MS PATRY HOSKINS: Good afternoon, sir. The first witness this afternoon is Mr Turner from the BPPA, the British Press Photographers Association.

LORD JUSTICE LEVESON: Yes.

MR NEIL GAVIN TURNER (sworn)

Questions by MS PATRY HOSKINS

MS PATRY HOSKINS: Good afternoon, Mr Turner. Could you please provide your full name to the Inquiry.

A. My name is Neil Gavin Turner.

Q. Thank you. Behind tabs 15 and 16 in the bundle, which statements should have in front of you, you will find the two statements provided to the Inquiry by the BPPA. They're not signed statements. Can I ask you, therefore, to confirm that this is the evidence of the BPPA and that the statements are true and accurate to the best of your knowledge and belief?

A. I can confirm that.

Q. Thank you very much. I'm going to start with the first statement, which is behind tab 15.

LORD JUSTICE LEVESON: Can I thank you for these submissions, which are very helpful and do provide a perspective on part of the work of the press which hasn't been the subject of as much attention as other parts.

A. Thank you.

MS PATRY HOSKINS: I'm going to start with a brief introduction into what the BPPA is and who it represents. We can see that from the bottom of page 26 of the first statement, 54177. The British Press Photographers Association, you tell us, has among its membership a large percentage of the country's front-line news photographers. It was founded in 1984 and its aim is to promote and inspire the highest ethical, technical and creative standards from within the profession.

You then go on to say at the bottom of that page that the BPPA can speak for press photographers who, because of the highly fragmented nature of their employment, may well speak to the BPPA when they would not speak to the Inquiry. You then set out a breakdown of your membership. You say that your total membership is just fewer than 800.

Q. And it breaks down into sort of four categories. First of all, directly employed photographers are 24 per cent of your membership. Does that mean directly employed by newspapers, magazines --

A. And agencies.

Q. And agencies. Then employed on fixed or rolling contracts, 12 per cent. Again, employed on fixed or rolling contracts with the same sorts of bodies?

A. With various media organisations but primarily newspapers and agencies.

Q. Then working through agencies as freelance photographers, 18 per cent. So would that be someone who was not employed by an agency but simply worked on a freelance basis?

A. Who syndicates largely their images through an agency.

Q. Right. Then entirely freelance, 46 per cent, so by far the largest number.

A. That's correct.

Q. Yes, would be photographers who work entirely on their own account.

A. No, that would also include photographers like myself, who work on Monday for one employer, on Tuesday for a second employer and then Thursday and Friday on a story that they've generated themselves.

Q. I understand.

LORD JUSTICE LEVESON: Can you say from your experience how many photographers there are? I'm not talking about the citizen photographers; I'm talking about those who make their living doing what you do.

MS PATRY HOSKINS: Okay. Thank you.

MS PATRY HOSKINS: Can I ask about your role in the organisation.

A. Yes. I am one of two vice chairman. I have been in that position for several years now. I joined the BPPA quite late, in 2003. Before being a vice-chairman, I was the editor of the website.

Q. What I am going to do is take you through your statement. I'm going to pick out a few key issues and then I'm going to turn to the key proposals that you have for the future, which you set out towards the end of the first statement. Let's start with the statement itself, please.

Page 4, just over from where we've been looking. You explain at the start, under the heading "The culture and practices of professional press photographers", that one of the main problems highlighted by this Inquiry is...
that the vocabulary used by the public and much of the media regarding press photography is limited and largely wrong. You go on to say that there is some evidence that this is due to confusion about who you are and what you do.

Can you, in a nutshell, explain to us what the confusion is there and what it is that the public get wrong?

A. It's the overuse of the term "paparazzi" is the primary problem. All of our members would tell you that they frequently get called the paparazzi. It's usually in a jokey way, but professional press photographers are exactly that. They're people who do this for a living. They do it professionally. They're not just some bloke with a posh-looking camera. They are people who are professionals.

I guess the issue is in several of the statements and several of the articles surrounding the early stages of the Inquiry, words like "freelance" weren't always used properly. Certainly, like I say, "paparazzi" was used with ridiculous abandon, and it's just all of the words that we see attached to photographer or used instead of photographer are very, very, very largely badly applied.

Q. All right. Leading on from that, you tell us, down at the bottom of page 4, that the activities of press photographers are not limited, of course, to celebrity photographs. They can range from sports action to press conferences, and from feature case studies to war and famine. You then go on to say:

"Most professional photographers will have touched all of those subjects as well as the red carpet events, doorsteps and other genuine jobs that seem to have been labelled as paparazzi by a lot of commentators."

That's a fair point, of course.

Turn to page 5, just over the page. You say, second-last paragraph:

"To flesh that out a little, we find ourselves responding to news stories, many of which are still breaking, with very little information and a lot of expectations from our newspapers ... the news agenda dictates that we often operate in direct competition to one another on the same story -- which results in what lazy television journalists often refer to as a pack of photographers or a mass of paparazzi."

Then you go on to say:

"The behaviour of professional photographers, even in a pack, is normally good, ethical and entirely legal."

If we just try to set the context for my question, the very last paragraph I want to refer you to in this context is at the top of page 6. You say that the problems are exacerbated in various ways. You seem to suggest that in other countries, photographers are given rather freer access to buildings such as courts, parliaments and committee hearings, and it's all a bit difficult because in Britain you simply don't have the same access.

Are you suggesting that in the UK there should be freer access to such buildings such as courts, parliaments and committee hearings? You appear to suggest that even at this Inquiry photographers are limited to being out in the street. You seem to have a problem with that. Is that an unfair characterisation of what you're saying?

A. It's not a problem in terms of that's the way it has been certainly since before I joined the profession, but you have to put this into a context where television news has access to the footage from this room, television news has the ability to shoot all sorts of cut-away shots and build a story, to do interviews to camera. We, as still photographers, have to sum up all of that in a single frame, and when you're restricted to a single position in a cold or freezing street outside, where you're going to have three seconds to grab the picture you want, and you're standing shoulder to shoulder with 20 other people and television crews are there in the way as well, then clearly we don't have, as a media, I guess what you would call a level playing field.

Q. Are you suggesting there should be a bank of photographers at the back of the room here?

A. I think that the time has come when it should be investigated whether a single stills photographer or a limited number of stills photographers with, you know, the right equipment, now we can shoot in really low light, be admitted to some of these hearings, because if we want -- or if our newspapers that we work for want to run stills from here, if I said something extremely controversial now, they would have to run a still grabbed from what is relatively low quality video, and certainly not up to the technical requirements of newspapers.

So I'm not overtly suggesting that we open it up to stills photographers. I guess what we're doing in this part of the statement is creating a background by which we're explaining why some of the actions that we have to take, quite legally and ethically still, to get our pictures have to be taken and possibly suggesting ways that, you know, some of the issues that you might point out.
to could be overcome.

Q. Another solution that you seem to be suggesting, right at the end of page 6, is that people who are the subject of your photographs could be a bit more relaxed about giving up their photograph. You say this:

"Professional news photographers have one goal: to get good, interesting pictures that editors want to use. None of us enjoys the process of having to wait on wet and windy pavements for hours and nobody actually wants to chase cars down the road because people involved in news stories haven't got the sense to stop and talk for two minutes."

Now, is that paragraph intending to suggest that those involved in news stories should, in most situations, be able to just stop and talk to photographers and allow their photograph to be taken?

A. I think there's definitely an element where if people did then, you know, again, a lot of the issues and a lot of the problems that are seen to arise could be sorted out. I mean, this is a tiny percentage of what we do, a really tiny percentage, but it happens and, you know, we have it within our powers as a society to kind of just change a few attitudes and then overcome possible issues.

LORD JUSTICE LEVESON: And those who don't want to be photographed?

A. Well, we have the Press Complaints Commission code of conduct, which we absolutely insist that people sign up to -- or abide by, and if someone says, "I don't want my picture taken", then under the PCC code, you stop taking their picture.

MS PATRY HOSKINS: I'm going to turn to page 7 of your statement, please, under the heading "The marketplace for news pictures and how it affects those cultures and practices". I'm going to ask you about the second-to-last paragraph on that page.

A. You explain, in a nutshell, that freelancers and other photographers are having to find exceptional pictures, and you say that this is all happening at a time when newspapers' circulation is still dropping and work is actually thinner on the ground. You then say, at the end of the paragraph, that you have had several reports from photographers who have expressed reservations about being told to shoot pictures that would be regarded as unethical and/or in contravention of the PCC Editors' Code.

Without naming any names, can you tell us who has told photographers to shoot pictures that would be regarded as unethical or in contravention of the PCC Editors' Code? Who puts that pressure on?
LORD JUSTICE LEVESON: I don't know.

A. I mean, as far as I'm aware, I wasn't there personally, but I've spoken to several people who were, and that's what I'm led to believe, so --

MS PATRY HOSKINS: Can I summarise your evidence: there was an agreement that photographers attending the Inquiry would stand behind barriers outside the exit that we walk through, yes?

A. Mm-hm.

Q. And the agreement was that they would remain behind those barriers and that's where they would obtain photographs and nowhere else, yes?

A. That was the agreement made between photographers and the court officials.

Q. You say this in your second statement: "Several photographers were ordered by their papers to get a picture of her [this is Ms Rowling], even if that meant suspending the agreement about only working from within the barriers. Others felt enormous pressure without hearing from their editors."

I don't want you to name any names or any photographs and nowhere else, yes?

A. Yes, I have.

Q. I know it's hearsay evidence, but they've spoken to you directly about it, have they?

A. Yes.

Q. Is there anything else that you want to say about that particular incident before I move on?

A. Only that the arrangement -- I've said this twice, but I think it bears saying again. The arrangement was made by photographers, who could see that there was going to be an issue. They took it upon themselves to make those arrangements. No one did it for them.

Q. Can we turn to page 9 of the first statement, please, behind tab 15. It's under the heading "The problems that the market for celebrity images are causing", and you explain in the second-to-last paragraph that people who look like press photographers and use much the same equipment as press photographers and whose pictures often end up in the press are causing much of the problem. You call them "celebrity-chasing amateur paparazzi -- or stalkarazzi, as Professor Greenslade refers to them". They're causing the profession a lot of problems and later on in this statement, you refer to their actions as "sometimes illegal and unethical". Can you tell us a bit about the illegal and unethical activities of these types of photographers that you're trying to describe?

A. They're very well described in some of the witness statements of some of the core participants in the first couple of weeks, but they do involve chasing people down the road, driving dangerously/illegally. They do involve initiating a reaction and a response from people to get different facial expressions, you know, in a kind of completely over-the-top way. They do involve trying to photograph women in compromising ways to show you either -- what they're wearing under their skirts.

Q. Lying on the pavement and taking photographs up their skirts?

A. Yeah, and you know, holding cameras in strange positions. Working in packs deliberately. Deliberately running in front of people. I mean, you know, hearsay, I'm afraid, but I've heard it second-hand that they've seen one photographer deliberately get into a fight with a celebrity so a second photographer, with whom they were working as a team, could get the picture of the fight and split the money. That is hearsay, but I'm pretty sure it's happened, having observed some of these guys at work.

Q. That particular incident might be hearsay but all the other incidents that you describe, have you witnessed those yourself?

A. I have to admit that I've only spent one night observing those yourself?

Q. That particular incident might be hearsay but all the other incidents that you describe, have you witnessed those yourself?

A. I have to admit that I've only spent one night observing those.

Q. That particular incident might be hearsay but all the other incidents that you describe, have you witnessed those yourself?

A. I have to admit that I've only spent one night observing those at work. This was about two years ago.

Q. That particular incident might be hearsay but all the other incidents that you describe, have you witnessed those yourself?

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1. will have read this section and I don't think we need to
2. ask you about it in any detail but I want to pick you up
3. on one matter, please. It's page 11, the second-last
4. paragraph. You're talking about French law and about
5. restrictive privacy rights in France. You're giving
6. a number of examples there and essentially saying that
7. the French privacy laws go too far in your opinion with
8. French privacy law, as we understand it -- clearly none
9. of us are French lawyers. We've spoken to photographers
10. who have worked in France and they say it's not
11. necessarily the laws, what it is, it's the
12. interpretation of the laws and the way that the news
13. organisations have chosen to function in France for fear
14. of contravening those laws that is actually the issue.
15. Q. Let me pick you up on one point. In the second-last
16. paragraph, you refer to two politicians, Mr Strauss-Kahn
17. and former president Francois Mitterrand. You say they
18. had hidden elements of their private life from view
19. using this law that, had it been known to the public,
20. might have cost them elections and therefore their jobs.
21. But have you considered whether or not there are
22. cultural elements which might mean that the French
23. may not need to know or may not have wanted to
24. know about the person --
25. A. Cultural elements notwithstanding, I mean, people who
26. are in favour of privacy law in this country talk about
27. French privacy law in a way that they seem to want to
28. import it -- not exactly wholesale, because they have
29. a different legal system, but to import huge chunks of
30. it. So it doesn't matter whether it's a cultural issue.
31. It's because if we imported a French privacy law here
32. without kind of huge references to our culture and our
33. legal system, then we would be in the same danger.
34. Q. Let's turn, please, to your four-pronged approach as the
36. A. I think we haven't set out a series of tests because, of all media -- not just newspapers but certainly
37. you know, this set of proposals was put together
38. reasonably quickly and we felt that until we'd had
39. a great long conversation about what we thought the
40. tests should be, then maybe we should just talk about
41. tests and let greater minds other than ours come up with
42. the solutions. But you know, the number of tests -- you
43. would speak to the photographer, say, "Where were you
44. when you took the picture? Did you engage in
45. conversation with the person concerned? Did the person
46. concerned ask you to stop taking pictures? Are you
47. aware of the PCC code of conduct?" or whichever code of
48. ethics that photographer is operating under. "Were you
49. aware of all the ethical and legal consciousies and do
50. you think that you abided by all of those
51. considerations?"
52. Q. All right, so essentially asking them a series of
53. questions with a view to finding out whether or not the
54. picture was taken in a way that might have invaded
55. someone's privacy? Isn't that what happens already, or
56. isn't that what should happen already?
57. A. I do not pretend to work on a picture desk. I don't
58. think that I'm the right person to answer those
59. questions.
60. Q. Okay. The second relates to UK press cards. You
61. say that essentially if someone held a UK press card,
62. then there would be a lower standard of checking and
63. proof because the photographer holding the press card
64. would have already performed tests as they were shot.
65. I think you're suggesting that if someone held a press
66. card, they would somehow be held in higher esteem than
67. someone who didn't hold such a press card, and you could
68. rely on the images produced by such a person rather more
69. easily. Is that fair?
70. A. I think that's a fairly good summation. I think -- the
71. UK press card scheme already requires that you have
72. a track record as a working journalist to get one, and
73. I think in parallel with part three of this four-pronged
74. approach, I think it would be fair to say that people
75. holding UK press cards, you know, should be held to
76. Of the opinion that you need a four-pronged strategy.
77. You say in the second paragraph that your board is
78. of the four-pronged strategy. I'm going to take you through each and ask you to
79. of the opinion that you need a four-pronged strategy.
80. You say in the second paragraph that your board is
81. necessarily the laws, what it is, it's the
82. interpretation of the laws and the way that the news
83. organisations have chosen to function in France for fear
84. Q. And you would not want it categorised in that way.
85. Bearing that caveat in mind, can you tell us about the
86. four. The first is having a system of clear and strict
87. tests applied before publication of any photograph. Can
88. you tell us about that?
89. A. Yeah, I mean, the duty should be placed on all editors
90.
a much higher standard of ethics because they would have
signed up to the relevant codes, and therefore
newspapers could use their work with a greater degree of
security and certainty, without having to perform
time-consuming and difficult series of tests.

Q. Thirdly, you say that the press card scheme could be
strengthened by having an enforceable code of conduct
which would include the suspension and cancellation of
cards. Presumably in situations where someone acted
unethically, they could have their press cards suspended
or cancelled? Is that the suggestion?

A. Absolutely. And actually, you know, I can make one
small kind of sub-correction here: the UK Press Card
Authority does already suspend and cancel cards. The
BPPA is a card-issuer and we have done that. So the
press card scheme already does have the ability to do
that, and re-reading this, it kind of implies that it
doesn't, and it does.

Q. Okay.

Finally, you would agree a simply outline about
equally which laws would apply to photographers when
they are going about their legitimate business.
Trespass, assault, intimidation, harassment and so on.
Can you just explain that to us briefly?

A. Yes. Sorry, could I just refer to a couple of notes
Page 21

I've made?

Q. Of course.

A. What we would be seeking really would be -- and I'm
quoting from myself here -- a simple and robust
explanation of the relevant legislation that recognises
and encapsulates best practice. A credit card size
pocket note, if you like, and pages on websites that
outline all of the relevant statutes that really could
take effect.

I realise that's not a simple task and I know we
have a roomful of lawyers here who probably would rub
their hands with glee --

LORD JUSTICE LEVESON: No, I think what the roomful of
lawyers would say is there's an enormously weighty tome
which does that exercise, and to get it onto one card
would defeat even the most erudite of them.

A. Okay, I'll take that for sure. But I mean certainly
kind of outlining which areas of the law photographers
could be in danger of breaching and hopefully, because
we're professionals, we would do the background reading
that goes behind all of that and kind of, you know, be
much more aware of what goes on.

Equally, you know, what we're trying to do here is
kind of -- by creating systems like this for
professionals, hopefully those aspiring professionals,

A. I think that would be a very fair assessment, yes.

LORD JUSTICE LEVESON: They're responsible for what they put
into their newspaper.

A. Precisely.

LORD JUSTICE LEVESON: If that photograph has been taken in
breach of the code of practice, they're responsible for
that breach, even if they didn't know about it?

A. I think that would be a very fair assessment, yes.

MS PATRY HOSKINS: You said there were two parts to your
answer.

LORD JUSTICE LEVESON: I think we've got the one.

A. I'm afraid --

MS PATRY HOSKINS: You're happy?

A. Yes.

Q. Thank you very much. Was there anything that you wished
to add? I think I've covered the points I wanted to
cover, but I want to give out opportunity to add
anything.
2 A. We came here today, at your kind invitation, wanting to
3 put forward our approach to help solve the problem. The
4 BPPA is an organisation of professionals and we want to
5 be part of the solution. We don't want to be seen as
6 part of the problem, because we don't feel that we are
7 part of the problem, and if any of our members are part
8 of the problem, then we would like to be able to sort
9 that out. You know, in the conclusions, we say that we
10 want to provide assurances to the general public that
11 professional journalists exist and our work is ethical,
12 legal and trustworthy, and I think that's important.
13 We've talked a little bit about the United Kingdom
14 press card authority, and I know that Mr Dacre's
15 evidence yesterday touched on this. The gatekeepers of
16 the organisations who form the UK Press Card Authority
17 are a deliberately diverse bunch and they operate in
18 such a way that no single person can have to apply for
19 that press card through one single route. So as
20 a photographer, I can get my press card through the
21 BPPA, I can join the NUJ, I might do it through the NPA,
22 and that's a really important principle because, you
23 know, if, as a photographer, you fall foul of one
24 particular organisation, you can still apply for a press
25 card through one of the others as long as you haven't
Page 25

committed offences and had your press card suspended.
2 That's an important point.
3 So we have quite a lot of the tools at our disposal
4 already. We have a body in the UK PCA that has a track
5 record, and also we have a group of people amongst
6 photographers who have a serious track record.
7 For example, we were involved in drawing up a series
8 of guidelines with the Association of Chief Police
9 Officers for the way that photographers and the police
10 work together on the street, and largely that works
11 rather well. That was done by us.
12 So, like I say, we want to be part of the solution
13 and that's our entire reason for putting up the series
14 of proposals in the submission.
15 MS PATRY HOSKINS: I'm very grateful to you.
16 LORD JUSTICE LEVESON: Mr Turner, thank you very much
17 indeed. Responsible photographers, like responsible
18 journalists, are not part of the problem and they do
19 need to be part of the solution. Thank you very much.
20 A. Thank you, sir.
21 MR JAY: Sir, the next witness is Mr Harding, who has been
22 recalled, please.
23 LORD JUSTICE LEVESON: Thank you.
24 MR JAMES HARDING (recalled)
25 LORD JUSTICE LEVESON: Mr Harding, you're still subject to
Page 26

the oath you took when last you came.
1 A. Very good.
2 LORD JUSTICE LEVESON: I'm grateful to you for returning.
3 You will appreciate that my interest in the contents of
4 your second statement is not prurient or seeking to
5 unpick that particular decision, but rather the wider
6 perspective which falls within my terms of reference.
7 A. I do. And Lord Justice Leveson, if you full allow me,
8 there is one thing I would like to say, which is in the
9 last couple of weeks I've learned a great deal more
10 about what happened in this incident. As editor of the
11 paper, I'm responsible for what it does and what its
12 journalists do, and so I want to say at the outset that
13 I sorely regret the intrusion into Richard Horton's
14 email account by a journalist then in our newsroom. I'm
15 sure that Mr Horton and many other people expect better
16 of the Times; so do I. So on behalf of the paper,
17 I apologise.
18 LORD JUSTICE LEVESON: Thank you, Mr Harding. You will
19 appreciate that nothing that you're discussing today is
20 relevant to the litigation between Mr Horton and the
21 Times. If Mr Horton wants to pursue some remedy, that
22 will be a matter for him --
23 A. Of course.
24 LORD JUSTICE LEVESON: -- to take advice and to do what he
Page 27
<table>
<thead>
<tr>
<th>Q.</th>
<th>I think the evidence which supports this, and indeed it ties it into a date, namely 19 May 2009, is page 1 of exhibit JH4.</th>
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<tbody>
<tr>
<td>A.</td>
<td>Yes.</td>
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<tr>
<td>Q.</td>
<td>This is from Mr Foster to Mr Barrow, who you tell us was the then home news editor, to whom Mr Foster reported:</td>
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<td>A.</td>
<td>Mm.</td>
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<tr>
<td>Q.</td>
<td>&quot;... has sent typically polite email below. Am trying to talk it out of paper this Saturday for three reasons: (1) am away this Friday, (2) want a little more time to put ducks in a row and pix ...&quot;</td>
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<td>A.</td>
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<td>Q.</td>
<td>&quot;... (3) want little more space between the dirty deed and publishing.&quot;</td>
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<td>I'm not suggesting for one moment, Mr Harding, that you saw this at the time. You've done some detective work and --</td>
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<td>Q.</td>
<td>-- the picture has been pieced together.</td>
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<tr>
<td>A.</td>
<td>Correct.</td>
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<td>Q.</td>
<td>In paragraph 9 of your statement, you tell us that Mr Foster also informed Mr Alastair Brett, the then legal manager of the Times and the Sunday Times, and you mentions the legal manager of the Times and the Sunday Times, and you refer to &quot;Alastair on side. SB ...&quot;, that's Mr Bevan, who is referred to in the lower email.</td>
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<td>A.</td>
<td>Correct.</td>
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Q. Yes. It goes slightly further than that. If you go to page 7, please, Mr Foster to Mr Barrow:

"So have spoken to Horton [he, of course, is NightJack, who doesn't confirm or deny it] and says he will lose his job ..."

So that in itself was a pretty strong clue that he'd found the right man, but of course he knew that anyway because he'd been into his email account. I read on: 

"... even though he says he's gone nothing wrong."

So the evidence was there, from Mr Foster's perception from the email account, and he'd also told this conversation with Mr Horton himself, who neither confirmed nor denied the attribution. That is right, isn't it?

A. Well, I understand -- I think we've jumped a little bit ahead of ourselves. My understanding is that what has happened is Mr Foster has gone to Martin Barrow. Martin Page 33

Barrow has said, "There's an issue here. You need to go see Alastair Brett, the lawyer." Once Alastair Brett then is -- according to later emails, in his words, "tears a strip off Mr Foster" and says if he wants to pursue this story, he has to do so by proper journalistic endeavour, Mr Foster then does that and then, as would normally be expected by a journalist at the paper, seeks to confirm his identity by calling him directly. As I understand it, Mr Brett also insisted that Mr Foster would do that. Again, I piece that together from the emails that we have here.

Q. Yes, but what was said by Mr Brett and Mr Barrow to Mr Foster, namely: "Obtain your information by legitimate means (after having obtained it first illegitimately)", is that a journalistic practice that you would support or repudiate?

A. Thank you for the question, Mr Jay. No, of course not. To be absolutely clear, if Mr Foster had come to me and said that he had done this (a), we would have taken the disciplinary action that we did take and I would have told him immediately to abandon the story, because regardless of what information he did or didn't get, as I say, it lays the newspaper wide open to that charge. So no, I squarely do not approve of what happened.

Q. Is this right: if you were ever in possession of sufficient information to lead you to believe that the original basis of the story had been email hacking, you would not have published; is that correct?

A. Yes. I think -- let me just address this. This is -- there's a danger that we get ourselves into a world of hypotheticals. If X, would you have done why?

I imagine we'll get to the conversation about the decision to publish, and we should address it within the context of, I guess, a number of issues that we faced. One was the public interest discussion. Two was the High Court judgment. Three was the fact that Lancashire Constabulary had already been contacted, and then four, in addition, was the behaviour of Mr Foster.

Q. Yes. Working through JH4 slightly further, Mr Harding, I think we can probably move ahead to page --

A. Mr Jay, sorry, I should say one other thing.

Q. Of course.

A. Of course you are -- behind your question is the subject of a discussion we had when I was here last, which was about: where do you weigh the public interest issue versus a level of intrusion? I think that I should also be clear that if Mr Foster had come to me and said, "I would like to seek unauthorised access to a person's email account in order to identify a police officer as an anonymous blogger", I would have said that I did not believe that that intrusion was warranted in the public interest.

I do believe strongly that this story had a public interest, but if he'd come to me in advance, that would have been the position that I'd have taken. Clearly, he didn't come to me in advance.

Q. Thank you.

It appears that what happened is that over the course of the three days between 27 May and 30 May, Mr Foster was beavering away at publicly available information. The code was cracked, as it were, about lunchtime on 30 May, because if you go to page 14 of JH4, Mr Foster to Mr Brett:

"Alastair, I cracked it. I can do the whole lot from purely publicly accessible information."

Then Mr Brett comes back, top of the page:

"Brilliant -- that may be the golden bullet. Can you set it out on paper?"

We see the golden bullet at page 15, where there was reference to the brother's publicly accessible Facebook page.

A. Yes.

Q. Then what happened, to go back to paragraph 11 of your witness statement, Mr Chappell, the then managing editor, learnt of the existence of the litigation on Page 36
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1. 3 June, and there's an email which evidences that.
2. There was a conversation between Mr Chappell and
3. Mr Brett on 4 June, and Mr Brett came to see Mr Chappell
4. later in the day following the hearing.
5. Mr Chappell believes it was at this meeting, in the
6. afternoon of 4 June, after the hearing, therefore, in
7. front of Mr Justice Eady, that he was first informed by
8. Mr Brett that there was a concern that Mr Foster had
9. gained unauthorised access to an email account and that
10. Mr Chappell was first briefed by Mr Brett on the
11. litigation.
12. To be clear, then, as to the sequence of the
13. litigation -- because this was going on, as it were, in
14. the background, but some might say in the foreground --
15. if we could go to JH3, Mr Harding --
16. A. Yes -- and just to be clear, Mr Jay, you do understand
17. the significance of that: that the way in which
18. a newspaper works -- the senior management of the
19. newspaper are the editor, the deputy editor and the
20. managing editor. So the first time that anyone in the
21. senior management of the paper becomes aware of the
22. contents of this litigation or of the concern about the
23. accessing of the email account is after Mr Justice Eady
24. has heard this case.
25. Q. But before Mr Justice Eady had delivered judgment in the

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1. MR JAY: We do need to touch on that, Mr Harding. Page 4 of
2. Page 37

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1. JH3 is an email contact with his opponent at Olswangs,
2. Mr Dan Tench, whom it appears he's on first name terms
3. with, so obviously they've done cases against each other
4. in the past. He warns him that he's going to publish,
5. so this is to give Mr Tench's client the chance to apply
6. for an injunction, which is entirely appropriate.
7. Page 5, Mr Tench says:
8. "I am instructed to seek an injunction."
9. Mr Tench gave a statement in support of his
10. application, dated 28 May. If you go to page 13,
11. please, we can see the start of the statement. At
12. page 17, paragraph 20, he says at that point:
13. "The claimant has no idea how Mr Foster identified
14. him as the author of the blog."
15. Do you see that sentence? The last sentence of
16. paragraph 20.
17. A. Yes.
18. Q. There were then proceedings, no doubt conducted at very
19. short notice and therefore everybody was in a bit of
20. a rush, before Mr Justice Teare on 20 May.
21. A. Yes.
22. Q. The proceedings are transcribed at page 20 and
23. following. The Times' counsel was Mr Barnes. What
24. happened is that the proceedings were adjourned, but
25. what Mr Barnes submitted to the court we can see at the

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1. manager takes the case to a High Court without informing
2. the editor, the deputy editor or the managing editor.
3. LORD JUSTICE LEVESON: I must admit that caused me surprise
4. Is that a systemic thing that needs to be addressed?
5. A. I -- sorry, I only laugh because when you say it caused
6. you surprise, you can imagine what it caused me.
7. I don't believe it's systemic. I should say this:
8. Mr Brett is an extremely distinguished and
9. well-respected lawyer and had been the lawyer for the
10. paper for many, many years, and I think on quite
11. principled grounds believed that he wanted to take this
12. case, that it was important to address the issue of
13. creeping privacy injunctions and the issues that raises
14. for press freedom, and I think in particular there were
15. issues that he thought were important in terms of
16. anonymity on the web. As you will see in one of his
17. notes, he deeply apologises for the fact that he didn't
18. raise it with us before he took it to court.
19. LORD JUSTICE LEVESON: Yes, well, I'm very pleased that he's
20. considering the ethical considerations that might apply
21. to the press. The extent to which he gave thought to
22. the ethical considerations relevant to the court is
23. perhaps another matter.
24. A. It is.
25. MR JAY: We do need to touch on that, Mr Harding. Page 4 of

Page 39

10 (Pages 37 to 40)
Mr Jay: Yes. Page 46 now Mr Harding. This is Mr Tench.
I think that -- these were lawyers acting on behalf of
the Times and at the instruction of the company's legal
manager. I've now read them all, and I have
instructing solicitors and the journalist, who is here,
are that the proposed coverage that will be given, which
would involve the disclosure of this individual's
identity, is derived [and then this] from
a self-starting journalistic endeavour upon the granting
of the Orwell Prize. It is a largely deductive
exercise, in the sense that the blogs have been examined
and contemporary newspaper reports have been examined."
That, sadly, was entirely misleading, wasn't it?
A. Mr Jay, as you know, I'm not a lawyer, and I've read now
all of these papers. I understand that at this stage
the issue being raised was about breach of confidence.
As you'll see when you get through the legal
correspondence, there are more specific allegations are
made by Mr Horton's lawyers about access to the email
account, and I'm sure we'll come to those and address
those.
Q. But what's being said here, in the context of breach of
confidence, I accept, and in the context of what has
been called the second stage, the weighing of the public
interest, is that this was a "self-starting journalistic
endeavour", "a largely deductive exercise". So
statements of fact were being put before the court which
were incorrect, weren't they?
A. I think that -- these were lawyers acting on behalf of
the Times and at the instruction of the company's legal
manager. I've now read them all, and I have
writing to Mr Brett. Mr Tench is onto the issue. He
draws attention to what was said during the hearing --
this is about four lines down:
"The statement that our client was identified by
your journalist as the author of the blog 'largely by
a process of deduction' -- this suggests that our client
was so identified in part by a process other than
deduction, most obviously, we assume, by as source."
A. Mm.
Q. Then on the next page they ask for a statement from
Mr Foster verified by a statement of truth which sets
out various matters, and in paragraph 2, "confirm that
he did not, at any time, make unauthorised access into
any email account owned by our client".
Then he said for a number of reasons, I paraphrase,
a suspicion arises that he did.
A. Yes, correct.
Q. So the issue, as it were, was clearly joined at that
stage.
A. Correct.
Q. Mr Brett's reply, on 2 June at page 49 -- he provides
a copy in draft of Mr Foster's witness statement and he
says, exactly level with the lower hole punch:
"I therefore attach a copy of it, as it sets out
how, through a process of elimination and intelligent

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<td>Q. And precisely how did that I don't think it's necessary to go into in any detail, but the point's already been made that he had the answer before he started.</td>
<td>LORD JUSTICE LEVESON: He also explains that there's some reason for that suspicion, because when he tried to log into his email account, his password wasn't accepted, suggesting that somebody had been into the account and changed it, so he had to reset the password.</td>
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<td>A. And do you know whether he did or didn't have a confidential source? I --</td>
<td>A. Correct.</td>
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<td>Q. I'm afraid that's not a question I can answer.</td>
<td>LORD JUSTICE LEVESON: Yes.</td>
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<td>A. I don't know either. I'm just --</td>
<td>MR JAY: The claimant's skeleton argument starts at page 83.</td>
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<td>Q. His confidential source was in fact his own actions in accessing the email. It was entirely disingenuous, with respect.</td>
<td>This is for the return date of the hearing now before Mr Justice Eady, the application for an injunction.</td>
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<td>A. Yeah.</td>
<td>At paragraph 4.3 at page 86, the point is made on behalf of the claimant: &quot;It is noteworthy that Mr Foster does not (a) confirm that he's not accessed the email account used at the blog, (b) explain how he found the claimant's mobile telephone number and the details of the identity of the claimant's literary agent.&quot; The Times' skeleton argument starts at page 94.</td>
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<td>Q. The Times would be the only persons who would know whether he had a confidential source, but the inference is that he didn't.</td>
<td>I think I can move straight to page 96 under the heading &quot;Breach of confidence&quot;. It's the last sentence in paragraph 7. The assertion is made, again on instructions: &quot;Mr Foster was able to establish the claimant's identity using publicly available materials, patience and simple deduction.&quot;</td>
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<td>LORD JUSTICE LEVESON: Doesn't really matter, because, as I say, it's not this particular incident that necessarily concerns me.</td>
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<td>A. Right.</td>
<td>12 (Pages 45 to 48)</td>
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<td>MR JAY: The next piece of evidence, page 68, second statement of Mr Tench of 3 June --</td>
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London EC4A 2DY
the claimant has a reasonable expectation of privacy -- essentially because blogging is a public activity.

Further, even if I were long about this, I consider that any such right of privacy on the claimant's part would be likely to be outweighed at trial by a countervailing public interest in revealing that a particular police officer has been making these communications."

It might be said that the Times would have won anyway, even had Mr Justice Eady known of the manner in which the information was first obtained, because the claim failed at stage 1. I'm not saying that that is the ineluctable conclusion but it's certainly a possible conclusion, because it's only at stage 2, when you're balancing the public interest against other factors, that the circumstances in which the information has been obtained will be directly relevant. I don't put that forward as writ in stone, but I do put that forward as a possible interpretation of the law in the light of that particular conclusion.

Can I take the story forward and then go perhaps back in time to 4 June, because we left it, as it were, at paragraph 11, Mr Harding, with the conversation between Mr Chappell and Mr Brett after the hearing.

A. Can I just make one point, Mr Jay, if I can?

Q. Certainly.

A. I've gone through a whole exchange of legal correspondence and legal arguments, which, as I said, I've read in the past few days. I hope you appreciate that I'm not a lawyer, and, as you'll see in the witness statement, what I try to do is reflect the thinking of Mr Brett, who was the company's legal manager, in his decisions and in the instructions that he gave.

I can make a journalist's observation on the way in which this was conducted, and it does seem to me very clear that Mr Horton's lawyers raised stage and again the issue of their concern about this email access, that Mr Brett tried to push them off with this claim that that was "a baseless allegation", and then on every instance that it was raised after that, there was no attempt to answer it.

As I say, I'm not a lawyer. I am responsible for what happens in the newsroom of the Times, I'm not responsible for what happens in the courtroom, but I do feel that while the company handles legal affairs, somebody owes Mr Justice Eady and Mr Horton an apology, and I think you'll have seen I've written to Mr Justice Eady to apologise for the fact that this was not disclosed to the court.

Q. In paragraph 20 of your witness statement, if I take this slightly out of my intended sequence, you say...
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1 Q. "David, you asked me to do you a memo on NightJack and events to date.
2 "I first saw Patrick Foster on or about 19 May when he told me he'd been able to identify real live cases
3 that an anonymous police blogger had been writing about. Patrick felt this was seriously off side and probably
4 a breach of the officer's duty of confidence to the force. He therefore wanted to identify the guy and
5 publish his name in the public interest. He then said he had gained access to the blogger's email account and
6 got his name." Well, that's crystal clear, isn't it?
7 A. It is, yes.
8 Q. "This raised immediate alarm bells with me but I was
9 unaware of the most recent law governing email
10 accounts."
11 Then he said he phoned a barrister's chambers, got
12 to speak to someone who was a very bright junior
13 barrister and said that -- I'm paraphrasing now -- it
14 looks like a breach of Section 55 but there's always
15 a public interest defence.
16 A. Yes.
17 Q. Which we know about. Pausing there, although this is a
18 point of law, really, under the Computer Misuse Act,
19 which this was also a breach of, there isn't a public
20 Page 57

interest defence. That's made clear subsequently.
2 A. No.
3 Q. The next paragraph:
4 "After this conversation, I told Patrick: 'Never
5 ever think of doing what you have done again.' I said
6 he might just have a public interest defence if anyone
7 ever found out how stupid he'd been. He apologised and
8 promised not to do it again. Further, he said he would
9 set about establishing Horton's identity without
10 reference to the email account. I did though say he
11 would have to put it to Richard Horton that he was
12 NightJack."
13 We know that occurred on 27 May, I think, and
14 then -- I paraphrase -- over the following days, he
15 continued to investigate NightJack. He describes the
16 process of deduction.
17 At the bottom of the page:
18 "Last Thursday afternoon, our barrister told the
19 court that through a process of deduction and
20 elimination, Patrick could identify Horton as NightJack,
21 but it looked as though we would lose the application
22 because Horton's silk was convincing the judge that he
23 was entitled to have the information protected by the
24 law of privacy and confidence."
25 So he asked for an adjournment -- I paraphrase --

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1 LORD JUSTICE LEVESON: You'd better read the middle of the
2 bottom paragraph.
3 MR JAY: Certainly.
4 LORD JUSTICE LEVESON: Which is:
5 "Given my own failure to spot what could be a breach
6 of section 1 of the Computer Misuse Act, I am not in
7 a position to advise sensibly in this case, but I would
8 suggest that Patrick is given a formal warning that if
9 he ever accesses anyone's computer ever again without
10 authority, whether it's in the public interest or not,
11 he will be sacked. You might add that the only reason
12 he has not been sacked now is because he was told he
13 might have a public interest defence if he was pursued
14 under the DPA."
15 So that's a false premise as well. Anyway.
16 MR JAY: So the following day Mr Harding -- and now we're
17 back to paragraph 13 of your statement.
18 A. Yes.
19 Q. -- you say:
20 "I personally first came to hear about the matter
21 the following day, 5 June 2009, when Mr Chappell raised
22 the matter with me in a meeting. In this meeting,
23 Mr Chappell told me about the story, and that there was
24 a concern that Mr Foster had accessed Mr Horton's email
25 account."
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<td>Q. So you must have known enough then to know the gravamen of the case against Mr Foster, namely that he'd unlawfully accessed an email account? That must be right, Mr Harding, mustn't it?</td>
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<td>A. Well, as you know, one of the issues I've had is I didn't know exactly what he had done. The reason for this -- and I will keep going back to it -- is the issues in this case were all coming to me at the same time, ie why were we seeking to identify an anonymous blogger, what was the public interest in that argument, why had a case been taken to the High Court without me being informed, and where in this process did, you know, Patrick Foster's -- at that stage, I didn't know whether it was an attempt to access an email account or successful attempt to access an email account -- fit in the investigations? All of those things came at the same time.</td>
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<td>Q. Then the sentence we've just been scrutinising:</td>
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<td>&quot;The suggestion that he had accessed someone's email account was a matter of concern to both of us&quot;.</td>
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<td>So your state of mind on 5 June was clearly someone was telling you that Mr Foster had accessed someone's email account, wasn't it?</td>
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<td>A. That is what is -- as I say, I can't recall exactly what was said in that meeting.</td>
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<td>Q. All right. Then you say:</td>
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| 9       | "It was clear that we had to deal with Mr Foster's behaviour."

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<td>I</td>
<td>I was not aware of this fact. So I think it may have been the case that in the short conversation that we had, the first focus my attention was: what case, on what grounds, why and why wasn't I informed? And we probably didn't drill down probably into exactly what Mr Foster had done.</td>
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<td>Q. But the key message from the email we've been looking at was that Mr Foster had gained access to the blogger's email account. That must have been something that Mr Chappell -- it must have resounded with him and it must have been something, surely, which he'd communicated to you, Mr Harding; isn't that right?</td>
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<td>A. A. I can't recall the exact contents of that conversation. There's a reference to the meeting in my diary and there's a reference to the meeting having happened in a follow-up email, but I don't want to speculate on what was in that conversation.</td>
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<td>Q. You do say in your statement:</td>
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<td>&quot;The suggestion that he had accessed someone's email account was as matter of great concern to both of us.&quot;</td>
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<td>A. Yes.</td>
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<td>Q. So the message of unlawful accessing of an email account, at least that message was transmitted to you, wasn't it, by Mr Chappell?</td>
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<td>A. Well, the issue of whether or not it was lawful, I don't know. I would have taken the view immediately that this was not right, this was not the way in which we pursued stories and certainly we had no business doing it without being consulted in advance. Exactly the nature of the conversation, I don't know. I just can see from the follow-up emails that we decided that we were immediately going to take disciplinary action.</td>
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1. A. Mr Jay, I have to own my responsibility and my failure here. As I say in the statement, I can see now that we paid insufficient attention to this matter at the time.

2. Q. Finally on paragraph 13, you say:

3. "We agreed that we would await Mr Justice Eady's judgments before doing that."

4. A. Yes.

5. Q. Don't you think, though, that given that Mr Justice Eady had not handed down his judgment, it might be a sensible idea to obtain legal advice, and if Mr Brett no longer could give you that independent advice, as he was suggesting in an email, get legal advice as to whether you should go back to Mr Justice Eady and tell him what the true facts were?

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1. A. I'm sorry, Mr Jay, you're asking me to make judgments on things I didn't know about. I didn't know about this email. I didn't know about the advice that Mr Brett was giving. How would I be able to go back and ask for different advice when I didn't know the advice that was being given?

2. Q. But you did know that the email account had been hacked into. We're agreed about that, aren't we?

3. A. Sorry, I keep trying to be clear. You're saying to me:

4. "If we could strip away the fact that there was a political crisis going on, and if you could strip away the fact that you had not been informed of this litigation at all, if you could take those things out of the equation, would you not then have appreciated ed fully?"

5. But the reality is that wasn't the situation that I was confronted with, and as I've tried to say to you, I don't recall exactly what was said. What I have tried to acknowledge is that when this was brought to me, when it was clear that there was a problem of behaviour and not even being clear exactly what the problem was, we dealt with it. We took really swift action.

6. Mr Chappell was informed. Mr Chappell came to tell me. We immediately decided that disciplinary action would be taken.

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1. A. Much worse than that, Mr Jay. I had no idea that the case had been brought to court. I didn't know what the legal correspondence was, I didn't know who had been instructed, I didn't know what the instructions were, I didn't know the subject matter in the case. So all of this is after the fact.

2. Q. It would be obvious to a lawyer -- but you're not a lawyer -- that Mr Justice Eady could not have been told that the email account had been unlawfully hacked into, because had he been told that, you would have got to know about it because he might have exploded, but that degree of ex post facto rationalisation, obvious to a lawyer, might not be obvious to everybody.

3. A. Right.

4. Q. May I move on to what happened approximate ten days later, because the judgment was provided in draft, as I've said and you say at paragraph 23, and then there was a meeting on 15 June to discuss the issue of publication. The best route into that is JH4, pages 47 and 48.

5. A. Okay.

6. Q. The first email at page 47 is the one at the bottom of the page, timed in the morning of 14 June. This is Mr Chappell to Mr Blackmore, where you're beginning to give consideration, or your paper is, to the public interest considerations:

7. "There are three things to consider:

8. "(1) What is the editorial value of this story?

9. "(2) Given there is a significant legal precedent in this, we'll want to run something. Given the trouble it's caused, are we now cutting off our own nose to see spite our faces if we decide the story isn't that interesting? Are we now stuck in a position of having to run something because of the legal processes?"

10. Then the third issue is:

11. "What do we do about Patrick?"

12. Then the next email -- I am not sure we're necessarily concerned with --

13. A. I should say that pretty much reflected the nature of the conversation, I think, the following day on Monday, 15 June.

14. Q. Am I right that by this point you were aware that...
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1 Mr Foster had hacked into the email in order to gain the identity of NightJack?
2 A. No. I keep on trying to make it point to you, Mr Jay.
3 I was not aware of exactly what he had done. I was aware that we had a concern about what he had done, but I was not aware of exactly what he had done, and that's remained the case, to be honest, until we've got all of these emails and all of this documentation in front of me in the last couple of weeks.
4 Q. I think you were -- or may I ask the question less directly: were you involved in the decision whether to publish this story in the public interest?
5 A. Yes.
6 Q. How did you feel you could reach that decision without exploring further into the circumstances in which the story had been initially obtained?
7 A. So again, we'll try to go back to June 15, this is, 2009, and just again to give some context, this is in the aftermath of the Iranian elections. We had a reporter in Tehran and, do you remember, it turned quite violent. So this was what was occupying us on that day.
8 We had a meeting, as I remember, to discuss this issue. The first and biggest one was: what was the public interest argument? And of course, what was very frustrating was that's exactly the conversation we should have had in advance of going to the High Court.
9 We had it after the fact and after the fact that Mr Eady's judgment was being handed down, but it was an important argument that we had to address, because on the one hand, some people said, "Why are we trying to identify someone who is essentially a citizen journalist who is an anonymous blogger? Surely, if you like, he's one of us?"
10 And on the other side there was a question which was: here is a police officer who appears to be in breach of his police duties and also there is a real question about this kind of commentary made anonymously on the Internet, the whole issue of anonymity on the web, and having listened to that debate, I took the view that this was -- and still believe that this was firmly in the public interest. This was what dominated that conversation.
11 The second issue was: what do we do about the fact that this case has been taken without our knowledge to the High Court? What do we do if we've taken up the time of the High Court, Mr Justice Eady has ruled that this is in the public interest, we are thereby enabling everyone to publish the identity of NightJack, but more importantly, will the Times not then get known for bringing vexatious lawsuits to the High Court if we don't honour that judgment?
12 Third, there was a question which was: the reporting had already led to Mr Horton's identification within the Lancashire Constabulary, and fourth, we believed we had a behavioural problem with one of our reporters. We were going to have to address that.
13 The way it had been presented to me -- and that's obviously different with hindsight but the way it had been presented to me was there was a concern about Mr Foster's behaviour but that he had identified him through entirely legitimate means. On that basis and in the light of all of those four things, I took the decision to publish.
14 Q. If the focus of your deliberations was the public interest, wasn't it all the more important to weigh into the balance the circumstances in which the information had been first obtained?
15 A. I think what I've tried to explain was the arguments of the public interest, if you like, the balance of the arguments was not about public interest versus privacy; it was: was this in the public interest? Ie, public interest versus rights of anonymity on the web and the nature of the blogosphere. That was the nature of the conversation we had.

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1 Q. That's raising the debate to quite a high level of abstraction, because ordinarily, if you're considering the public interest, you would want to know the circumstances in which the information was obtained. If it was obtained by traditional methods of subterfuge which weren't particularly intrusive, that would weigh quite lightly as a countervailing factor in the public interest but if it was obtained illegally, then surely the public interest balance comes down -- or arguably comes down in a rather different place, doesn't it?
2 A. No, I appreciate what you're saying, but what I'm trying to explain is that -- actually, no, this was not a high level of abstraction for us. For all journalists, we are really trying to understand the nature of what we do and the nature of information on the Internet, and how we interact with that kind of information on the web. So actually the interaction between a newspaper and the blogosphere was a very real issue.
3 In this case, we took the view -- I took the view -- that this was a police officer in breach of his police duties. There were questions about what the information that he was putting into the public domain would do. That was the focus of our thinking.
4 Q. One possible insight or evidence, rather, into the subject matter of your discussions may be gleaned from

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25 Mr Horton's email account for the purposes of this story", I would have said no. If Mr Brett had come to me and said, "Mr Foster has done this; can he continue to pursue the story?", I would have said no. If Mr Brett had come to me and said, "Do you think we should go to the High Court, given the circumstances of this story?", I would have said no.

The problem was they came to me all after the fact and I had to make a decision, which was: what is the public interest in this story? And I believe it was strongly in the public interest. What are the consequences of having been to the High Court? What are the consequences of the fact that this had been raised with Lancashire Constabulary and how do you fit in the issue of Patrick Foster's behaviour within that? And all I can tell you is that the judgement I came to was that I decided to publish.

Q. Can I ask you whether the formal warning letter that was written to Mr Foster by the managing editor at page 59 of JH4 --

A. Yes, yes.

Q. -- whether the penultimate paragraph at page 60 correctly represents the position. The point is made there:

"By your actions, the Times was placed in a position where it had to run the story, despite misgivings of Page 75

19 (Pages 73 to 76)

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1 informed Mr White that this had happened.
2 LORD JUSTICE LEVESON: Yes.
3 A. We were all --
4 LORD JUSTICE LEVESON: But then you had to make some
decisions, didn't you?
5 A. Mm.
6 LORD JUSTICE LEVESON: And you were bothered about it, and
indeed you're discussing whether it might have, in
fairness to Mr Justice Eady's judgment in favour of the
Times, been only appropriate to publish.
7 A. Yes.
8 LORD JUSTICE LEVESON: But the person who could have
provided you with a window on it --
9 A. Yes.
10 LORD JUSTICE LEVESON: -- was the person who had fought it
for you.
11 A. I didn't know that Mr White had fought it for me.
12 LORD JUSTICE LEVESON: I know, I know, I know.
13 A. When you look back at all of this, sir -- I really hope you
understand -- it's terrible. I really hope you appreciate that. I know that as keenly as you do. But I also hope you appreciate that the reason we're here and the reason we're discussing this is that we take this Inquiry very seriously, and as a result -- and every time we've learnt new things about this, we've brought this to your attention, and that's the reason that we're addressing these issues now.
14 LORD JUSTICE LEVESON: That is, of course, very important.
15 MR JAY: A few other points, Mr Harding. You've drawn to our attention -- indeed, I read it at the time -- the piece in the Times on 19 January of this year, which is the second page of JH1.
16 A. Yes.
17 Q. I've been asked by someone else to put this to you.
18 A. Where are we?
19 Q. Last page of JH1.
20 A. Yes. Yes, yes.
21 Q. It's a piece by your media editor. The second column, four lines from the bottom:
22 "The role the hacking played in Mr Foster's investigation remains unclear."
23 A. Yes.
24 Q. "Mr Foster identified Mr Horton using a legitimate process of deduction based on sources and information publicly available on the Internet."
25 Well, are you entirely happy with that sentence, "remains unclear"?
26 A. But, Mr Jay -- so can I try and explain the process here?
27 Q. Yes.

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20 (Pages 77 to 80)
was brought to me, we confronted it and we said this kind of behaviour is unacceptable. We gave him the strongest possible sanction short of dismissal, we gave him a formal warning for gross professional misconduct, and because we believed we'd dealt with it, we didn't look back or look into it enough and didn't realise that there was looming, as we've since discovered, this whole issue about the conduct of litigation.

LORD JUSTICE LEVESON: Except, except, except -- and I appreciate that it's easy now to look backwards -- it was made abundantly clear that had somebody joined the dots together and realised that this was an offence under the Computer Misuse Act, which did not have a public interest defence, the Times would have taken a different view, and yet that information was known to Mr Brett.

A. Lord Justice Leveson, the whole story is about information that didn't get passed through, and as you remember, when we spoke last time in this room, one of the things that we discussed was the nature of an audit trail, and I said to you that I believed that the way that this should work is that any time a journalist goes to speak to a lawyer, it should be logged in the managing editor's office, and my thinking is -- this is not just related to this case, but generally -- that is a much more effective way of making sure that issues of concern and issues of legality are immediately brought to the attention of the management of the newspaper. I should say that if we'd had that process in place then, I'm sure the alarm bells would have gone off much sooner.

MR JAY: Who was it, though, who would have called for or instituted a formal investigation? Would it have required your imprimatur or could it have been done by Mr Chappell?

MR JAY: Okay. Thank you very much, Mr Harding. I appreciate that you've brought all this to my attention. I'm grateful. Thank you.

A. Thank you very much indeed.

LORD JUSTICE LEVESON: I think we'll take a little break.

MR JAY: Yes. We may have to take the next witness out of sequence because of the video-link and the fact that there's only a limited window of opportunity.

LORD JUSTICE LEVESON: When it the window of opportunity?

MR JAY: It's closing in -- the message is, subject to your view, if we could take the video witness next.

LORD JUSTICE LEVESON: Yes. I'm sorry to Mr Mohan.

(A short break)

MS PATRY HOSKINS: Sir, we have Mr Morgan. Can I just check that Mr Morgan can see and hear us. Mr Morgan?

A. I can see you, yes.

Q. You can hear me all right?

A. Yes.

LORD JUSTICE LEVESON: Thank you very much indeed for taking part in this exercise. I'm very grateful.

A. Thank you, my Lord.

MS PATRY HOSKINS: Mr Morgan, I understand that you may have an affirmation that you wish to read out. Do you have that in front of you?

A. Yes, I do.

MR GARY MORGAN (affirmed)

Questions by MS PATRY HOSKINS

MS PATRY HOSKINS: Could you state your full name to the Inquiry, please?

A. My name is Gary Morgan.

Q. You provided a statement to the Inquiry, Mr Morgan. Can you confirm that the contents of it are true and accurate to the best of your knowledge and belief?

A. Yes, I can.

Q. Mr Morgan, you explain at paragraph 1 of the statement that you are the senior vice president of Splash news and picture agency.

A. That's right.

Q. We're booming sound. Just pause for a moment.

LORD JUSTICE LEVESON: Carry on and we'll see.

MS PATRY HOSKINS: You explain at paragraph 5 your career history, and if I can just summarise it in this way: you are originally from the UK. You worked as a journalist with an agency. You then became a staff reporter on the Today newspaper. After that, you travelled and you met a gentleman called Mr Smith in LA in the course of the year you were there. He used the business name Splash. You joined him when you were 27 and then you have stayed since that time with Splash. Is that --

A. That's right.

Q. -- an accurate summary? It has now developed in the US and the UK, and you've held the position of chef executive officer from 1996 until 2011. From that point on, you've been senior vice-president of Splash news and picture agency.

A. That's correct.

Q. I've correctly summarised your career history. Thank
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1. Q. In terms of freelancers -- and that's the only piece of
2. A. That's correct, yes.
3. Q. Splash also has a number of websites, you explain to us.
4. A. Yes. We have about 40 staff photographers and the rest
5. Q. I'll pass over them by and large, except for the one
6. A. That's correct, yes.
7. Q. People-paparazzi.com is one of your websites, which is
8. A. Yes, I do.
9. Q. Finally, as the head of a celebrity photographic agency,
10. A. Well, as far as staff are concerned, we have a -- we
11. Q. You explain that you set up in California initially, but
12. A. I would say certainly there's an incentive to get
13. Q. I mean is: when you are selling photographs to the
14. A. That's right, yes. It is.
15. Q. Let me ask you then about the guidance that you give to
16. A. Yes, I think both. I'll come on to ask you about them specifically in a moment, but
17. Q. Well, UK-based photographers -- obviously the
18. A. Yes. We have about 40 staff photographers and the rest
19. A. That's correct.
20. Q. Now, please, describe very briefly how
22. Q. As a consequence, Mr Morgan, am I right to say that
23. Q. In the public eye in circumstances that might be
24. Q. As a consequence, Mr Morgan, am I right to say that
25. Q. That is a fair assessment, yes.

Page 85

1. Splash operates, what it does, how many people it
2. employs, paragraph 6 onwards of your statement, which
3. you should find -- do you have a bundle which has behind
4. it tab 10, your statement?
5. Q. I'm going to now, please, describe very briefly how
6. Q. Do the staff photographers stay in the US or do they
7. travel to the UK?
8. Q. Your photographers -- yes, I think both. I'll come on
9. to ask you about them specifically in a moment, but
10. Q. Let me ask you then about the guidance that you give to
11. Q. Are you relating to staff and freelance or --
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<td>They're obliged to comply with it. Do you think that the PCC code is sufficient for the purposes of guiding photographs? It's not specific to photographers in any way. Do you think it's sufficient or do you provide a more specific code or guidance that they could or should adhere to?</td>
<td>Yes.</td>
<td>If a celebrity did not approach you but made it clear they didn't want to be photographed, then we would do so.</td>
<td>We'd certainly talk to them about what the issue was and why they wanted that, and if we felt that their plea was good, then we would do so.</td>
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<td>I'll come back to freelancers in a moment. Can I just touch on your employed photographers. You say that your UK-based photographers are required by their contract to comply with the PCC code. So that's the nine photographers, is it, in the UK?</td>
<td>I don't think the PCC is comprehensive enough for photographers at all. It seems to be directed towards editors rather than content-gatherers. It seems to be directed mainly towards the print side of journalism rather than the digital age or photographers generally.</td>
<td>We're not actually -- yes, that we receive or that we update them regularly. It's actually updated from the picture desk and emails are sent out whenever there's an update to that list.</td>
<td>Am I right in understanding your answer is that you monitor court orders, which you receive --</td>
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<td>You say you have a document which you call a &quot;no shoot list&quot;. You say you have a document which you call a &quot;no shoot list&quot; which contains the names of individuals who may not be photographed for Splash, and that's communicated to staff and freelancers on a regular basis.</td>
<td>Why would an individual appear in a &quot;no shoot list&quot;? Is it something that they request? Is this court orders? Can you help us?</td>
<td>We're not actually -- yes, that we receive or that we know others are receiving. We try I to be proactive in that.</td>
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<td>things like that, to hold up pictures that have captions that may look libellous or dodgy for whatever reason, and then those processes are designed to alert the desk to any problems. Freelancers generally -- obviously, we don't exert control over how they behave out in the street, so our only recourse is to try and monitor the photographs they're uploading and to put into place procedures that will either proactively or retroactively pull pictures that are a problem.</td>
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<td>1</td>
<td>LORD JUSTICE LEVESON: So it would help you, would it, Mr Morgan, if there was some available information to your company of people who really were likely to indulge in litigation if they were photographed? That would be of value to you?</td>
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<td>2</td>
<td>A. I think greater co-operation between celebrities and agencies on realising what the boundaries will and won't be can't do any harm.</td>
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<td>3</td>
<td>MS PATRY HOSKINS: I'm going to ask you now about freelancers. You briefly touched on the attempts that you make to ensure that they behave in a manner that's ethical and so on. Can you tell us a bit more? Do you require them to sign up could a code of practice or any kind of contractual obligation that any photo they will submit will be compliant with the PCC code or that it will be taken in a situation where the celebrity has not been harassed or -- is there any mechanism that you put in place?</td>
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<td>4</td>
<td>A. Photographers do have to sign a media upload agreement in which they pledge not to invade privacy or break the law in any way. The PCC regulations are available on the Splash website internally. Some freelance photographers are put onto -- we have a process called &quot;fast and slow track&quot;, and we have a back office that has a list of objective terms, such as nudity, swearing, and in breach of someone's privacy?</td>
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<td>5</td>
<td>22 Q. Are the you aware of ever not using someone for reasons that their photographs were simply obtained unethically or in breach of someone's privacy?</td>
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<td>6</td>
<td>24 Q. Start this way. Shortly after Ms Hong gave birth, she was subjected, it is said, to a sustained campaign of harassment by photographers outside her home. Mr Grant gave evidence to that effect at this Inquiry. He also provided a witness statement which made those allegations. Are you aware of that?</td>
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<td>7</td>
<td>23 Q. I understand that on 11 November 2011, an injunction was obtained on behalf of Ms Hong against persons unknown, and the objective behind the obtaining of that</td>
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<td>8</td>
<td>21 Q. Would you blacklist a freelancer whose photographs regularly failed to comply with the tests that you apply?</td>
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<td>9</td>
<td>20 A. We would, yes.</td>
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<td>10</td>
<td>19 Q. Have you ever done that?</td>
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<td>11</td>
<td>18 A. I don't think we have, no. We've moved occasionally, photographers in the US, fast track to slow track, which is a commercial disadvantage for them because their pictures don't move as fast, and moving pictures to market very fast is important from a business point of view, but generally we -- the only resolution we have with freelancers is to put them on slow track, talk to them, or ultimately not to continue using them.</td>
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<td>12</td>
<td>17 Q. Let me give you a specific example, please. It's the example of Ms Hong, the lady who recently had a baby with Hugh Grant. Are you familiar with that case, Mr Morgan?</td>
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<td>13</td>
<td>16 A. Yes, I am.</td>
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<td>14</td>
<td>15 Q. I think I asked that you have papers available relating to that case. I don't know if you have a full panopoly of papers available in front of you so I'll go through the chronological, if I can, and you can tell me whether you agree or disagree. I'll do it as briefly as I can.</td>
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<td>15</td>
<td>14 A. Okay.</td>
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<td>16</td>
<td>13 Q. Start this way. Shortly after Ms Hong gave birth, she was subjected, it is said, to a sustained campaign of harassment by photographers outside her home. Mr Grant gave evidence to that effect at this Inquiry. He also provided a witness statement which made those allegations. Are you aware of that?</td>
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<td>12 A. We would, yes.</td>
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<td>19</td>
<td>10 Q. Have you ever done that?</td>
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<td>20</td>
<td>9 A. I'm not quite sure what circumstances you're referring to. If a celebrity is in a public place, perhaps, then it may make a difference as perhaps if they're in another circumstance. Can you define exactly what you mean?</td>
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<td>21</td>
<td>8 A. I'm not quite sure what circumstances you're referring to. If a celebrity is in a public place, perhaps, then it may make a difference as perhaps if they're in another circumstance. Can you define exactly what you mean?</td>
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Day 38 - PM  
Leveson Inquiry  
7 February 2012

1. injunction was to essentially prevent the campaign of
2. harassment that she'd been suffering, so to prevent
3. photographers from doing a number of things or anyone
4. from doing a number of things, including harassing her
5. outside her home, taking photographs and so on. You're
6. aware of that injunction that was obtained?

A. Yes.

Q. We're also told -- it's in the public domain -- that
shortly after the order was obtained, a copy of it was
circulated to a number of people, including your agency.

You accept that you received that?

A. That's right, yes.

Q. This was one of the orders you were describing earlier
that you would be aware of.

A. Yes.

Q. Can we confirm that at that point Ms Hong made it onto
your "no shoot list"?

A. Yes. As soon as we receive a letter from a lawyer
regarding an injunction or a legal complaint, we
automatically put them onto a "no shoot list" and
withdraw any photographs in question while we
investigate the claim.

Q. All right. Again, it's in the public domain that
you have there an apology that Splash made to David
Walliams and Lara Stone. Do you see that?

A. Yes. Yes, I do.

Q. For those who don't have it, this is an apology you made
on 30 August 2011, and the apology says in very brief
terms:

"In April 2011, photographs pursued David Walliams
and Lara Stone while they spent the day together in
London. Splash subsequently made these images available
for onward publication. We wish to convey our apologies
to the couple for the harassment and unwarranted
intrusion into their private lives and make it known
that we have reimbursed all legal costs and have paid
them damages."

Page 99

25 (Pages 97 to 100)
Q. I'm going to ask you finally about people paparazzi and citizen journalism. You invite people, through the people-paparazzi website, to contribute photographs, individuals, members of the public, to contribute photographs. Are they subject to contractual terms and conditions?

A. Yes. People-paparazzi allows members of the public to upload pictures through an email. We look at those pictures on email, and if we think the picture has any relevance, then we contact the person, asking them how the photograph was taken. If we want them to submit the photograph, we then ask them to fill in the media distribution agreement which applies to all photographers.

Q. What kind of questions would you ask them to ensure that, again, the privacy of the celebrity has not been infringed, the celebrity was not being harassed at the time the photograph was being taken and so on? Because presumably members of the public don't have access to the training and the daily briefings that you've been speaking of. So what questions are asked?

A. Kind of questions -- usually if there's a picture that we want, we're pretty sure when we're talking to the person anyway that it looks like it's a public place or event. You know, if it's a picture of them inside a house or, you know, inside a hotel or something, we'll know that there's more of a risk there.

Q. So we'll ask them where they took it, how they took it, where they were, what camera they were using. Did they talk to the celebrity? How did they know the celebrity was there? We'll go through pretty much the same kind of questions we would ask a photographer.

MS PATRY HOSKINS: Mr Morgan, I think those are my questions.

LORD JUSTICE LEVESON: Thank you. Mr Morgan, I have a couple. First of all, entirely confidentially and to be kept within the Inquiry team, would you be prepared to send us a copy of your present "no shoot list" for the UK?

A. Yes, my Lord.

LORD JUSTICE LEVESON: Secondly, you've made the point that the PCC code doesn't really cover many of the issues or some the issues that you believe would be valuable to cover for photographers.

A. That's correct.

LORD JUSTICE LEVESON: Would you, please, also let me know what you think it could cover, how you think it could cover them, and any suggestions you have to make that would assist. I'm not trying to prevent photographs being taken but I am trying to prevent them being taken...
<table>
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<tr>
<td>1. in a way that is disorderly or is going to infringe</td>
<td>1. Kensit.</td>
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<td>2. people's rights.</td>
<td>2. If we can look at the fourth insert:</td>
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<td>3. A. I'd be --</td>
<td>3. &quot;A pal of the couple said last night: 'You'd have</td>
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<td>4. LORD JUSTICE LEVESON: You have an enormous amount of</td>
<td>4. thought after being on tour for such a long time, Patsy</td>
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<td>5. experience, Mr Morgan, and I'd be grateful if you'd be</td>
<td>5. would have wanted to see him, but they just don't appear</td>
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<td>6. prepared to share that with us.</td>
<td>6. to want to be together or even to talk to each other.</td>
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<td>7. A. I'd be happy to.</td>
<td>7. She was only an hour away by plane but she didn't come</td>
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<td>8. LORD JUSTICE LEVESON: Thank you very much indeed.</td>
<td>8. back and has been telling people she's just about had</td>
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<td>9. MS PATRY HOSKINS: Sir, before I sit down, I've been told</td>
<td>9. enough. The couple married in secret [et cetera] ...</td>
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<td>10. that there is one statement which needs to be read into</td>
<td>10. They are a stream of fierce rows over the phone while</td>
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<td>11. the Inquiry. Nothing to do with Mr Morgan.</td>
<td>11. Liam was on the road ...</td>
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<td>12. LORD JUSTICE LEVESON: Mr Morgan, thank you very much indeed</td>
<td>12. And then it continues. What was your source for</td>
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<td>13. and I am grateful for you participating in this exercise</td>
<td>13. that story, Mr Mohan? Can you recall?</td>
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<td>14. over a live link. It's saved you a lot of time and</td>
<td>14. A. The articles you're going to point me to, obviously</td>
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<td>15. trouble and allowed us to get the benefit of your</td>
<td>15. a lot of them are up to 14 years old and I can't</td>
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<td>16. evidence. Thank you.</td>
<td>16. remember specific sources obviously. But to talk</td>
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<td>17. A. Thank you, my Lord.</td>
<td>17. generally -- I just wanted to give you a picture of</td>
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<td>18. MS PATRY HOSKINS: The statement to be read in is that of</td>
<td>18. showbiz reporting. I mean, many stories really</td>
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<td>19. Mr Simon Citron from Yahoo.</td>
<td>19. generally are obtained through going to events, talking</td>
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<td>20. LORD JUSTICE LEVESON: Thank you very much. We'll</td>
<td>20. to celebrities at events, at nightclubs, in bars.</td>
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<td>21. disconnect Mr Morgan, with no disrespect to him and</td>
<td>21. At this kind of time I was travelling the world</td>
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<td>22. we'll carry on.</td>
<td>22. interviewing a lot of celebrities who would tell me</td>
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<td>23. MR JAY: Sir, I am going to recall, please, Mr Mohan.</td>
<td>23. things off the record, for instance. I mean, I don't</td>
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<td>24. LORD JUSTICE LEVESON: Thank you very much indeed.</td>
<td>24. remember the specific -- who wrote this story or the</td>
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<td>25.</td>
<td>25. specifics of it, so --</td>
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<td>26. MR DOMINIC MOHAN (recalled)</td>
<td>27. (Pages 105 to 108)</td>
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<td>28. Questions by MR JAY</td>
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<td>29. MR JAY: Mr Mohan, there are a number of specific matters</td>
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<td>30. I'd like you to deal with, please. The first relates to</td>
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<td>31. phone hacking, matters which have been drawn to the</td>
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<td>32. Inquiry's attention, relating to the time when you were</td>
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<td>33. editor of Bizarre. In the bundle which has been</td>
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<td>34. prepared, look at tab 5.</td>
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<td>35. LORD JUSTICE LEVESON: One of the great problems of having</td>
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<td>36. been the first editor to give evidence is that in the</td>
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<td>37. period which has elapsed since you gave evidence, many</td>
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<td>38. things have been sent to the Inquiry, and it's only fair</td>
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<td>39. that you be given an opportunity to deal with them.</td>
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<td>40. A. Thank you.</td>
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<td>41. LORD JUSTICE LEVESON: Right.</td>
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<td>42. MR JAY: There are a number of similar pieces, Mr Mohan, in</td>
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<td>43. Bizarre, and the question is: does a pattern emerge?</td>
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<td>44. Can we look first of all at this article. It's 9 April</td>
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<td>45. 1998, so self-evidently we're going back in time</td>
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<td>46. a considerable period. You are editing Bizarre with</td>
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<td>47. someone called Victoria Newton. We can see that at the</td>
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<td>48. top of the page. This piece is:</td>
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<td>49. &quot;Liam and Patsy on the rocks. 'I've had enough,'</td>
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<td>50. she tells mates.&quot;</td>
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<tr>
<td>51. This relates to Liam Gallagher's marriage to Patsy</td>
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27 (Pages 105 to 108)
A. I mean, there were a lot of stories that we were receiving at this time about Liam Gallagher and Patsy Kensit and there were a lot of contacts reporters had in that kind of area, so I would think a more likely explanation would be that it would come from one of them.

Q. It's really whether a pattern builds up through this material. Item tab 6. We're now onto 17 July 1998. The bottom right-hand side, if you're with me there:

"Eastenders star Martine McCutcheon is dating pop sensation Mark Baron, we can reveal."

A bit later on:

"Pals say ..."

It's always that formulation, "pals say": "... that the pair had phoned each other every day since they met. One says, 'They liked each other straight away and got on like a house on fire ..."

Et cetera. Again, the showbiz team, we see Sean Hoare's name, don't we?

A. We do. Again, I can't remember the specifics of the story. I don't think you probably expect me to. In fact, I can't even remember some of the celebrities mentioned in the stories. But again, I remember that there was a -- one of the journalists on the team had a good Martine McCutcheon contact at the time and we...
1. MANAGEMENT STANDARDS COMMITTEE AT NEWS INTERNATIONAL, AS YOU WELL KNOW. BUT WHAT I WOULD SAY IS YOU'VE PICKED A NUMBER OF STORIES OVER MORE THAN THREE YEARS, AND I'M SURE IF YOU TOOK A SAMPLE FROM ANY NUMBER OF NEWSPAPERS OVER A THREE-YEAR PERIOD, THERE WOULD BE NUMEROUS REFERENCES TO PHONE CALLS.

2. Q. THERE'S QUITE A GOOD ONE AT TAB 11, MR MOHAN. THIS TIME IT'S THE FOOTBALLER. MORE OF THE STORY OR WHO WROTE IT.

3. A. NOT THAT I'M AWARE OF, NO. AGAIN, I CAN'T REMEMBER THE SOURCE OF THE STORY OR WHO WROTE IT.

4. Q. TAB 13. THIS TIME IT'S THE FOOTBALLER. MORE BOMBARDMENT:

5. "AN INSIDER Tells ME SHE REALLY FANCIES J AND KEEPS RINGING ON HIS MOBILE. SHE'S MADE IT CLEAR FROM THE START THAT SHE WANTS IT."

6. THAT INSIDER WAS NOT SOMEONE WHO'D BEEN HACKING INTO VOICEMAILS, WAS IT?

7. A. NOT THAT I'M AWARE OF, NO. AGAIN, I CAN'T REMEMBER THE SOURCE OF THE STORY OR WHO WROTE IT.

8. Q. TAB 13. THIS TIME IT'S THE FOOTBALLER. MORE BOMBARDMENT:

9. "THE MANCHESTER UNITED WINGER HAS BEEN BOMBARDING THE MODEL WITH PHONE CALLS AFTER THEY MET AT THE WORLD SPORTS AWARDS IN MONACO."

10. Q. DO YOU HAVE THAT ONE, UNDER TAB 13?

11. A. SORRY.

12. Q. 4 AUGUST 2001. SO THERE'S THE BOMBARDMENT, AND THEN IN THE MIDDLE PARAGRAPH:

13. "THEY HAVE SPoken ON THE PHONE LOADS, BUT SHE ISN'T INTERESTED."

14. WE DON'T KNOW WHO WROTE THIS STORY, DO WE?

15. A. I DON'T RECALL, NO.

16. Q. WHAT MIGHT BE SAID IN RELATION TO THESE STORIES IS THAT THERE'S A SMALL KERNEL OF TRUTH, THAT IS TO SAY INFORMATION OBTAINED BY HACKING INTO VOICEMAILS, AND AN AwFUL LOT OF EMBROIDERY AND CONFECTION AROUND THAT KERNEL OF TRUTH WHICH YOUR COLUMN SIMPLY MAKES UP. IS THAT TRUE OR NOT?

17. A. I'M NOT AWARE OF THAT BEING THE CASE, NO. I'M NOT AWARE THAT ILLEGALLY ACCESSING VOICEMAILS WERE THE SOURCE OF ANY OF THESE STORIES.

18. Q. ARE YOU SURE ABOUT THAT?

19. A. I HAVE NO KNOWLEDGE OF IT. IT'S OVER A THREE-YEAR PERIOD. THERE'S -- WE PUBLISHED MANY, MANY STORIES OVER A PERIOD OF A YEAR. IN FACT, WE PUBLISH OVER 100,000 ARTICLES A YEAR IN THE SUN THIS IS A VERY SMALL SELECTION OVER A THREE-YEAR PERIOD.

20. Q. YES. YOU'RE AWARE WHO PROVIDED THE INQUIRY WITH THIS MATERIAL THAT CAME TO US ACTUALLY BY A CIRCUITOUS ROUTE.

21. Q. THAT PERHAPS DOESN'T MATTER MUCH, BUT THE SUGGESTION IS THERE ARE MANY MORE STORIES LIKE THAT. THAT WOULD BE A FAIR COMMENT, WOULDN'T IT?

22. A. I'D HAVE TO CHECK.

23. Q. YOU SAY YOU MADE A JOKE AT THE SHAFTA AWARDS 2002 ABOUT LACK OF SECURITY AT VODAFONE, I THINK IT WAS, IN RELATION TO THE MIRROR. THAT JOKE CREATED THE BIGGEST LAUGH OR CHEER OF THE NIGHT, DIDN'T IT?

24. A. I DON'T REMEMBER WHAT GOT THE BIGGEST LAUGH AND WHAT DIDN'T.

25. Q. BUT AT AN AWARDS CEREMONY LIKE THIS, YOU'RE GOING TO COME OUT WITH IN-JOKES RATHER THAN SOMETHING WHICH IS OLD NEWS. WOULD YOU ACCEPT THAT?

26. A. IT WAS A JOKE THAT I MADE. WE TALKED ABOUT IT LAST TIME I WAS HERE. THE AWARD CEREMONY WAS SPONSORED BY VODAFONE, SO I GUESS IT POPPED INTO MY HEAD AND SEEMED APT.

27. Q. BUT YOU MUST HAVE COME UP WITH IT BECAUSE IT WAS SOMETHING WHICH YOU KNEW YOUR AUDIENCE WOULD KNOW THEMSELVES WAS SOMETHING WHICH WAS REGULARLY TALKED ABOUT?

28. A. AS I SAID LAST --

29. Q. IT WAS SOMETHING WHICH WAS CURRENT, REALLY, IN YOUR BUSINESS, WASN'T IT?
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<th>Page 118</th>
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<td>organisations. That's the truth, isn't it?</td>
<td>last year we launched a campaign after the implant scandal, where we demanded safer surgery for women, and also Jade's Legacy, which was set up after the death of Jade Goody, which was raising awareness of cervical cancer screening.</td>
<td>So I think some of the allegations that I've heard about the Sun being sexist in some way and not tackling women's issues I think is a false one.</td>
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<td>Q. Okay. May I move on to a separate topic and may I deal with it in this way, by taking it through stages.</td>
<td></td>
<td>Q. It has been said that Page 3 treats women as sex objects is therefore not merely demeaning but is harmful. As against that, you may pray in aid the wider public interest in freedom of expression, which of course the Sun is entitled to put forward, but do you see any merit in that first objection? The objectification of women?</td>
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<td>The first stage is the Page 3 girl, which you cover in your witness statement.</td>
<td></td>
<td>A. No, I don't, because I think that the girls are very healthy, for instance. They're good role moulds. If you look at a lot of catwalk models, they're stick thin.</td>
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<tr>
<td>A. Yes.</td>
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<td>Some of them don't look they healthy. So I would disagree with that.</td>
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<td>Q. In a nutshell, your position is -- in your own words, please, Mr Mohan. I'm not going to put words in your mouth or read out your statement. You set out your stall in relation to Page 3.</td>
<td>Q. Can I deal with a number of points which are around Page 3. One of them is before your time. Under tab 17 -- this is before your time as editor -- I don't have the date, but this is a piece which is rudely critical of Clare Short, isn't it?</td>
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<td>A. There's obviously been quite a lot of criticism I've read of late of Page 3, but my position is -- I mean, this was first published 42 years ago, and I think it's meant to represent the youth and freshness and it celebrates natural beauty. We don't have models who have had plastic surgery on the page. It's obviously legal. We're allowed to publish those images, and I think it's become quite an innocuous British institution where, as a parent myself, I'm more concerned about images that my children might come across on the Internet or on digital devices. So I think it's a part of British society. I think on our 40th anniversary, I've included a piece that was written by the feminist author Germaine Greer. She says:</td>
<td>A. No. I don't believe I did.</td>
<td></td>
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<tr>
<td>Q. Is it the sort of piece which the Sun would run now, do you think?</td>
<td></td>
<td>Q. Did you have any involvement in this piece we're looking at?</td>
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<tr>
<td>Mr Mohan?</td>
<td></td>
<td>A. No. I don't believe I did.</td>
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<tr>
<td>Q. Is this appropriate language, do you think, to use, to the availability of the Herceptin cancer drug. Also</td>
<td></td>
<td>Q. Is it the sort of piece which the Sun would run now, do you think?</td>
</tr>
<tr>
<td>Q. In a nutshell, your position is -- in your own words, please, Mr Mohan. I'm not going to put words in your mouth or read out your statement. You set out your stall in relation to Page 3.</td>
<td></td>
<td>A. Possibly not in that way, no. I mean, I think there is an article in -- actually, I'm not sure it's in this piece. It was in one of the submissions from one of the women's groups, but I ran a similar piece -- sorry, I ran a piece in the run-up to the last election where -- which was about Harriet Harman and Lynne Featherstone because they were claiming they wanted to ban page 3, but I didn't use that kind of language that</td>
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#### Day 38 - PM Leveson Inquiry 7 February 2012

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<td>2. Q. &quot;Burly [and then the name has been redacted] has shocked trucker pals by telling them: 'Call me [then it's obviously the new name].' The lorry driver left workmates stunned when he revealed his sex swap, but insists they're supportive.&quot;</td>
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<td>3. Then it's &quot;he said&quot;. The objection here is twofold: firstly, the inaccuracy, the use of the male pronoun, and secondly the use of the adjective &quot;burly&quot;. Why is language like that used in the Sun, Mr Mohan?</td>
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<td>A. Mermaids charity who praised the way that we'd reported that.</td>
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<td>So I think we've improved -- we've raised our game in terms of transgender reporting.</td>
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<td>Q. So is this your evidence, Mr Mohan, that this sort of piece -- and we can see the before and after photograph -- of course the faces have been pixelated to avoid identification -- is not going to be replicated, is it, in the Sun in future?</td>
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<td>A. Well, I'm making attempts to do that, yes, in the news pages, yes.</td>
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<td>Q. How are you doing that?</td>
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<td>A. In fact, one of the journalists who wrote one of the articles was invited to speak as a transgender conference and I would be quite keen for -- I spoke to you last time about some of the workshops that we've had for journalists about sensitive issues, and I would be quite keen to maybe get one of those groups to come in and talk to my reporters, my staff.</td>
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<td>LORD JUSTICE LEVESON: But it raises a more over-arching point, whether one's talking about Object or this material. Do you think it would be worthwhile to ensure that whatever mechanism there is for complaints allows the possibility that groups who have concerns about the way in which particular stories are presented, or people</td>
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<td>A. Yes. I mean, that's really a formalisation of what we're already doing informally at the paper, in terms of -- we had -- the Samaritans group came in last week, for instance, and spoke to the staff. You're talking about a more formalised method?</td>
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<td>Q. Why is that a deception, Mr Mohan?</td>
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<td>A. All I'm saying -- the TV series -- I don't know if you're familiar with -- was called &quot;There's something about Miriam&quot;, and it involved a transsexual who was placed in a house, who was basically put in a house with a number of male contestants, some of whom actually -- did actually -- how shall I put it?</td>
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<td>Q. On the basis of some sort of deception?</td>
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<td>A. Yes.</td>
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Q. When you weren't editor. The matter blew up again last year, and the Sun published an article which said that a member of the public had provided the information relating to the child and that the Sun was denying that the article -- or rather, the underlying evidence -- had been obtained unlawfully. Is that correct?
A. Yes, but it was also addressing the fact that I'd researched the background to the story and -- there are probably other witnesses who you might be seeing at a later date who might be able to help you further on this, but my information was that consent had been given to run this story.
Q. Yes, well, that, I think, is a matter which is hotly disputed, isn't it? If consent had been given for the story, obviously certain consequences would flow, but if consent had not been given for the story, what was the public interest in publishing it, Mr Mohan?
A. I don't think the story would have been published without consent. I wouldn't have published it without consent.
Q. So does it boil down to this: it's really an issue of fact, which is in dispute and may have to be resolved in due course, as to whether consent was given back in 2006? Have I correctly understood it?

A. Although -- one of the central allegations was obviously, as you've said, that the Sun had illegally obtained this information by hacking medical records, and the source, who I obviously don't want to attempt to identify -- and we were very careful to conceal that individual's identity -- he swore an affidavit saying that's not how the information had been obtained.
Q. Yes. Let's assume that that's correct, namely that the information was not obtained illegally, it was obtained by lawful means via a source. You would not have published this story unless you were sure that consent had been given by the parents? Does that summarise your evidence?
A. Yes.
Q. Okay. Is it implicit in that that you would take the view that even if the information had been obtained entirely lawfully, it was intrusive and not in the public interest to publish the story without consent?
A. This specific story, I would not have run without consent.
Q. Your reasons being?
A. Well, it's obviously an extremely sensitive issue.

LORD JUSTICE LEVESON: It's a medical matter concerning a child, so the question becomes how robust your consent-gathering mechanism was.
A. (Nods head)

LORD JUSTICE LEVESON: That may be the issue.
MR JAY: Have you been able to investigate the circumstances in which consent was allegedly obtained, Mr Mohan?
A. I spoke to journalists who were involved in the original story, and they indicated to me that consent had been given. There is a quote in the original story from a Treasury spokesman, and I don't think that would have been provided if consent had not been given.
Q. That may be may not be something we can pursue further. We know -- and this is the last point, Mr Mohan. How far we can go with this point, we will see. We know that at least four journalists from the Sun were arrested under Operation Elveden on 28 January, which was eleven days ago. It was a Saturday. Were you aware of that operation before 28 January?
A. That the arrests were to take place the following day?
Q. Yes.
A. No, I wasn't.
Q. So when were you first made aware that these arrests had taken place or were going to take place?
A. When -- I was contacted and told that my office were trying to get hold of me on the Saturday morning.
Q. So is it your evidence that you had no advance notice of this?

A. I wasn't told that the arrests were going to take place on the Saturday, no, absolutely not.
Q. But were you aware that arrests were going to take place on a certain day, although the exact day was not known to you?
A. No. I think that I have to be extremely careful here, because obviously this is a live police investigation.
Q. So is it your clear evidence that the first time you were made aware of the arrests was after they had happened?
A. Yes. I actually was -- I actually spoke to my office, who informed me at -- I can't remember the time.
Q. Yes. It may be may not be something we can pursue further.
A. Yes. It was a very long weekend. I think it was about maybe 9.15 am.
MR JAY: Okay. I was asked to put that point to you and I have taken it as far as I think I can go and I've overrun by one minute.
LORD JUSTICE LEVESON: Thank you very much indeed. Mr Mohan, thank you very much indeed for returning and for dealing with these other matters. I'm sure you would agree that it's sensible that we get your input on issues that have been raised during the course of the Inquiry.
A. Yes.
LORD JUSTICE LEVESON: I thank everybody for their patience.
yet again. Tomorrow morning, 10 o'clock. Thank you.
(5.31 pm)
(The hearing adjourned until 10 o'clock the following day)
The document contains text that is not clearly legible or is not in a readable format. It appears to be a mix of dates, numbers, and possibly legal or formal language. Due to the quality of the text, it is not possible to extract meaningful content or natural text from this page.