the background which comprised this: that the police had obtained the diary, having seized it from Dr Kate McCann, and then there was an order by the Portuguese judge for the diary to be returned, but I think a copy by then had been taken? Were you aware of any of that background? A. I don't recall that specifically, I'm sorry. Q. But it was clear to you that the ultimate source -- the proximate source was the journalist, but the ultimate source was the Portuguese police. That much was clear, wasn't it? A. I think it's clear that that's where it probably would have emanated, yes. Q. And then there were discussions about the cost, which I don't think we need dwell on. And then -- LORD JUSTICE LEVESON: This is a formal agreement is made in writing, behind tab 3? A. Yes.</td>
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<td>1 LORD JUSTICE LEVESON: This is 5 September?</td>
<td>1 quickly --</td>
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<td>2 A. Yes.</td>
<td>2 MR JAY: Yes, you're right, I'm wrong.</td>
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<td>3 LORD JUSTICE LEVESON: A substantial sum of money to supply the diary of Kate McCann for exclusive publication?</td>
<td>3 So the next few days, I think the documents show, were devoted to establishing that the diaries were what they purported to be, do I have that right?</td>
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<td>4 A. Yes. According to this, yes.</td>
<td>5 A. Yes.</td>
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<td>5 LORD JUSTICE LEVESON: Yes. That's the --</td>
<td>6 Q. And then did there come a point, you having established that, that you wanted to ascertain whether or not there was consent from Dr Kate McCann for publication? Have I correctly understood the position?</td>
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<td>6 MR JAY: So at that stage you had a contractual commitment to pay an amount, and the consideration would be exclusive publication in the News of the World; is that right?</td>
<td>7 A. Yes.</td>
<td></td>
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<td>7 LORD JUSTICE LEVESON: A substantial sum of money to supply the diary of Kate McCann for exclusive publication?</td>
<td>8 Q. But the obvious question, Mr Myler, is this: why did you not telephone either of the McCanns and find out whether they consented?</td>
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<td>8 A. It wasn't your understanding that anybody had asked for Dr Kate McCann's consent by that stage, was it?</td>
<td>9 A. Because Ian Edmondson had assured me on more than one occasion that Clarence was aware of what we were intending to do and had said, &quot;Good&quot;. I think it was very clear from Mr Edmondson's point of view how he'd spelt out what he was doing, and indeed I stressed very clearly by using the phrase that I did not want Kate to come out of church on Sunday morning and find that the diaries were there without her knowledge.</td>
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<td>9 Q. At that stage?</td>
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<td>10 A. Yes.</td>
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<td>11 Q. -- which would save you having to pay money which might not lead to anything --</td>
<td>12 LORD JUSTICE LEVESON: Which Friday to which Saturday are we talking about? What date?</td>
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<td>12 A. Generally, yes.</td>
<td>13 MR JAY: 12th and 13th, isn't it?</td>
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<td>13 Q. It wasn't your understanding that anybody had asked for Dr Kate McCann's consent by that stage, was it?</td>
<td>14 A. In other words, sort of from the Friday conference to deciding, you know, what you're doing with the front of the paper.</td>
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<td>14 A. At that stage?</td>
<td>15 LORD JUSTICE LEVESON: I see.</td>
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<td>15 Q. Yes.</td>
<td>16 A. I made it clear, I think on the Friday, by using that phrase, and I repeated it to him again on the Saturday. And at no stage did he indicate to me that Mr Mitchell had told him it wouldn't be appropriate to do what he'd been told we were doing.</td>
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<td>19 Q. -- which would save you having to pay money which might not lead to anything --</td>
<td>20 A. Well, I don't know -- at that stage, I didn't know whether or not they had it. You know, physically had from the journalist what she said she had.</td>
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<td>30 Q. And Mr Edmondson was telling you that he'd obtained consent on what day?</td>
<td>31 A. Well, it was absolutely clear from the Friday to the Saturday that that assurance had been given to him and given again to me.</td>
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<td>31 Q. It was going to be a front page story, wasn't it?</td>
<td>32 Q. But you were of course aware that if Dr Kate McCann had not given her consent to the publication of this personal diary, she would be outraged by the publication. You were aware of that, weren't you?</td>
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<td>32 MR JAY: 12th and 13th, isn't it?</td>
<td>33 A. Because Ian Edmondson had assured me on more than one occasion that Clarence was aware of what we were intending to do and had said, &quot;Good&quot;. I think it was very clear from Mr Edmondson's point of view how he'd spelt out what he was doing, and indeed I stressed very clearly by using the phrase that I did not want Kate to come out of church on Sunday morning and find that the diaries were there without her knowledge.</td>
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<td>33 LORD JUSTICE LEVESON: Which Friday to which Saturday are we talking about? What date?</td>
<td>34 Q. But the obvious question, Mr Myler, is this: why did you not telephone either of the McCanns and find out whether they consented?</td>
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<td>34 MR JAY: 12th and 13th, isn't it?</td>
<td>35 A. Because Ian Edmondson had assured me on more than one occasion that Clarence was aware of what we were intending to do and had said, &quot;Good&quot;. I think it was very clear from Mr Edmondson's point of view how he'd spelt out what he was doing, and indeed I stressed very clearly by using the phrase that I did not want Kate to come out of church on Sunday morning and find that the diaries were there without her knowledge.</td>
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<td>35 Q. It was going to be a front page story, wasn't it?</td>
<td>36 LORD JUSTICE LEVESON: Which Friday to which Saturday are we talking about? What date?</td>
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<td>Page 90</td>
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<td>1. Mr Edmondson was telling me wasn't correct.</td>
<td>1. have published it. I mean, why would I do something as personal as that, however much behind a shield of</td>
<td>23. (Pages 89 to 92)</td>
<td></td>
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<td>2. Q. Did Mr Edmondson tell you clearly that he had told</td>
<td>2. nailing the lies of the Portuguese media and the press?</td>
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<td>3. Mr Mitchell that a copy of the diary had been obtained</td>
<td>3. I don't think that would have been sufficient for the</td>
<td></td>
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<td>4. via the Portuguese police, had been translated by you,</td>
<td>4. grief it caused her, and I had absolutely nothing to</td>
<td></td>
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<td>5. and that sections of that translation were going to be</td>
<td>5. gain and everything to lose, given the relationship that</td>
<td></td>
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<td>6. published in the News of the World as opposed to the</td>
<td>6. we had established.</td>
<td></td>
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<td>7. News of the World simply using publications which had</td>
<td>7. Q. But if that was your thought process on 16 September,</td>
<td></td>
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<td>8. already been made in Portugal to base a story?</td>
<td>8. why wasn't it the thought process you had the previous</td>
<td></td>
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<td>9. A. No, no, no. My understanding was that it was very clear</td>
<td>9. week, Mr Myler?</td>
<td></td>
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<td>10. that Mr Edmondson had explained what had we because</td>
<td>10. A. Because I was given an absolute categoric assurance that</td>
<td></td>
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<td>11. I think the extracts that had appeared in Portugal were</td>
<td>11. Clarence knew what we were doing.</td>
<td></td>
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<td>12. very minor, limited. I don't know how much they used.</td>
<td>12. LORD JUSTICE LEVESON: Well, you've read this transcript,</td>
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<td>13. But there was a -- I think there's a transcript in here</td>
<td>13. I'm sure. It's clearly not a document that spells it</td>
<td></td>
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<td>14. of a conversation where he explains that he was trying</td>
<td>14. out in words of one syllable, is it?</td>
<td></td>
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<td>15. to get me to go big with it, and I think in the course</td>
<td>15. A. You know, Mr Edmondson, given the number of times</td>
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<td>16. of that conversation I think Mr Mitchell had said that</td>
<td>16. I asked him for the assurance to make sure that there</td>
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<td>17. he'd vaguely remembered when they had been used in part</td>
<td>17. was absolute clarity and understanding, had no view that</td>
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<td>18. in the Portuguese press and that they were obviously</td>
<td>18. there was anything ambiguous in what we were going to</td>
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<td>19. very selective.</td>
<td>19. do.</td>
<td></td>
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<td>20. Q. Yes, but did Mr Edmondson make it clear to you that he</td>
<td>20. LORD JUSTICE LEVESON: It may be, Mr Myler, that it's unfair</td>
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<td>21. had made it clear to Mr Mitchell that he had the whole</td>
<td>21. to ask you much more about this, but would you agree</td>
<td></td>
<td></td>
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<td>22. diary and was going to cause extracts from it to be</td>
<td>22. with this: this document is most clearly ambiguous?</td>
<td></td>
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<td>23. published in the News of the World?</td>
<td>23. A. This --</td>
<td></td>
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<td>24. A. That's what he led me to believe, yes.</td>
<td>24. LORD JUSTICE LEVESON: This is the transcript that you were</td>
<td></td>
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<td>25. Q. Because reading the transcript, and this is something</td>
<td>25.</td>
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<td>1. which you didn't, of course, see at the time, the</td>
<td>1. sent by Mr Edmondson as establishing, presumably, the</td>
<td></td>
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<td>2. transcript of the conversation --</td>
<td>2. consent about which you were then concerned. And it's</td>
<td></td>
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<td>3. A. Sorry, which tab are we?</td>
<td>3. not terribly clear. Would you agree with that?</td>
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<td>4. Q. This is tab 9.</td>
<td>4. A. I need to --</td>
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<td>5. LORD JUSTICE LEVESON: You did see it just a few days later</td>
<td>5. LORD JUSTICE LEVESON: All right.</td>
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<td>6. on the Tuesday.</td>
<td>6. A. I only got this bundle yesterday.</td>
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<td>8. Ian Edmondson and Clarence Mitchell on Friday, September</td>
<td>8. A. I'm sorry.</td>
<td></td>
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<td>9. 12, 2008. It's quite a complicated document, and</td>
<td>9. MR JAY: What was the total sum that the News of the World</td>
<td></td>
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<td>10. certainly bears at least one interpretation, probably</td>
<td>10. paid for this diary?</td>
<td></td>
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<tr>
<td>11. several. You saw it two days later or two days after</td>
<td>11. A. I don't know. We'd have to check. Because often when</td>
<td></td>
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<td>12. publication, on the Tuesday, didn't you?</td>
<td>12. sums are going into a managing editor's sheet,</td>
<td></td>
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<td>13. A. This is the transcript of the conversation between</td>
<td>13. particularly when they have brackets which says they're</td>
<td></td>
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<td>14. Ian Edmondson and Mr Mitchell?</td>
<td>14. still being negotiated, the tendency was for that sum to</td>
<td></td>
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<td>15. Q. Indeed.</td>
<td>15. be negotiated down, and therefore it was a running</td>
<td></td>
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<td>16. A. Yes.</td>
<td>16. memoir, if you like. Chances are that figure</td>
<td></td>
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<tr>
<td>17. Q. We know Mr Edmondson sent it to you. You're the first</td>
<td>17. possibly could have come down. So the managing editor's</td>
<td></td>
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<td>18. recipient on the email, aren't you?</td>
<td>18. office will have a record of that.</td>
<td></td>
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<td>19. A. Yes.</td>
<td>19. Q. Okay, but you made a donation to the Madeleine fund?</td>
<td></td>
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<td>20. Q. Having seen that transcript, and I'm not going to go</td>
<td>20. A. Oh yes.</td>
<td></td>
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<td>21. through it now, why did you apologise to the McCanns at</td>
<td>21. Q. Was it a substantial donation?</td>
<td></td>
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<td>22. all? Unless it was capable of bearing at least a number</td>
<td>22. A. I believe it was. And an apology the following week,</td>
<td></td>
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<tr>
<td>23. of interpretations?</td>
<td>23. I think it was the following week, negotiated with,</td>
<td></td>
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<td>24. A. Well, because I felt very bad that she didn't know. And</td>
<td>24. I think, Mr Thomson from Carter Ruck, and in it was an</td>
<td></td>
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<tr>
<td>25. as I've said before, without her permission, I wouldn't</td>
<td>25. acceptance and an acknowledgment that there had been</td>
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a misplaced understanding that we had Kate's permission
and, you know, we made that very clear, that the last
thing we wanted to do was to cause her any more
distress.

Q.  May I move off that to another topic.  This topic is
such that I won't be able to conclude it today.  I don't
know how you --

LORD JUSTICE LEVESON:  Do I understand that, save for
Mr Myler, we're not going to find ourselves tomorrow
running over a witness?

MR JAY:  We won't, because there's another witness,
Mr Sanderson, who deals with these matters.  He'll be
quite short.  And then Mr Webb, who won't be that long
either, so although we're not doing very well today,
overall we're not doing badly.

LORD JUSTICE LEVESON:  No, well, I understand the point.
All right, I think that Mr Myler is due a break as well.

A.  Okay.

LORD JUSTICE LEVESON:  Thank you very much.  We'll resume at
10 o'clock tomorrow. Oh, pause.

MR CAPLAN:  Sir, just one thing very briefly.

LORD JUSTICE LEVESON:  You're absolutely right. I'm very
sorry that one of the few moments that you're not
here --

MR CAPLAN:  Yes, I'm sure that was coincidental.

LORD JUSTICE LEVESON:  I'm sure it's coincidental and I knew
that you would see it.

MR CAPLAN:  Sir, yes.  Might I say this.  I understand that
Mr Sherborne referred to an approach that was made by
da Daily Mail journalist to Mr Mark Lewis, the Dowlers'
solicitor, yesterday evening, and the suggestion was
made, I think by Mr Lewis, that this approach and the
question that was asked was an attack upon the Dowler
family.  I'm mentioning this first of all because it was
mentioned in public to this Inquiry, and also because it
has been taken up by one or two other online publishers.
May I say this: the journalist was not attacking the
Dowlers in any sense.  He was making a proper approach
to Mr Lewis as their solicitor, trying to see what the
implications might be from recent reports concerning
deletions from Milly Dowler's voicemails.  No more than
that.  And I'm very anxious that that position should be
understood, that there was no attempt at all, or
intention, to mount any attack on the Dowlers.  It was
an inquiry to their solicitor.  No story has resulted
from it and I'm surprised that Mr Lewis brought it to
the attention of the Inquiry.
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