LORD JUSTICE LEVESON: Thank you.

MR JAY: Mr Straw, thank you very much for your witness statement and the obvious effort you've put into it and also for some of the annexes which were extremely prescient. Of all the witnesses who have appeared or who are to appear at this Inquiry, as I made clear in the declaration I made at the very beginning, I know Mr Straw the best, not merely because we knew each other many, many years ago, but because I worked quite closely with him in my capacity as senior presiding judge when he was the Lord Chancellor and Secretary of State for Justice 2007 to 2010; is that right?

A. Yes.

Q. General questions about engagement with the media, this is paragraph 9 of your statement and following, our page 02547. You speak of the general public interest in opposition and the obvious effort you've put into it and also for some of the annexes which were extremely prescient. Of all the witnesses who have appeared or who are to appear at this Inquiry, as I made clear in the declaration I made at the very beginning, I know Mr Straw the best, not merely because we knew each other many, many years ago, but because I worked quite closely with him in my capacity as senior presiding judge when he was the Lord Chancellor and Secretary of State for Justice 2007 to 2010; is that right?

A. Yes.

Q. The point you made about a rise in share price goes up well beyond the normal share price for politicians of that party, but like any share prices there's then a crash and those who are overvalued, there's then a crash and those who are, as it were, the share and those who are puffing the message across. So the share price rises, they then are not to do, and then, having spent 17 years in opposition, thinking about this a lot, I sort of came to these views over that period.

I also saw the effect of -- on those colleagues and people on the opposition -- on the other side who'd got too close to the press because what it means is your share price goes up well beyond the normal share price for politicians of that party, but like any share prices that are overvalued, there's then a crash and those who are, as it were, the share and those who are puffing the message, even if it was going to be really difficult.

I was always clear that if I was asked to go to Parliament, I should do, and indeed plenty were the times when I was arguing with the Whip's office to let me go to Parliament rather than to hide, and ultimately, if you just are as straight as you could be, that would come through, even though you'd get an uncomfortable ride on the way.

Q. Can I ask you, please, to explain in general terms the risks as you see them, particularly paragraph 11?

A. The risks are really getting too close to the press. We live in a democracy. A free press plays a critical role in our system of democracy, but -- and every politician wants to have the best relationship they can with the press because the press is the prism through which the work of politicians and other people in the public life is perceived, or the main prism. But if you get too close, your own position becomes compromised, more likely than compromising the position of the press, and can undermine your integrity.

Q. Thank you. We'll deal with that in some more detail in due course, but the steps you took to ameliorate those risks, paragraphs 14 to 17 of your statement, these are cautionary words of advice --

A. Yes.

Q. -- you would give to others?

A. Yes.
saying, and what you're saying you're going to do, but
obviously you can't be tested in terms of your actions.
Much press media reporting of politics is copy which is
framed by reference to the government, and these days
it's part of our culture, most of those stories are
knocking stories in one way or another. So what you get
is very close, sometimes cosy relationships being built
up between particular journalists and particular
opposition spokespeople, and it can become very, very
close, sometimes incestuous. And we all had to try and
do that.

So when I was education spokesman between 1987 and
1992, there were education correspondents who I worked
with. When I became home affairs correspondent -- home
affairs spokesman between 1994 and 1997, again there
were home affairs correspondents that you would work
with and build up stories and enjoy the results.

But that has to change when you go into government,
and I think one of the reasons -- there was a bigger
reason, but one of the reasons why collectively the
Blair government was too close to some people in the
press was because of our experience in opposition and
we'd not stopped and thought: hang on, we can't continue
to operate in that way in government.

Q. I will pick that point up a little bit later, Mr Straw.

A. Not even I was there at the time, but my grandfather was
and remembered it, and so I remember him telling me this
with great bitterness, about how Labour had been
deprived of -- the government only lasted eight months,
in 1924.

They were more powerful in one sense, hence Stanley
Baldwin's complaint, but all the broadsheet papers and
actually papers like the Daily Mail and the Daily Mirror
used to report what was going on in Parliament as
a public service, and that started to disappear, in fact.

I think coincidentally with the televising of
Parliament. But as I submitted, sir, to the Inquiry,
I got a young researcher who was working with me as an
intern in 1993 to do a lot of work in a newspaper
library in Colindale charting the decline of reporting,
being pretty stable and then it shot down, and the
effect of that, and it's led to -- contributed to
ignorance by the public about what happens.

I mean, just to give you an example, this is subject
to correction, but the online editor of the Times,
Mr Philip Webster -- he's been -- great man, been there
forever -- he started work working in the press gallery
of the House of Commons, and he's told me that at that
time there were 12 people in the gallery, not the lobby,
whose sole job was to produce the 7,000 words a day
which reported what had happened in Parliament. So if
you wanted to know what had happened in Parliament, as
opposed to what the background stories were, where the
fights were, that would be there. And that was also
true when I went into the House in the late 70s, and
that's gone and it's been replaced by this sort of
personality conflict-based journalism.

So if you're pursuing a policy which is consensual,
which ought to be a good thing, the papers in their
editorial columns will say why aren't you going for
agreed policies with the opposition? Often you are,
probably half the legislation that goes through is
agreed, but nobody notices and that has a knock-on
effect of not being examined.

The second point I'd make, Mr Jay, is this, that
although television and radio have become, and now the
Internet, much more powerful and to some extent balance
the print media, it is still the print media that sets
the news values, and I was very struck that in Mr Adam
Boulton's written evidence, paragraph 17, he brings that
point out, that they set the news values and they set
the news values for the broadcasters as much as they do
for their own colleagues in the print media.

Q. Special advisers now, Mr Straw, paragraphs 27 and 28.

A. LORD JUSTICE LEVESON: You have a long memory, Mr Straw.

Q. When you were in high office over a 13-year period,

A. Two sets of points. One is there wasn't ever a golden
age of journalism, and indeed before television and
radio got going, of course the newspapers were even more
powerful than they are today, and part of the folk
history of the Labour Party is still there. But

certainly when I -- it is about the role the Daily Mail
played in the defeat in the second election 1924 when
they published this Zinoviev letter suggesting that the
Labour Party had received Moscow gold, which
subsequently, but a long time afterwards, turned out to
be a complete forgery, and no question it assisted our
defeat.
presumably you had special advisers. Can you assist us, approximately how many?

A. Yes, I had -- any one time you were allowed two special advisers and I had one who was on the policy side and the other who dealt -- on the media side. And on the media side, I only had two fill that slot. One was a man called Ed Owen, who'd been with me in opposition in 1993 and stayed until the General Election in 2005, and then the second was a man called Mark Davies, who was with me from 2005 to 2010. Both were journalists, they came to the job as journalists, and their job was to have direct relations with the media but also to co-operate and work closely with the Civil Service press officers.

Both were completely straight and are completely straight and I wouldn't have employed them for a second if they'd not been, and they had a good reputation with journalists for being straight and for -- I think for not being manipulative, and that's how I wanted it.

I'm afraid my observation -- and bear in mind I was observing them in real time what they were doing. First of all, they reflected the personality and quirks of their bosses, and some people in politics are obsessively conspiratorial and think that the only way you can make Page 9

your way is by being involved in all kinds of conspiracies and stuff, and so you -- they employ special advisers who were similarly up to fancy tactics, which led to their boss's share price rising for a period, more than the generality, and then invariably the share price crashed and quite often the ministers themselves ended up having to resign. But this was a long learning process.

Q. The extent to which your media special advisers acted under your general direction, can you help us with that?

A. They acted under my complete direction, it wasn't general direction. I knew what they were doing. I knew in real time what they were doing. First of all, they were in and out of the office. They were effectively part of the private office. In each case they were on exactly the same floor, and so, for example, in the Foreign Office, there's one -- although it's an old building, one area which -- so they were just in/out(?) and the same is true in, say, the Ministry of Justice.

I was thinking about this. If there had ever been a moment where they'd acted inappropriately, then somebody else in this very open environment -- I mean, ring of confidentiality, but very open environment itself, would have told me. The Private Secretary, the Permanent Secretary, a press officer. They just would have found out immediately.

Q. Okay. Aspects now, Mr Straw, of your own individual practice. This is paragraph 30 of your statement and following. Our page 02550. You explain in paragraph 30:

"I have known a number of the senior journalists/editors for years, and we have each other's contact numbers. The political editors/senior correspondents would often call for a steer on issues -- how forthcoming I was would depend on a number of factors."

One can understand the underlying reasons for that. Can I ask you about Mr Dacre, who you identify?

A. Yes.

Q. You've known him since university in the late 1960s, but since then, how frequently do you meet him?

A. Not that often. I mean, I -- but he -- as I say, it's a respectful acquaintanceship. I mean, it's not a friendship. It could have been a close friendship, but it isn't. That's just how it's been. I'd have to trawl through my diaries, but I guess I -- aside from when there was policy business to deal with, as there was towards the end of my period at the Ministry of Justice, I probably see him for lunch or so maybe once a year. I might bump into him in other environments.

As I said in my evidence, my relationship with him has been made more straightforward because his political views and mine and those of his newspaper are different. I mean, I've never ever held my breath that just because I knew Mr Dacre, somehow or other, in the editorials on election day, saying that people would be insane if they voted Labour, there would be a sort of codicil saying but it's okay in Blackburn. That doesn't happen, I've never expected it. So it's a clean relationship.

Q. I think your flavour of your evidence is that the exchanges between you are not frequent, or indeed perhaps any text messages, rarely spoke on the mobile telephone, is that it?

A. With Paul Dacre?

Q. Yes.

A. No, I don't think I've ever exchanged a text message
LORD JUSTICE LEVESON: Just before you go on, can I go back to the...
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newspaper executives were very concerned about where  
25
24
23
22     people at News International like other  
21     people at News International took a very -- sorry, I was  
20     and was willing to talk to and journalists she detested.  
19     I remember there was one called Nora Beloff on the  
18     Observer and she used to spit about Nora Beloff, almost  
17     literally, and the Lobby, of course, in those days was  
16     very -- the press Lobby, with a capital L, was very  
15     tight, 60 journalists, sort of Freemasonry, so they --  
14     it was even more incestuous than it is today.  
13
12
11 Q.  There are three ways perhaps one can analyse power game.  
10
9
8 Q.  So is this right, what you're giving us here is  
7
6     leaders."  
5 A.  Yes.  The political leanings of most newspapers in  
4
3
2     Britain are predictable, so the Daily Telegraph is going  
1 to be supporting the Conservative Party, the  

Daily Mirror is going to be supporting the Labour Party.  
1 From recollection, I think there are only two newspapers  
2 that are unpredictable. One is the Guardian and the  
3 other is the -- three of the four at News International  
4 papers. The Guardian normally supports the Labour  
5 Party, but except in elections where we really need them  
6 to support us, it supports the Liberal Democrats, so it  
5 did in 1983 and it did again in 2010. So it's sort of a  
7 fair weather friend. It won't support the  
6 Conservatives, but it's unpredictable about whether it  
5 will support the Labour Party.  
4     For the Murdoch papers, since Mr Murdoch purchased  
3 those papers, the Sunday Times has always supported the  
2 Conservatives and it did in 1997. The other -- but what  
1 I perceive of Mr Murdoch's approach, particularly with  
1 the Sun and the News of the World, was that he reckoned  
1 that his political influence would be greater if, as it  
1 were, his support was available in return for what he  
1 thought he could get out of it, and I don't mean some  
1 deal, because I've seen no evidence of a deal, but he  
1 thought there was something in it.  
1
Now, they might -- a benign view of this is that the  
23 people at News International took a very -- sorry, I was  
22 going -- people at News International like other  
21 newspaper executives were very concerned about where  
20 their readers were and they spotted between 1992 and  
19 1997 their readers were going to support Labour so they  
18 followed them, but it's a more complicated set of  
17 relationships than that, and I think that the perception  
16 I've had was Mr Murdoch has enjoyed the fact that he has  
15 been willing to play with political leaders in a way  
14 that the senior executives of the other papers have  
13 not -- you know, have not, because their loyalty  
12 ultimately is predictable.  
11 I hope that explains what I meant there.  
10 Q.  Can I ask you to explain what you mean by that?  
9 A.  I've never had this conversation with him in my life.  
8 I've obviously met him but I scarcely have had more than  
7 a paragraph of conversation with him ever. This is just  
6 my sense.  
5 He's very interested in power for its own sake,  
4
because you don't get to that position, running a huge  
3 international media empire, without being interested in  
2 power, and I think to help him consolidate his  
1 non-newspaper interests in this country, and I was  
1 struck when he was explaining that the print media  
1 titles contribute only 2 per cent -- or James Murdoch  
0 did, only contributed 2 per cent or some small  
0 percentage of the total revenues of the News Corp --  
0 that there was a degree of disingenuity about the point  
0 that was being made, because the power that those print  
0 titles provide is much greater than 2 per cent of the  
0 total, certainly in the United Kingdom.  
0 It goes back to the point Mr Adam Boulton made,  
0 which is that the print media have the greatest  
0 influence of all over the news values and the headlines  
0 on all the other media and I mean I've assumed that  
0 Mr Murdoch reckoned that if his support for the winning  
0 party, which is basically what he's sought to do each  
0 time, was available, that would open more doors in  
0 government when it came to things like media regulation,  
0 licences, regulation of football and so on.  
0 Q.  So is this right, what you're giving us here is  
0 an analysis of what you believe his motivations to be,  
0 rather than perhaps direct evidence of anything he has  
0 told you or others may have --  

Page 18
A. No, as I say, I've never had more than say a paragraph of conversation with Mr Murdoch in my life so I have no direct evidence. This is my surmise. But Mr Murdoch is a busy man, he's a very successful man, and like anybody else in a senior position like that he thinks about what he's doing and why he's doing it, and that's the conclusion I've drawn.

Q. Okay. In paragraph 35 you refer to the "power" of Mr Murdoch's papers. One might note that you prefer to use that word rather than Mr Campbell's "influence"?

A. Well, it was a -- I mean from a point of view of the -- yes. Certainly those on the receiving end, it felt like power, and, Mr Jay, it may be helpful just to provide a bit of explanation as to why people who were on the front bench in the Labour Party in the 1990s, and particularly had been through the experience of the 1992 election, believed that we had to get the papers on side. If I may, I've dug out of my files with me one example of this, which is the main story in the Sun newspaper on 1 April, just -- 1992, eight days before the 1992 election. The main story was this, and I'll put this in as evidence: "I'm all right Jack." and it was saying:

"Shadow Education Minister lectures us on the scandal of private education from the luxury of his £300,000 cottage, his £200,000 townhouse and his £40,000 flat."

And I was branded a hypocrite for preaching socialism from the luxury of three homes. Well, it's true, my wife and I between us own three houses and that was perfectly public.

Now, what the Sun was doing in the 1992 election was working over each senior member of the Labour front bench and this had an effect, and if you were on the receiving end of it, it felt like power. It had an effect in my constituency. I remember doing an open-air meeting that Wednesday and you could feel support falling away, and my majority severely moved, although it did not reflect the national swing.

This was minor, but it had one consequence, let me just say, talking about power. Every burglar in West Oxfordshire knew that the day of the year we were not going to be in our house in West Oxfordshire was the election night. We got burgled and a lot of property was stolen. I raised that subsequently with the Sun and they got the glazed eye look: that's just one of those things, you get burgled, tough.

The more important point is that Mr Kinnock, for example, was mercilessly and unjustifiably treated by the Sun over quite a period. It did contribute to our defeat. I took that as power. And we were therefore, once Mr Blair had come into office in 1994, we all shared the same view, that if humanly possible, without completely compromising ourselves, we should do our best to get the papers on side. It was better than the alternative. This was -- because I'd been through 18 years of opposition.

Q. I'm sure there was no question of completely compromising yourselves. Some might ask: well, what about partially compromising yourselves?

A. Well, I thought you were going to ask that as I -- the words came out of my mouth. It's more complicated than that. I mean Mr Blair was very much in favour of the New Labour agenda, let me say so was I, in terms of, say, the crucial decision on that, which was to change clause 4. I mean, I published a pamphlet about that in 1993, and nothing whatever to do with the Sun or anybody else. In fact, I think they all regarded the pamphlet as rather boring.

I don't think there was any compromise of our integrity. Some -- if you take the area that Mr Blair had been involved with between 1992 and 1994 and then I took over between 1994 and 1997, which was law and order and crime, there were people who were saying, our critics on the liberal left, they were saying we were only doing this because we wanted papers like the Sun and the News of the World on side. That wasn't true. I was doing it, Mr Blair was, because we believed in it. We were -- had been profoundly dissatisfied with the very soft approach which the Labour Party had taken on crime before that, which had lost support of an awful lot of our working class supporters.

Q. Further social contacts, paragraph 38, Mr Straw.

A. Yes.

Q. You say:

"During my period as Justice Secretary I would often travel to London on a Monday morning from the West Oxfordshire station Charlbury. Mrs Rebekah Brooks used to use the same train. After a while, we made arrangements to meet up and sit together for the journey."

But then you say, I paraphrase, this stopped some time in 2009 when she became chief executive. That, I think, was formally in September 2009.

In general terms, were the discussions which you had with her on the train other than social or private?

A. No, they were -- not much of them were social or --

I mean, they were private in the sense that neither of us went out and wrote them up on a blog. They weren't social, they were political. So they were sort of --
made its decision to go to war, my whole time was spent trying to get support of the Security Council for a second resolution, and frankly I -- well, who Mr Blair was talking to on the telephone was neither here nor there. Unless it was about getting support for the second resolution.

LORD JUSTICE LEVESON: But how important was it politically to, as it were, get a newspaper on side, because the public had to be convinced?

A. It was certainly important, sir, to have the newspapers on side and my recollection is that the News International papers were not the only papers who were on side, and it is by any means -- yes, of course it's far better to have them on side than not have them on side so I'm not trivialising it but it was never part of any of the discussions I was involved in.

It's worth bearing in mind that there was widespread support for military action. I know there was also widespread opposition for military action and the opinion was polarised, but what many people are now doing is looking at those events with the benefit of hindsight, including the failure to find any weapons of mass destruction, and the awful aftermath, the chaos of the aftermath after the fall of Saddam.

But if you were looking forward, it was very different circumstances, and bear in mind that I mean the whole of the international community had said in resolution 40 and 41 that Saddam posed a threat to international peace and security, that 40 and 41 as far as I was concerned and the British government was concerned, that had authorised military action if there were a further material breach by Saddam, which we believed and still believe there was, so -- and there was a huge weight of international opinion as well as opinion here in favour of it.

In Europe, half the Member States of the European Union were in favour of military action. A very considerable number of those put troops in. So this wasn't what is now presented as a sort of evil minority activity at all. There was a very large consensus behind it.

It's also just worth sir, if I can just mention this, bearing in mind that the Conservative Party, not all of them but the Conservative Party front bench was strongly in support of military action as well and that was bound to affect the character of support from the newspapers, in practice.

MR JAY: Mr Straw, I move on to the topic of media influence on public policy. First of all, genesis of Section 12 of the Human Rights Act. We have the text of it
A. Do you want me to look at it?

Q. Please. You'll know this virtually off by heart.

A. I do know it virtually off by heart, but I'll try not to --

Q. Everybody following this will understand the significance of Section 12. It is a procedural provision dealing only with the circumstances where the High Court is considering whether to grant any relief which might bear on the Article 10 right of freedom of expression.

A. Yes.

Q. There are two key points. The first key point is that the High Court won't grant relief unless satisfied that it's more likely than not that publication should not be allowed, which, to be clear, that sets a higher bar than the general law in relation to interim injunctions.

A. Yes.

Q. And then the second point is under subsection 4: "The court must have particular regard to the importance of the Convention right to freedom of expression, particularly in journalistic cases, and also will have regard to matters such as public interest, the extent to which it may become available to the public."

A. And then importantly "any relevant privacy code."

Q. And the privacy code would be capable of accommodating the PCC editors' code?

A. Indeed, sure, yes.

Q. So that's what Section 12 is about. You deal with this in your witness statement at paragraphs 100 to 111, Mr Straw.

A. Yes.

Q. Let's see if we can summarise it in this way, that there were two concerns which came from the press, but who was leading the press cause, as it were, was the then chair of the PCC, Lord Wakeham.

A. Yes.

Q. First of all there was a concern about a burgeoning or clandestine privacy law which the Human Rights Act in general might herald, or usher in, and secondly there were concerns about pre-action restraint, which is what Section 12 is about.

A. Yes.

Q. Could you tell us about how those concerns evolved and how you addressed them?

A. Yes, and Lord Wakeham himself in his written evidence gives a lot of sort of factual detail about this, but once the White Paper called "Rights brought home" endorses to it.

And also I thought a part of what Lord Wakeham and the PCC were saying was reasonable, and if I may just refer you, Mr Jay, to paragraph 103, where I refer to a letter which Lord Wakeham wrote to Chris Smith, the Culture Secretary, on 12 January 1998, he said there are two central problems. He says one is the issue of prior restraint, I thought they had a point there, but Lord Wakeham went on to say there was a second issue, which he described as far more serious, which was whether the PCC should be a public authority within the terms of the bill.

In facts the PCC was not a public authority within the terms of the bill, but what the PCC were trying to secure was a situation where the media were out with the impact of the bill so you just drew a ring around them somehow and they be excluded from any adjudication on the conflict between Articles 8 and 10 or anything else. Now, that was just impossible to meet, and I had to explain that to them, and we didn't meet it.

It's also simply incorrect for anyone now to say that nobody knew that a Human Rights Act would lead to major constitutional change should only go through through a consensus in Parliament or through a referendum, and the Conservatives were opposing the bill at second reading and I was anxious to see whether we could reach an accommodation so we could get their endorsement to it.
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<td>politicians thought they'd like to will the end of a law</td>
<td>that, possibly it's not relevant for this Inquiry but</td>
<td>LORD JUSTICE LEVESON: No, no, no, I'd rather you --</td>
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<td>of privacy but hand the means to The Strand and the Law</td>
<td>it's a point worth making, that the flak has been</td>
<td>A. I think I've still not got number 9.</td>
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<td>Lords because it's tricky, if you're a politician, to</td>
<td>directed to the judiciary rather than to anybody else.</td>
<td>LORD JUSTICE LEVESON: Let me give you mine.</td>
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<td>develop a law of privacy and we thought that their</td>
<td>A. I'm very sorry about this.</td>
<td>A. I have 10, I have 3. Thank you.</td>
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<td>Lordships on the bench would do a better job, so it was</td>
<td>A. It was a great debate about whether in drafting the</td>
<td>LORD JUSTICE LEVESON: They're normally in order</td>
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<td>really a set question of passing the parcel to them.</td>
<td>bill you had a list of public authorities or whether, as</td>
<td>numerically.</td>
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<td>Everybody knew what was happening.</td>
<td>for example, there's -- they are schedules, either --</td>
<td>A. Sir, what I did was --</td>
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<td>Q. So the PCC wasn't listed as a public authority for the</td>
<td>Q. Yes?</td>
<td>LORD JUSTICE LEVESON: It doesn't matter.</td>
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<td>purposes of Section 6 but as a matter of ordinary</td>
<td>A. It's a matter of certainty whether an authority's public</td>
<td>A. -- to reduce the bundle on the train, I thought I don't</td>
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<td>principles of jurisprudence it would have been so</td>
<td>or not, whereas in the Human Rights Act it's structured</td>
<td>need those, but that was a very stupid thing to do and</td>
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<td>deemed, and Mr Pannick(?) gave an opinion, I think, to</td>
<td>in a different way and although I haven't got Section 6</td>
<td>I'm very sorry.</td>
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<td>that effect?</td>
<td>in front of me directly, there is reference to</td>
<td>MR JAY: You were debating what was then clause 13, which</td>
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<td>A. There was a great debate about whether in drafting the</td>
<td>a definition of a public authority, but it's much</td>
<td>became Section 12, and on the second page of 21 at the</td>
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<td>bill you had a list of public authorities or whether, as</td>
<td>broader than that, but of course the courts are public</td>
<td>top, you told the Commons:</td>
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<td>we -- as happened with the Freedom of Information Act,</td>
<td>authorities and what the PCC had worked out was that</td>
<td>&quot;As the Committee will know, there was concern in</td>
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<td>for example, there's -- they are schedules, either --</td>
<td>since the courts were public authorities and would</td>
<td>some sections of the press that the bill might undermine</td>
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<td>Q. Yes?</td>
<td>therefore have to -- as public authorities have to</td>
<td>press freedom and result in a privacy law by the back</td>
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| A. It's a matter of certainty whether an authority's public | follow the obligations of the Human Rights Act and the | door."
| or not, whereas in the Human Rights Act it's structured | convention articles, they would therefore reflect those | And then you say that was not the government's view |
| in a different way and although I haven't got Section 6 | in their judgments and therefore indirectly the PCC or | and you've dealt with that issue. |
| in front of me directly, there is reference to | its members or anybody else would be subject to the | A. Yes. |
| a definition of a public authority, but it's much | convention and that was what they were worried about. | Q. But on the issue of prior restraint and what became |
| broader than that, but of course the courts are public | Q. Yes, and the second point that the law of privacy would | Section 12, the third paragraph, you say: |
| authorities and what the PCC had worked out was that | develop on a case-by-case basis once Articles 8 and 10, | |
| since the courts were public authorities and would | as it were, had been incorporated, that was a point | |
| therefore have to -- as public authorities have to | which Lord Bingham made at the time in -- | |
"We recognise the concerns expressed in the press. As I have made clear, for example in respect of the bill’s impact on the churches, we are anxious [et cetera] to deal constructively with them. In the light of those concerns we decided to introduce a new clause specifically designed to safeguard press freedom. We thought long and hard about it ..."

A. Yes.

Q. Then at page 6 of 21, towards the top of the page, you make it clear that there were discussions which involved you, the late Lord Williams and Lord Wakeham, and in the third paragraph:

“The new clause [which is 13] was drafted in consultation with Lord Wakeham and representatives of the national and regional press. They have given it a warm welcome.”

So the upshot is that part of the explanation for the genesis of Section 12, a consultation, agreement, if you like, which you reach with Lord Wakeham, who may well have been speaking for a large section of the press. Is that fair?

A. Yes, he was chairman of the Press Complaints Commission.

Q. I think it’s fair to say although he was quibbling as to whether Section 12 would have much substantive effect, there was, generally speaking, cross-party support for this clause, is that your understanding?

A. Yes, there was, and the added advantage of dealing with Lord Wakeham was because he had been a leading figure in the previous Conservative administrations, and I mean he’s — I had a good — I still do have a good relationship with him, have high respect for him.

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in 1997, and the death of Princess Diana at the end of August 1997, did that cause any change of thought or not?

A. Not directly, no. I mean, obviously the sort of media surrounding that was terrible, but not -- not directly. And I think insofar as we had that conversation in government, the view was: let's see where this gets to.

The PCC plus a developing law of privacy might work.

Q. Some would say it's the traditional British approach: let's see how the law develops. You know it's going to move in a certain direction, and the ramifications of that can be seen over the forthcoming years.

A. Yes, I mean it's not -- if I may say so, Mr Jay, it's not a bad approach to do things gradually, because the risks of disaster are reduced.

Q. That probably covers the issue on Section 12. May I address now the amendments to the Data Protection Act 1998?

A. Yes.

Q. Following the ICO reports of 2006. You pick this up in paragraph 82 of your witness statement. This is our page 02555. Mr Thomas was arguing very strongly for increasing the penalty for a breach of section 25 from a fine only to a term of imprisonment and you say in paragraph 82:

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"HM Government agreed."

A. Yes.

Q. Can you tell us why, please, Mr Straw?

A. Why we agreed? Because we thought the case that he had made out was a very good one, that the penalty did need to be strengthened because of the evidence of abuse which he provided in that report which was in May 2006. I just say here, I mean I agreed with this, but for the first 14 months, this was handled not by -- I was Leader of the House between -- I became Leader of the House two days before the publication of this report in the first week in May 2006, and stayed in that position until the end of June 2007, so this -- the policy therefore is one I inherited, but as it happened, I wholly agreed that we ought to increase the penalty.

Q. Was it then government thinking that it was simply a question of increasing the penalty rather than changing the test in Section 55, because I think at subsection 4 the test it is a purely objective one, but we know in Section 78 of the 2008 Act it's part objective, part subjective test?

A. Yes.

Q. Was the government's view: all we need do is increase the penalty, without at the same time introducing this part objective, part subjective test?

Page 42

A. The part subjective test came later. I mean, I -- the view --

LORD JUSTICE LEVESON: That was part of the ultimate compromise.

A. That was, sir, it was.

LORD JUSTICE LEVESON: But the case for an increased sanction was if it was purely financial, then the law was quite clear on -- I'm on comfortable territory now. The law was quite clear that you had to have regard to means, and if people of little means broke the law in this way, then actually there was very little that could be done by way of sanction. And that was so whether you were doing it because you wanted to find out about your daughter's boyfriend, for example, or whether you were doing it for industrial or commercial reasons.

A. Yes. I mean you're right, sir, you are, if I may say so, the expert on sentencing. But my own view is that -- I mean the maximum sentences laid down by Parliament, although they're very rarely applied by the courts, they convey a message about the relative seriousness which Parliament and therefore the public attach to that particular transgression, and I regret the fact that in the Data Protection Act, which is also a bill which I put through, we had not spotted that this penalty was too low, but we hadn't.

LORD JUSTICE LEVESON: But if I pick up the point that was made when we were discussing this I think with Mr Graham, that actually, if you're doing it for the purposes of business, and at a high volume, it is something which society should disapprove of rather more than might be for that range of offences that have purely fiscal penalties.

A. I entirely agree. It may be -- this is a very recent thought I've had -- that in the light of what we think may have happened, that the penalty itself should be higher still, tougher still, than two years, but certainly I think the case for having a two-year penalty maximum was very strong.

LORD JUSTICE LEVESON: On the basis as you really identified, that then the court is in a position to calibrate the gravity of the offending, and in appropriate cases to discharge or fine or pass a community penalty, or ultimately a custodial sentence.

A. Indeed, sir, yes.

MR JAY: As you say in paragraph 83, the press objected.

When you're referring to "the press" there, are you able to be more specific?

A. Well, it was -- I don't know whether -- the people who came to see me were Mr Dacre, Mrs Brooks, from the
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<td>Telegraph normally Murdoch MacLennan, who is the chief executive, and sometimes Guy Black, who had been the secretary of the PCC and I think was working as adviser to the Telegraph. It was those -- those were the core, but I understood from them that they were representing the views of the national press as a whole. I had no reason to think they weren't.</td>
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<td>2</td>
<td>Q. Because these were the most powerful figures, either within the PCC or on the Editors' Code Committee, was that your inference?</td>
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<td>3</td>
<td>A. Yes. I never, Mr Jay, said, &quot;Can we see your precise credentials?&quot; They plainly were and are -- were powerful figures who were representing the generality of the --</td>
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<td>4</td>
<td>LORD JUSTICE LEVESON: You knew them and you knew that's what they were?</td>
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<td>5</td>
<td>A. Yes. So there wasn't an issue.</td>
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<td>6</td>
<td>MR JAY: Paragraph 83, you refer to a meeting that the minister sponsoring the bill, Maria Eagle, had on 17 January 2008. We have the note of the meeting under tab 44. I don't think it's necessary to turn it up, but we know that Mr Brett, Mr Garnier had a powerful voice on that occasion.</td>
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<td>7</td>
<td>A. Yes.</td>
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<td>8</td>
<td>Q. Moving forward, paragraph 84, you met directly with Mr Hinton?</td>
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<td>9</td>
<td>MR JAY: Paragraph 83, you refer to a meeting that the minister sponsoring the bill, Maria Eagle, had on 17 January 2008. We have the note of the meeting under tab 44. I don't think it's necessary to turn it up, but we know that Mr Brett, Mr Garnier had a powerful voice on that occasion.</td>
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<td>10</td>
<td>A. Yes.</td>
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<td>11</td>
<td>Q. Mr Dacre, Mr MacLennan, Mrs Brooks, I don't think Mr Hinton?</td>
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<td>12</td>
<td>A. Mr Hinton I don't think was there, no.</td>
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<td>13</td>
<td>Q. And that is referred to in a letter you wrote on 12 February.</td>
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<td>14</td>
<td>A. Yes.</td>
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<td>15</td>
<td>Q. It's not exactly clear from that letter -- it's under tab 46 -- when the meeting was, whether it was over lunch or over dinner. It may not matter much.</td>
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<td>16</td>
<td>A. I don't think the meeting was over lunch or dinner. I think it was in my office. In fact, I'm almost certain it was in my office. It's not -- yes.</td>
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<td>17</td>
<td>Q. If we could look at the text of the letter of 12 February, you write to Mr Dacre. Under the heading &quot;Data Protection Act&quot; you say: &quot;We're not proposing to criminalise any conduct which is not currently against the law. However, we do understand your and the media's concerns more generally about the introduction of custodial sentences for breach of Section 55. We have no wish to curtail legitimate and responsible journalism, and when the proposed penalties were being designed it was not considered that they would have that effect. We're not aware that Section 55 has caused any problems such as a chilling effect since the DPA came into force. The penalties were proposed and strongly argued for by the Information Commissioner to strengthen the protection of individuals' rights to respect for their privacy.&quot; And then if I can look six lines into the next paragraph: &quot;But I have reviewed the proposals in the light of the important points which you and others have made. As I explained when we met I was increasingly minded to consider inclusion of provision for the reasonable belief of someone at the time an offence was committed. I understand there will still be considerable anxiety about the potential impact of this measure and that there is, therefore, a case of reconsidering it in slower time.&quot; Then you say: &quot;Alongside this, I am faced with the overwhelming need to achieve royal assent for the bill by 8 May 2008, when the existing legal restrictions against prison officers taking industrial action otherwise terminate. Taking all these factors into account, I'm making a further recommendation to colleagues and I will be back in touch.&quot; So you're faced here, Mr Straw, with a double pincer movement. On the one hand you have the press stirring up trouble, making the arguments you'd expect them to make, and we can analyse those in a moment, and you would say, perhaps even more importantly, you had to get this bill through by a particular date because there were other provisions in it which were absolutely vital. Is that it?</td>
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<td>18</td>
<td>A. Yes. It obviously was extremely hard for others outside or, say, for Mr Thomas to comprehend because it was my problem, not theirs, but it made me recall that at the end of August 2007 the Prison Officers Association called an unlawful one-day national strike, and they gave us 15 minutes' notice of this. It led to huge disruption in Britain's jails, it led to the firing of a whole wing at Lancaster Farms, it led to a breakdown in order in a number of other jails, and it was completely contrary to an agreement which the Prison Officers Association had voluntarily signed called the JIRPA -- please don't ask me what the acronym stands for because I can't remember -- that they had voluntarily signed in return for the statutory bar on industrial action being taken from the statute book. Now, they broke that agreement and also had given notice that they were going to terminate it in any event and the date of termination was 8 May, so the absolute imperative, whatever else happened, was that I got this bill through both houses and into royal assent by 8 May,</td>
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because we knew anyway, given the state of mind of the
leaders of the POA, that they would almost certainly go
on strike the next day, and it would be a disaster. So
I'm afraid other things then became subordinate to it.
That's life, that's politics.
So what was in my mind at this stage was that
I might have to withdraw the whole provisions to
increase the penalty for this legislation and then find
another bill to put it in in the following session. So
that was what was going on there.


Lord Justice Leveson: Mr Jay, is that a convenient moment
to take a few minutes?

(A short break)

Mr Jay: Well, first of all, my view about CFAs generally was
because I became persuaded, if you follow me, so you
have to work out why you were persuaded. If I may just
explain this about this deadline, the deadline not only
meant that I had less time, but it also changed the
balance of forces in Parliament, because although we had
a majority in the House of Commons, we never had
a majority in the House of Lords and if the
House of Lords had decided to block the bill, as they
could have done, or to delay it, I would then have been
faced with a situation where either I lost the whole of
the bill or I dumped part of it, and indeed
I faced exactly that dilemma ten years before over the
crime and disorder bill, where a proposal to lower the
age of consent for gay people to the same age as
heterosexual people was defeated in the Lords, and I was
about to lose the whole of that measure, so I had to
drop that part of it and introduce it separately.
So I mean what would have happened if I'd had more
time, if we'd been able to take this bill through in
normal time, which would have been to the end of that
session, which would have been October 2008, I could
have drawn breath and then I think found it easier to
satisfy Mr Thomas, who I wanted to satisfy, so...
than the national press about the effect on the
financing of the regional and local press of the way
CFAs were operating, and I recall a case which affected
not my own local newspaper, that was the Lancashire
Telegraph, but the adjacent one, which is printed and
published in Preston, the Lancashire Evening Post, where
for a very minor defamation, where I think the payout
was £3,000, and even that really wasn’t justified, the
newspaper had had to pay out thousands and thousands by
way of costs, and as just a citizen as well as
a politician I’m very concerned that we should not lose
the regional and local press.

I looked at this, whichever -- I think the Society
of Editors which represents the regional or local papers
as opposed to the Newspaper Society which represents the
national ones, but the Society of Editors had made a lot
of representations to me, provided a lot of data. There
were also strong representations, however, from the
nationals as well, and I thought they had a case, quite
a strong case, and to cut this short, I then followed it
through and I decided that we should reduce the success
fee from 100 per cent to 10 per cent. I got ministerial
colleagues’ agreement to that without any difficulty.

As it happened, in the rush of legislation as we
approached the General Election, that proposal was then
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the subject of what I can only describe as an ambush in
the particular committee that looked at it and so it
tumbled. I mean, it would not have fallen but for the
election.

Q. Were you lobbied by those in favour of maintaining the
existing panoply of arrangements in relation --
A. Yes, I was. The people who represented plaintiffs in
these actions, I can’t remember exactly who -- which law
firms it was, but they were lobbying. There were some
people in the Commons who were concerned about what
I was proposing. And I remember going through a lot of
contrasting evidence about the effect of defamation
claims on newspaper finances, and I think Lord Justice
Jackson had a view about this as well --

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Lord Justice LEVESON: He certainly did, but let me take a
point away from Lord Justice Jackson’s comprehensive
view, not merely of defamation but of costs generally,
and ask whether this is a relevant consideration. There
has to be a bit of a statement surrounding it.

Before conditional fees, libel, privacy, defamation
was very much only open to the wealthy. Legal aid
wasn’t available for it, therefore you took on what were
perceived to be the wealthy newspapers at your peril,
and therefore that area of litigation could be kept
comparatively under control.

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A. Yes, sir. My view was this: I did not want to go back
to the situation where the boot was only on one foot,
which was the one you described before CFAs came in, and
where it was in practice impossible to take proceedings
for defamation unless you had a very long pocket
yourself, just impossible, and that gave the press too
much power. But I also took the view, for reasons I’ve
explained, that I thought the balance had shifted too
far in favour of plaintiffs, and some the cases I looked
at in some great detail were frankly completely
unmeritorious. I mean, they really were unmeritorious,
but they nonetheless --

Lord Justice LEVESON: Then risk of course is the newspapers
say, "It's going to cost us £500,000 to fight it,
therefore we'll buy it off for a very small sum."

A. It's a kind of subset of the abuse of the costs system
which we've ended up with in motor insurance, which was
never intended but it's the way it's come out.

Just going back to Lord Justice Jackson, I'm sorry
I haven't briefed myself on this, but my recollection is
that when I was discussing whether it was appropriate to
make this change then, and I'm pretty certain that
Lord Justice Jackson took a different view from me on
this, but I can't remember, he produced or his office
produced quite a lot of evidence about whether I was

Page 56
correct in claiming that the Defamation Act was having this effect, but I looked at all this and I came to the judgment I did.

You can never be certain when you make a policy change. My view was that it liked to rebalance it reasonably satisfactorily and if it didn’t, then three or four years’ time you could balance it again. But given the fact that Lord Justice Jackson’s proposals overall have now broadly been taken into law, I assume that to a degree, sir, the landscape’s changed a bit anyway.

LORD JUSTICE LEVESON: I think that’s right, but the reason that I’ve gone into that discussion with you and would welcome your view is because at an earlier stage of the Inquiry, one of the things that I have said that I would like to think about is whether whatever mechanism one puts into place, if one changes what is to be proposed in any meaningful way, would be the question of some form of arbitral system which permitted privacy, small libel claims, all that sort of breach of confidence type litigation to be dealt with perhaps inquisitorially in a way that was far cheaper, far quicker, and provided a far better outcome for everybody, with the possibility, of course, that points of law could come up to the courts and be dealt with as usual, and I’d be very interested in your view on that, and I’m sorry --

I frequently take Mr Jay out of order, and it’s too bad. A. Would you like my view now off the top of my head or would you like me to submit a memorandum about it?

LORD JUSTICE LEVESON: I’m very happy for you to defer and consider it, if you’re able to, because there are a couple of other hooks in your statement which I intend to pick you up on.

A. On which I’m going to be impaled, yes.

LORD JUSTICE LEVESON: All right.

A. Sir, if you’re happy, I will send in a supplementary statement.

LORD JUSTICE LEVESON: Thank you very much.

A. Thank you.

MR JAY: The issue of activation of Section 77 and 78, it never happened.

A. Yes.

Q. Is that a matter of regret?

A. Yes, it is, yes. I wish I’d done it before the election. I can’t remember why I didn’t, but anyway. I mean, there’s a wider issue about activation of legislation and my view is that there ought to be time limits by which sections of legislation have to be activated full stop, because otherwise Parliament’s will is undermined. But that’s a wider issue.
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<td>Q. How persistent was her lobbying of you on this?</td>
<td>A. I'm a bit vague on this but it was fairly persistent.</td>
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<td>Q. What about the specific point or indeed the general point that Mrs Brooks was merely representing the views of her readers and therefore it's wholly legitimate for her to bend your ear?</td>
<td>A. Oh, yes. It is striking that when one talks to editors, senior executives of popular newspapers, that they believe this. I think that has a truth behind it, but the Sun's or the Daily Mirror's readers are also my constituents and I think you can't have a position in public life, which editors do as much as politicians, and plead as your excuse for an otherwise abject position that you have asked your readers or your constituents what you should do with your conscience and taken their view, because first of all they don't have a single view, and not only -- I mean, a lot of my politics comes from talking to my constituents in organised ways, through open air meetings, through residents' meetings and so on, and the same person may have two views within the space of ten minutes, and what you have to do is to try and make judgments about what they are saying to you. Most people have their lives to lead. They're not people who use argument as day by day as you and I do, Mr Jay, or that journalists do, so I say at one level I understand that.</td>
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<td>Q. If you draw a distinction between the interests of the white constituents and that towards the end of my period as Justice Secretary, where there was a man who had no case whatever for staying in the country, except that he'd been here evading the law for 12 years, was turned into a hero by the Daily Mail, as it happened, and if you are the person who has to make a decision, it's really really tricky and it also means that public opinion becomes quixotic. Or, for example, you're invited to take a firm position over those who breach the law, and that people ought to be serving the sentences laid down, and then when you get a man who's sentenced to 30 years in jail, escapes from jail after 19 months, spent 36 years on the run, Mr Ronnie Biggs, he is then regarded as some kind of hero and you are accused of being unfair to him when you decide he ought to stay in jail for a bit longer. These things are -- you have to cope with them, but I wish sometimes that the newspapers would hold the mirror up to themselves and compare and contrast positions they're taking in general with those they're taking in particular. On the issue of Thompson and Venables, what happened was towards the end of my period as Justice Secretary, one or other of them, and I'm afraid I can't remember which one, had committed an offence of Internet porn and that meant that they had to be recalled to prison and all the rest of it, but there were demands from the papers for the injunctions, which were lifetime ones to prevent their new identity being released, those to be withdrawn, and for further details to be given. The press were desperate to find these people. Again, I understand that, but if the identities of</td>
<td>A. Yes. It's probably not necessary to go into that. Is there anything you can help us with on paragraph 123, and this is the Thompson and Venables case?</td>
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then there are non-Parliamentary speeches, where
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adviser or sometimes a minister concerned about what
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a statement, although that's less frequently, is leaked,
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pre-brief or publish in advance. That's often, I'm
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hear what a minister is saying, so you must not
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which is that Parliament should be the first group to
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from non-Parliamentary occasions.
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Statements to Parliament, the rules are very clear,
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start this again and separate statements to Parliament
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of speeches, but we've got too absurd -- may I just
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I thought this was kind of absurd because you ended up
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have more influence than if you're selling three papers.
13
Although it's not just, as everyone knows, an issue of
12
influence and authority -- query legitimacy.
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Legitimacy, I think, is a slightly -- I wouldn't use
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readers. So if you're selling 3 million newspapers, you're going to
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Total numbers because the Financial Times would say they
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aggregate of their readership, because -- for sure. If
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you're selling 3 million newspapers, you have more
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5
that word, sir. They get their authority and influence
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from --
3
LORD JUSTICE LEVESON: All right, I prefer that.
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A. -- from, say, the aggregate weight and value of their
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readers. So if you're selling 3 million you're going to
have more influence than if you're selling three papers.

papers on any day, therefore they face an election every
single day, and if nobody likes their views, they won't
buy the paper.
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A. Well, they certainly get their legitimacy from the
aggregate of their readership, because -- for sure. If
you're selling 3 million newspapers, you have more
influence and authority -- query legitimacy.
8
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readers. So if you're selling 3 million you're going to
have more influence than if you're selling three papers.
Although it's not just, as everyone knows, an issue of
total numbers because the Financial Times would say they
only sell, I don't know, 300,000, but they sell to the
right 300,000, I think is how they put it.
18
And talking to editors and senior executives, I'm
struck almost by their neurosis about what their readers
think of their product, and yes, they are tested every
day, and it's also the case that this is a -- the market
in newspapers in Britain is more competitive almost than
anywhere else in the world, we have more national
titles, and some titles are doing better than others.
If you think of the Daily Mirror, I mean it was outselling all the papers 30, 40 years ago, and now it's not.

So they're right to be neurotic about this, they're right that their authority and influence comes from this, but I think where it's inappropriate is for them to say therefore, as it were, they should resort to the lowest common denominator of the prejudice of their readers, because I don't think even the readers think that, really.

LORD JUSTICE LEVESON: Thank you. The second point, you provided some graphic illustrations of inconsistent approaches, and you said newspapers should hold up a mirror to themselves. That actually raises another question, which is the fact that with very, very rare exceptions, nobody holds the press to account at all, and I'd be interested in your view at some stage about whether that's just a fact of life and everybody just has to live with it, or whether there is force in the view that organisations such as Full Fact should be given a greater prominence in order to just try to improve standards.

A. I think it's a cultural issue, this, as much as a kind of issue of regulation. A more effective system of regulation, which as I set out in the Gareth Williams lecture I think has to have a platform of statute, would certainly help and it would more effectively put the mirror to the press where they have breached certain standards, but there is, say, there's a bigger issue here about the culture of newspapers, culture of what happened in newsrooms, where I certainly think that the press need to be more examining of what they are doing, much more examining.

I talked earlier in this evidence about how they report politics and Parliament. I'm constantly amazed by the newspapers complaining about low turnouts at elections and even 20 years ago they were much higher, and not understanding that they have contributed to a significant degree to a culture in which polls is seen as boring, it's seen as completely self-serving and is not for smart people to get involved in, even to the point of voting. So of course there's going to be -- and that has an effect and they don't really think about that.

They're highly quixotic, so the same newspaper can be praising a politician one day and then -- I can produce cuttings, but I won't, where one month I'm the greatest thing since sliced bread and the next month even your paternity is being questioned in some very great degree, and by the same people who have written this, and they have no memory at all. I mean, it doesn't matter what you said before. Previous inconsistent statements can never be adduced against a newspaper, whereas, quite properly, they can against politicians.

The other thing, sir, that many newspapers are lacking in is an understanding of what it feels like to have to make decisions. Yes, you need observers in a society, but there is a degree of sort of voyeurism about the British journalists which takes no account of the responsibility of decision-making. I don't use that as an excuse for decisions which I may have got wrong, but they -- I mean they sometimes think that you have had all the time in the world to make a decision. Well, you haven't. You have a box full of papers to make -- to get through.

One is conscious, when I certainly was a minister, that if I missed a detail then I could a year down the track, maybe ten years, I'd get rolled over for missing that detail, not merely by the press, you have to be very careful, but you have to be very quick, you have to move on but no understanding of that. It goes back to this almost wilful refusal by the press collectively to develop an understanding in the minds of their readers about how governments in this country and democracy actually works and they reduce it so much to personalities and to conflict, which -- some of it is personality, some of it is conflict, but nothing like as much as they claim.

LORD JUSTICE LEVESON: Does that carry into a criticism that Mr Boulton was making yesterday -- or actually I think he was quoting somebody else -- that errors are not simply errors, there's something going on behind them? A. Errors by the media?

LORD JUSTICE LEVESON: No, errors by the politicians. In other words, there is some not merely -- I think I used the word yesterday, not merely a cock-up, but actually there's something much more serious underlining a failing.

A. Well, I'm sorry, I did read Mr Boulton's written statement carefully. I've not read the oral evidence --

LORD JUSTICE LEVESON: I think it came from a book that he'd written, a piece that he'd written.

A. I'm not sure what point he's making because very, very occasionally there may be a conspiracy behind a decision, but I've never taken part in a conspiracy and I never saw any of my colleagues doing this. I took part in plenty of cock-ups, for sure, because that's life. As John Major famously said, the only people who've never made a mistake are the people who have never had to make a decision.
never made a decision, to which I would simply add: they're called journalists.
So you do make mistakes, of course. I think when you do, you should seek to apologise for them and move on. But that's life.

LORD JUSTICE LEVESON: All right. MR JAY: Police issues now, Mr Straw.
A. Yes.
Q. The detail of what you say in paragraphs 51 and following I'm not going to ask you about. I'm going to ask you about the issue of culture.
A. Yes.
Q. Particularly your take on what the culture was as between senior members of the Metropolitan Police Service and journalists.
A. I have no direct knowledge of this, and as I said in my written statement, I've been through all the records that the Home Office could find of this period as Home Secretary and the issue of media relations itself is very rarely mentioned. I mean, my view from having been briefly in practice at the bar in the 1970s when the evidence was emerging of endemic corruption inside the Police Service, including in London, and having taken a close interest in the whole issue of police accountability from the very first year that I was in office or member of staff, who they were paying. That was also -- I mean just regarded as a fact of life by senior officers, very difficult to pin down, and -- yes, that was my very clear view.

The other point I think is very important which I didn't properly bring out in my written statement to take account of is this: the whole of my relationship with the police, particularly the Metropolitan Police, when I was Home Secretary was framed above all by the Lawrence Inquiry. I'd become Home Secretary in very early May, I'd made no commitment about an investigation into Lawrence before the election or at the election because I didn't think that was appropriate, but I then -- one of the first things I did was to call for the papers, look at what had happened or hadn't happened, and then at the end of July 1997, just three months after taking the job, announced this inquiry, and as both Lord Blair and Lord Stevens bring out, I mean that was deeply traumatic for the Metropolitan Police and particularly with Lord Condon, Sir Paul Condon, who was the Commissioner -- my Commissioner between May 1997 and when he retired, which I think was early 2000, it was absolutely dominant. So I just need to -- what we were dealing with there was much wider failings of the Met, which came out, as they did so dramatically in the course of that inquiry.
Q. The Lawrence report was, of course, leaked.
A. It was.
Q. Are you able to assist the Inquiry as to the circumstances surrounding that?
A. Yes. Yes. The inquiry report was due to be published on a Wednesday, which I think was 22 February. I was -- I received it the previous week. We were very concerned at the Home Office about the possibility of it leaking, and it was kept very closely under wraps in the Home Office, and I'm absolutely -- I had total confidence in everybody who handled it within the Home Office, the few who did.

Downing Street people wanted to see it and said they wanted to see something for the Prime Minister's weekend box and I was very resistant to this because I was very concerned about the general culture which had built up in Downing Street of leaking, so I was very reluctant about them seeing anything before the Monday.

In the event, as I recall, we agreed to produce a summary, but it was a bit of a -- part of it was a paraphrase, and quite deliberately so, and this only went to them.

Then on the Saturday evening, when I was coming back, as it happens, from Blackburn, I got a call from my private secretary, Clare Sumner, who was on duty, to say that it had leaked, and because I was so concerned about the effect of this leak on the Metropolitan Police particularly and on the Lawrence family and also on Parliament, because we'd been under great criticism for pre-briefing, which I didn't go in for myself but with government in the frame, I sought and obtained an injunction to stop the presses of the Sunday Telegraph.

And then that subsequently had to be lifted because they'd already printed some of the copies and there was a huge rumour that I was trying to gag the press, which was nothing of the kind because the whole thing was going to be published the following Wednesday.

LORD JUSTICE LEVESON: I've had that problem too, in the Inquiry.
A. Indeed. It was absurd. Nonsense. If I was intending not to publish the report, of course there would have been a public interest in publishing it, but this was about whether one newspaper was entitled to publish...
It suited the ministers or Number 10 concerned at 24 unhealthy. 23 groups. It was very, very incestuous, I think very 22 conspiracy is too strong a word, but had these little 21 ministers, and they were involved in kind of -- 20 were being favoured by Downing Street or some particular 19 newspapers or some journalists on some newspapers 18 of the British press. So what I saw was that gradually 17 the 1992 election, and to the highly competitive nature 16 papers, which arose particularly during the 1980s and 15 those? 14 Q. Can I ask you about the general topic of spin and New 13 Labour. 12 A. Yes. 11 Q. Some observers would say that you were either tangential 10 to or outside the spin circle and therefore can assist 9 us sort of looking in. 8 A. I take that as a compliment, if they do, and I hope 7 I was. 6 Q. You're statement suggests that generally speaking you 5 were, but as you say you're not perfect? 4 A. Well, none of us is perfect, but I disliked that -- 3 I understood why it happened, but I thought that it was 2 bound to blow up in our face, which indeed it did, and
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I also just thought it was unnecessary, because if we 3 just got on with being ministers and telling Parliament 2 what we were doing, it would mean — to use the share 1 price analogy, of course the price wouldn't be puffed as 2 much as it was, but it wouldn't go down as badly as it 1 did, and it might have meant that we, instead of winning 2 400 seats in 1997 and 401 in 2001, if those were the 3 numbers, we'd won 30 or 40 fewer, but that probably -- 2 I mean, without -- that would probably -- I think might 1 have been a good thing for the Labour Party as well as 1 for our democracy.

Q. In terms of its causes, though, how would you analyse 3 those? 2 A. The spin? Well, it goes -- it partly, Mr Jay, goes back 1 to our concern to develop a close relationship with the 16 papers, which arose particularly during the 1980s and 17 the 1992 election, and to the highly competitive nature 18 of the British press. So what I saw was that gradually 19 some newspapers or some journalists on some newspapers 18 were being favoured by Downing Street or some particular 17 ministers, and they were involved in kind of -- 16 conspiracy is too strong a word, but had these little 15 groups. It was very, very incestuous, I think very 14 unhealthy. 13 It suited the ministers or Number 10 concerned at 12
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the time. It also suited those journalists because they 10 had privileged access to information, so they were 9 getting exclusives over their colleagues in the same 8 newsroom and over other newspapers, but I think it was 7 a bad idea. I didn't like it, and I tried to get on, as 6 far as I could, doing things in a different way. 5 Interestingly enough, Alastair Darling did too, and 4 I think there was some connection with the approach we 3 adopted and the fact that we survived in that government 2 whilst others didn't. 1

Q. Arguably there are two polar positions one sees in 19 commentaries. There's the position that someone like 18 Mr Oborne adopts, and we'll be seeing his piece. It's 17 all the fault of the political classes, if one can put 16 it in one sentence. And the position of Mr Campbell is 15 more: it's the fault of the fourth estate, culture of 14 negativity, everything else. Do you have a different 13 position, a mid-position or -- 12 A. Right, as I've indicated I think the truth lies in 11 between and I think there are high responsibilities on 10 both journalists and the media and on politicians. I'm 9 not trying to be sort of Pollyanna-ish here, although 8 probably that's the wrong metaphor, but anyway, I'll 7 think of the correct one a moment, but yes, the right 6 approach always lies in the middle, but I think we fed 5
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each other. I think Mr Oborne is completely off the 4 wall in what he writes, but Mr Campbell is not correct 3 either. 2 Q. One can debate the diagnosis, but what if anything can 1 be done about it in a free press and a mature democracy? 1 A. I think the process of this Inquiry is, quotes, doing 0 something about it, just as the process of the Lawrence 1 Inquiry, the process of it, leave aside the specific 0 recommendations, changed the nature of policing, because 0 you saw over the period of that inquiry aspects of 0 policing which the public didn't generally know about 0 and the police -- it was a mirror for the police. Now 0 this Inquiry, this whole process, is a mirror for 0 journalists and many journalists are very serious 0 people, intelligent, bright, thoughtful, and concerned 0 about the future of journalism in our democracy, and 0 they want this -- they want to think about this. 0

So that's one part of it. 18 I think changes in the system of regulation will 17 also help, in fact I'm pretty certain they will, because 16 they will end this -- with luck -- sorry, sir, I'm 15 anticipating your recommendations, but my view is that 14 you have to have some external regulation of the press 13 and that's not, as Mr Dacre would claim, I think, that 12 this would be the end of freedom of the press as we know
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<td>It's to protect the freedom of the press. But the press can't go on, as they have been, claiming that every other institution in the land requires external regulation, which includes the legal profession, and they were right at the front of claiming that the legal profession couldn't continue to regulate itself, it includes the City, and again they were in the front of saying the City couldn't go on regulating itself, but they then say, &quot;But hang on a second, the press ought to be able to regulate itself&quot;, when palpably it has failed, and also it has to be taken into account that the only reason that any changes in regulation have ever been made, ever been made, in terms of self-regulation have been a late response by the press to the possibility that they will at long last be subject to statutory regulation. You go through all the post-war inquiries, including the Younger one and then Calcutt and all of those, so they only shifted under -- well, when they saw a tank coming down the road, and I think, frankly, the last 50 years' experience shows that those days have gone and you have to have something external, and I think it would be good for the press as well because most journalists want much higher standards.</td>
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| Q. | -- historical context. |
| A. | And one other point which I make in the preceding paragraph is that -- and the subsequent ones is that some people in the press have presented self-regulation versus external regulation as a kind of four legs good, two legs bad dichotomy, and implied that at the moment there is no external regulation anyway. There is actually quite a lot, in terms of the law of defamation and indeed the law of privacy, and what you have is simply -- it's principally about what sanction you can get for failure of substantive law above the -- at the top of it, which is the system of self-regulation. I didn't make that very clear, but you may want to go on, Mr Jay. |
| Q. | On page 4 you deal with the issue of privacy. |
| A. | Yes. |
| Q. | Which you describe as intellectually, procedurally and politically much more difficult to handle. |
| A. | Yes. |
| Q. | We're not dealing with inaccuracy, we're dealing with truth. |
| A. | Yes. |
| Q. | Which should remain private. Is this your position now that consideration should be given to a separate privacy tort? |
| A. | Yes, it is, and indeed I say that in the course of this |

Gareth Williams memorial lecture. One sentence, of course, was extremely propitiously timed, 12 July, so it was right in the eye of the storm. It's under our tab 2. A. Yes, I have that. Q. We're not going to read it out, Mr Straw. We've had the chance to pre-read it. But can we pick up a number of key themes and see the extent to which at all you wish to modify those in the light of events which have occurred since July of last year? LORD JUSTICE LEVESON: Or indeed what's happened in the Inquiry. Not external events, but to such extent as you've picked things up from the Inquiry. A. Indeed. MR JAY: First of all, the concept -- the reality indeed of self-regulation, which you begin to touch on on page 3 on the internal numbering. A. Yes. Q. You describe it, I think, as a weak substitute at the margin for a legal structure. A. Yes. Q. I think you probably have already explained it as one in the context of the -- A. Yes. Q. -- historical context. A. And one other point which I make in the preceding lecture later on, that there ought to be -- we ought to pick up what Calcutt proposed, which was that -- for a separate tort. And I've -- later on -- Q. Page 8, isn't it? A. Sorry? Q. Page 8. A. Yes. And I mean there isn't -- and for the reasons which I set out, that the public have a right to expect the same explicit protection available to them as they do in respect of defamatory statements, breach of copyright, and every other tort. At the moment we're getting to copyright by a kind of side door. Q. Might two things be said? The creation of a privacy tort might create primacy of Article 8 over Article 10, and secondly, what is wrong with the development we've seen over the last 14 years, namely what the highest courts have done, creating not so much a privacy tort but de facto principles, or indeed perhaps de lure principles which amount more or less to the same thing? A. I think on your first point, Mr Jay, you can deal with that by drafting of the legislation, so I don't -- I think you can overcome that. On your second point, the answer isn't -- what would be the difference? Not much, is my answer. I accept that, and it's implicit in what I say at page 8.
It's really -- the only inference is really a point of principle. You may say the principle's not worth it, and you could also say, well, the torts which are available for people where a remedy is available to them directly, for example, defamation, have themselves been developed by the courts rather than by Parliament, and broadly that is true, so why not leave, as it were, the living law, the common law, to develop in the same way? And I -- there is a strong argument on that side.

As I say, my judgment, and it's a balanced one, not a -- is that to get a -- first of all, I think that Parliament needs to take this job on now. I mean -- and Lord Justice Leveson has made the point in an interrogatory way that the effect of us, as I -- to use the analogy here, the passing of the parcel, the development of a law of privacy was to put the judiciary unfairly in the frame for being criticised for this, when in fact it was Parliament which had done this. So I think we ought -- it's an issue of responsibility, and just of Parliament saying -- making a statement to everybody that as citizens they do have a right to have their privacy protected, not absolutely, but generally. What was then going to be a non-statutory inquiry into the culture, practices and ethics of the press.

A. Yes.
Q. And a few days later it ceased to be that.
A. Yes. I was struck how much this is a piece of ancient history when I reread that paragraph.
Q. The "kicking into the long grass" point may or may not be valid, whatever the --
A. Well, I hope not.

LORD JUSTICE LEVESON: But that again is going to be a matter for Parliament. The great difference between what I am doing now and what I normally do for a living is normally I decide cases, and that's the end of that. The decision is there, and if you don't like it, off you go to the Supreme Court. Here, everything I do will take the form of recommendations.
A. No, I understand that.

LORD JUSTICE LEVESON: They don't have to be picked up or not.
A. I understand that, sir, and there will then be a responsibility on the body politic, in my view, to ensure that your labours have not been wasted.
LORD JUSTICE LEVESON: It is one of the reasons why I've been very, very keen to ensure the Inquiry could maintain the cross-party support --
A. Yes.

LORD JUSTICE LEVESON: -- that it had when it started.

A. So far that's there, and it's -- the whole sort of politics of this are now very different from where they were before.

LORD JUSTICE LEVESON: I'm pleased you say that, because I think I heard from Mr Campbell on Monday that he doubted whether there was still the same support. I am not trying to get into any political debate here.
A. No, I know.

LORD JUSTICE LEVESON: I want to make this as politically neutral as possible to make it easy for all parties to decide a common way forward. If you like, it's the consensus politics to which you referred earlier.
A. I think that really -- it -- you could only make progress, I think, on a -- in an area like this by consensus. That doesn't mean without any argument, but it does mean there has to be backing for the principle and backing for where you get to in the end.

I mean, at the moment, if you look at what's going on in Parliament, of course there is a lot of partisan argument over, for example, the issue of the BSkyB bid, and I won't go into any further detail on that, but that is obvious, but behind that, I think that what I divine is clear understanding by all the parties that we got too close to the papers, and that applies particularly to the two main parties, and that it's not healthy for anybody, least of all is it healthy for the press, so with luck, there will be that continuing momentum for change, and some of us are going to do our best to ensure that it takes place.

LORD JUSTICE LEVESON: I'm pleased to have asked you the question, because listening to Mr Campbell the other day -- I don't say it was very depressing, but it certainly created a concern.
A. Look, I'm not in any doubt, sir, that there will be a concerted effort by some of the newspapers to argue against any form of more coherent regulation than you have today, and I think Mr Dacre has made clear he holds a perfectly honourable view, which I respect but don't share, about what he thinks will happen if there is coherent regulation. But I hope and believe that even he recognises that the landscape has changed completely, and what the public are willing to tolerate has changed completely.

LORD JUSTICE LEVESON: He certainly said that last September when he attended the seminar.
A. Yes.

MR JAY: Mr Straw, on other matters, the issue of prior notice, page 10.
A. Yes.
Q. You don't favour an absolute requirement, you favour...
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<td>1 A. Yes.</td>
<td>1 LORD JUSTICE LEVESON: The editor of the Times --</td>
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<td>2 Q. And you indicate why.</td>
<td>2 A. Mr Harding?</td>
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<td>3 The third issue, the make-up and underpinning of the</td>
<td>3 LORD JUSTICE LEVESON: -- proffered that argument and when</td>
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<td>4 reconstituted regulator --</td>
<td>4 I came back and pointed to section 3(1) of the</td>
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<td>5 A. Yes.</td>
<td>5 Constitutional Reform Act, which enshrines in a statute</td>
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<td>6 Q. -- which you would like to be called the Press</td>
<td>6 the independence of the judiciary, he decided that he</td>
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<td>7 Commission, but I'm sure the label doesn't matter.</td>
<td>7 had brought a knife to a gun fight and, as it were,</td>
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<td>8 First of all, its normative force, are you envisioning</td>
<td>8 retired from the debate.</td>
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<td>9 a statutory underpinning, and, if so, why?</td>
<td>9 A. Yes.</td>
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<td>10 A. Yes, I am. One discrete reason for having statutory</td>
<td>10 LORD JUSTICE LEVESON: But that's an identification of</td>
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<td>11 underpinning is that if you don't, if it continues to be</td>
<td>11 a principle -- I think it would be quite difficult</td>
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<td>12 voluntary, there's no way that I can perceive by which</td>
<td>12 judicially to review something on the basis of</td>
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<td>13 you can then bring in those newspaper groups that don't</td>
<td>13 an alleged breach, but do you see a value or a detriment</td>
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<td>14 want anything to do with the regulator. It used to be</td>
<td>14 in having a similar sort of declaration of principle, as</td>
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<td>15 a matter for speculation but now it's a matter of</td>
<td>15 it were, to put the position beyond doubt and to</td>
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<td>16 reality because of the position the Express Newspapers</td>
<td>16 demonstrate that if somebody did want to change it,</td>
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<td>17 decided to take to just extract themselves from the PCC.</td>
<td>17 they'd have to change the principle, which actually</td>
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<td>18 That's one reason.</td>
<td>18 couldn't be just done through an &quot;and or an or&quot;</td>
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<td>19 Secondly, if you leave it to self-regulation, we end</td>
<td>19 amendment, as it were, but would require a fundamental</td>
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<td>20 up with this absurd situation where they are judge and</td>
<td>20 rethinking of the structure?</td>
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<td>21 jury in their own cause. As I think has become clear in</td>
<td>21 A. Yes, I think a statement like that is of -- would be of</td>
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<td>22 the course of this, I do have very high respect for</td>
<td>22 value. I'm sure it would be. And I mean picking up</td>
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<td>23 Paul Dacre -- I've known him for a very long time and so</td>
<td>23 your point about the Constitutional Reform Act, the</td>
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<td>24 on, and none of that is soft soap, but I simply do not</td>
<td>24 2005 Act, not only -- I know you are familiar with its</td>
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<td>terms -- is there this requirement about the</td>
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Day 72 Leveson Inquiry 16 May 2012

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| What about the concern though that there is a seepage or the perception of seepage that there might be state control over the content of what newspapers can do? | I don't think there will be state control over the content of what newspapers can do. I mean, by what process could the state -- I mean -- control what they were doing? They would be still free to publish anything they wanted within the general law. If I may say so, Mr Jay, I don't know who said this, but I think it's nonsensical, it's a fantasy. | I think that's clear. 
Unless you have any points you wish to develop in relation in particular to the future, those were all the questions I had for you. |
| Can I say, sorry, it was triggered in my mind by Lord Justice Leveson's reference to the Times. The only thing--probably I think it is quite important to understand is that we tend to talk about the News International papers as a single body, but what is striking in my dealings with these papers over 30 years is that although for sure they're all owned by the same group, they are very different and you've had the Sun, which was -- has been without question the most powerful paper and the one I think Mr Murdoch has used as the agent of his power, right out front, and then not far behind, the News of the World. And then the Sunday Times, which in a sense, although it shares a name with the Times, is a very, very different animal from the -- works in a different market. And I put those three together in one bracket, they're sort of partisan vehicles, and quite separately you have the Times. And I have just to say, because I declare a sort of interest because I've written for them on and off over the last 30 years, that the Times has a very different culture from these other papers, and in my lengthy experience maintains high standards. I mean I just say that. So I think it's quite important that they shouldn't all be tarred with exactly the same brush. |

Lord Justice Leveson: It bears the weight of its history. 
A. Yes, and it has -- it's really interesting that in that building, the one at Wapping and now the other one, they just have a very different culture, even though they're only a floor apart. It's just how it is. And, of course, you might say that it's what their readers expect. 
Lord Justice Leveson: If that's not an invitation, I don't know what is. 
A. I will, sir, provide you with more details. 
Lord Justice Leveson: I would be very grateful. The reason I would find it valuable, let me make it abundantly clear, much criticism has been addressed, at least initially, I hope not so much now, to the fact that my background is as a lawyer and latterly as a judge, and I have been parachuted into a world that is not mine, and expected to identify all the pitfalls and all the solutions, and the suggestion is that that simply isn't practical or feasible. 
You bring a very different experience to bear, and I've said this to a number of people, and therefore any assistance that I can get to try to come to terms with the terms of reference that I have and to produce a solution that is practical, effective, and properly balances the legitimate interests of society where a free press is critical, of the press who have the
commercial problems that they have to face with the
Internet, and the public is quite a task.

A. Yes, I accept that.

LORD JUSTICE LEVESON: And therefore I would welcome
everningly the assistance of you and indeed, as I've
tsaid to others and will continue to say, to provide
input. I'll come up with the recommendations and then
everybody can do with them what they will, but
I wouldn't want to fail to take up a point for want of
the humility of asking. I am humble in this area.

A. Yes, sir. Of course I'll do that, and if I may, I'll
reflect on it and prepare a written statement.

I was also just reflecting on the experience of
setting up the Independent Parliamentary Standards
Authority, because it's a -- which I had -- fell to me
to do, and that's been a very interesting institution
because here is a body which has considerable power over
Members of Parliament, which is the sovereign Parliament
in the land, and to begin with, it caused conflict and
friction between the members of the House of Commons and
this body, but it's sort of gradually settled down and
there are mechanisms there by which the -- so the
members of the authority, the five members, are
appointed at arm's length from people in the House of
Commons, and I think it works. Of course I'll --

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LORD JUSTICE LEVESON: There are a couple of things you've
agreed to look at.

A. Yes.

LORD JUSTICE LEVESON: And I'm very grateful. Let me just
ask one further question, if I might, really picking up
on something that Lord Hunt said, which Lord Wakeham
agreed with, which --

A. Lord Hunt, the chairman of the PCC at the moment?

LORD JUSTICE LEVESON: Yes. Lord Hunt put it this way: oh,
well, if you introduce legislation, then members of both
the House of Commons and the House of Lords will do
their level best to really try to emasculate the press.
That's my summary, not his words. And they will want to
use the opportunity to impact on the freedom of speech
and expression and the press, which I have constantly
espoused.

Another witness said: well, I'd like to know who
these people are.

A. Yes.

LORD JUSTICE LEVESON: But then Lord Wakeham said: oh no,
there are certainly people like that.

A. If you have some sense of that, I'd be interested to
know it.

A. Well, I mean there could be people in the House of
Commons and the House of Lords, who after all number

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having a separate tort because I've agreed with Mr Jay
it wouldn't make that much practical difference, so
you're just talking about provision of remedies, and
what you're trying to do is effectively to make the
current purpose of the PCC, which is to provide
fast-track remedies in situations like this, far more
effective in the circumstances in which certainly I've
come to the conclusion that the PCC cannot do it by
voluntary behaviour.

So that's what you're doing. There's no way in the
world that process is going to lead to control of the
press. It's completely nonsense. And I mean who are --
so you have a press commission, let's call it that.

They have an office, you have adjudicators, they have
power to require publication of corrections and
apologies, they may have power to award damages. And
query, although I think's it's a really tricky area,
this, whether they have power to restrain publication in
advance of publication in privacy cases. Okay.

But how would any of that lead to --

LORD JUSTICE LEVESON: Yes, I ought just to say so I can
test you on the question of restraint, prior restraint,
you suggest there should be a presumption --

A. Yes.

LORD JUSTICE LEVESON: -- of provider notification. Was it
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<td>1. in your speech --</td>
<td>1. LORD JUSTICE LEVESON: Well, you mean our society isn't going to change?</td>
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<td>2. A. Yes, it was.</td>
<td>3. A. Sorry, my sentence rather tailed off. I don't think that the pluralism is going to change, just because you have a press commission which is backed — has a few powers and enjoys public confidence, which the current arrangement palpably doesn't.</td>
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<td>3. LORD JUSTICE LEVESON: -- that the answer to that might be in default, exemplary damages?</td>
<td>4. LORD JUSTICE LEVESON: I think that's probably a very convenient moment at which to conclude, Mr Straw. Thank you very much.</td>
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<td>4. A. Yes.</td>
<td>5. A. Thank you very much, sir.</td>
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<td>5. LORD JUSTICE LEVESON: It was in your speech?</td>
<td>6. LORD JUSTICE LEVESON: Right. Well, you shrug, Mr Jay.</td>
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<td>6. A. Yes, it was, page 10. I mean I didn't come to a --</td>
<td>7. You've allowed me to have an afternoon to do some work.</td>
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<td>7. I thought about this a lot and talked to a lot of people</td>
<td>8. Thank you very much indeed. We'll say 10 o'clock tomorrow morning. Thank you.</td>
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<td>8. before I wrote that paragraph, and it is -- and of course well informed by a lot of the discussions I had over in the Ministry of Justice. It's a really complicated area; you know it, sir, better than I do, about whether you should have an absolute requirement of prior notification or whether it should have some qualification.</td>
<td>9. (1.02 pm) (The hearing adjourned until 10 o'clock the following day)</td>
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<td>9. And in the discussions I've had with serious senior editors, there could be cases where it was in the public interest for essentially the subject to be ambushed.</td>
<td>10. MR JACK STRAW (sworn) ................................1</td>
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<td>10. Not very many, but they may be very serious cases. So I was trying to find a way through, and I think my suggestion there was you make this presumption and then if they can't meet the test, public interest, then it would be open in very serious cases for there to be an award of exemplary damages against them so they have to take that into account when they make a risk assessment.</td>
<td>11. Questions by MR JAY .........................1</td>
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<td>26. (Pages 101 to 103)</td>
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