Q.  Is it fair to say that from a very early stage indeed the government's response to the proposal for statutory regulation was to the effect that it could be a step of some constitutional significance and something which the government would be extremely reluctant to do?
A.  That's correct, yes.
Q.  And so that we can deal with that aspect of things very shortly, that effectively remained the position throughout the history of the response to Calcutt 2?
A.  It's been the position -- it certainly was the position throughout the time that I was responsible as a minister, and for a long time since.  If you're asking me the question about the period that I was a minister, it's absolutely right that the government had a strong preference to avoid any form of statutory regulation.
Q.  And perhaps you could briefly explain the thinking behind that position?
A.  I think it starts as an issue of principle, that there is -- it was described by Peter Brooke in his original statement in reaction to Calcutt 2 that it would be a step of considerable constitutional significance.  I think there are all kinds of issues of principle that are raised by the suggestion of statutory regulation of the press that I personally would be uncomfortable with, and I think that was a view reflected within the government at the time.

There also, because this was a real political world and a real political set of decisions, there was the reality that if you were going to even contemplate going down that road, you would encounter huge opposition from the press themselves, based both on principle and it's often argued on self-interest, but it would be powerful, vigorous opposition, and that would, as a practical matter, have made it I think impossible for such a proposal to have been carried through the House of Commons.

So whether you address it as an issue of principle or reality, it wasn't an option that merited very serious consideration.
Q.  You inherited a draft White Paper in the summer of 1994 when you took over the portfolio.  The thinking at that time -- I'll deal with it briefly -- you thought that there were signs of self-restraint on the part of the press?
A.  I think there's -- yes, that's true.  I think there was a recognition within the press industry that things weren't as they should be, from the point of view of the majority of the press community, and their decision as an industry to appoint John Wakeham as chairman of the PCC later that year I think reflected a willingness to...
take seriously the need to do something more effective through the PCC.

Q. And you thought in picking that up that there had been some improvement to the way the PCC was operating?

A. I think there was a willingness to improve and that that was developed through the 12 months that I was engaged in these issues, yes.

Q. But nevertheless the message from the draft White Paper was that further improvement was needed and that if it wasn't forthcoming then the government would be inclined to introduce either intrusion offences or a privacy tort or even both?

A. Well, at the time of the draft White Paper that I inherited, the -- that was built, of course, on a position where the government had a longstanding commitment to legislate intrusion offences. That was a matter of public record. So a move in the government's position merely to consider intrusion offences would have been a step backwards from previous commitments. There had been a commitment given to legislate the intrusion offences as recommended, in fact, by Calcutt 1 and repeated by Calcutt 2.

The question of a privacy tort was something that had been recommended for serious consideration by Calcutt 2, and the government was -- had engaged in a process of serious consideration, including publishing some consultation documents in the period before I became Secretary of State.

Q. I was looking at page 5 of your witness statement, paragraph 12(b), where you tell us that the draft White Paper was stating in paragraphs 1.19 and 1.20 that the government's key conclusions were as follows, and you set them out. At the bottom of 12(b): "Failure to implement these changes, particularly if any such failure coincided with further press abuse, will incline the Government to introduce, or give support to any Private Members' Bills introducing intrusion offences, a privacy tort, or both." So certainly the draft White Paper was talking about an inclination to legislate.

A. No, that's correct, and I saw that in the quote that I included in my witness statement, and I don't remember why the draft White Paper was couched in those terms, but if you read the government's reaction to Calcutt 2, when it was originally published, it was clear that there was an existing commitment and the government felt there to be an existing political commitment to the intrusion offences.

Q. I see.

A. There's therefore a distinction in this discussion, as it was carried on at that time, between the intrusion offences, where there was a commitment, and a tort, where there was a willingness to consider.

Q. You set out in the following paragraph, paragraph 13, some of the matters which the draft White Paper considered were areas for improvement for the PCC. Dealing with these briefly, they included a desire for an independent appointments commission, a concern that the privacy commissioner lacked powers and that there was a need for a hotline to enable the PCC to intercede directly with editors with a view to proactively preventing breaches of the code. There was a desire for a compensation fund, and it was thought desirable that the scope of the code of practice should be expanded so it was comparable with the thinking around a draft tort for the invasion of privacy. Does that fairly summarise the position?

A. Yes.

Q. When you considered the draft White Paper, you tell us at paragraph 15 of your witness statement that you're personally hostile to any proposal for official regulation of the freedom of expression, so I take it that you were fully on board with the effective decision not to introduce statutory regulation?

A. Correct.
substantial period of debate to get to the draft White Paper, you decided that you wanted time to reassess the options. Given the background and the time already spent debating this matter within government, that was quite a significant step, wasn't it?

A. Well, I was a new minister being appointed to a brief that had obvious sensitivity in this subject, and of course a wide range of other subjects involved in the department at that time as well, and although the government had had a very protracted internal discussion to get itself to the point of the draft White Paper, it didn't achieve the clarity that I had an instinctive preference for, and so I felt that it wasn't the highest priority on my plate to bring it to a conclusion, since it was going to be a field of policy that I was responsible for in the public mind, I wanted to be clear that it was a set -- it reflected the best policy mix that I could achieve as an incoming Secretary of State.

Q. Now you receive a submission and you develop a position which is essentially to try and encourage the PCC to improve itself, to proceed with criminal legislation, but to expressly abandon the idea of a privacy tort?

A. Correct.

Q. The paper, which we'll touch on very briefly, is at tab 3 of your bundle. I'd just like to pause to look at that to consider what your department felt were the abiding weaknesses -- and I'm quoting -- of the PCC.

The phrase "abiding weaknesses" appears at the bottom of the first page, and that introduces a list at the top of the second page of five perceived weaknesses.

"(i) the fact that many people do not complain to it (because they do not know of its existence, because they think it is ineffective or, in privacy cases, because they fear the further publicity which PCC involvement would bring);

"(ii) its lack of perceived independence from the industry;

"(iii) its rather vague and weak Code;

"(iv) its somewhat perfunctory procedures;

"(v) its lack of real sanctions."

Allowing for the traditional understatement of Civil Service drafting, that amounts to a scathing attack on the state of play, doesn't it?

A. It clearly reflects a view that the PCC hadn't discharged its responsibilities to general satisfaction, which was, of course, the view of Calcutt himself as well.

Q. And we can take it from that that the approach the government is developing in holding back from some of the recommendations is certainly not underpinned by any complacency about the performance of the PCC?

A. That's true.

Q. Looking at the bottom of the page, paragraph 5, we see some suggested improvements, some of which we've already touched upon. They are "more independence for the privacy commissioner", procedural improvements including the hotline, third-party complaints, general enquiries, oral hearings and more thorough investigations.

"Content of the code.

"(vii) amendments to give better protection for the individual ..." and I'm summarising, "incorporation of elements of tort into Code."

And sanctions, incorporation of Code into newspapermen's contracts, compensation; and on publicity, any steps which bring the PCC to a wider public.

So it's also fair to say, isn't it, there was no shortage of ideas about how the PCC might be improved?

A. Correct.

Q. All of this is reported to the Prime Minister, isn't it?

We see at tab 4 that there's a document which goes from you to the Prime Minister setting out the state of play. It refers in its first paragraph to your discussions on this topic. I appreciate that I'm asking you to cast your mind back a very long time indeed, but can you help us with the then Prime Minister's thinking at this stage?

A. I think the honest answer to that is no, I'm afraid. I would certainly, before sending him a minute of this nature, have sought to have an informal conversation with him about where his thinking was and what -- whether he had any sort of personal input in order to understand what I was aiming at as a minister, so I would have had a preliminary discussion, but I don't remember what it was. I suspect it would have led me to some form of comfort level that this was a minute that wouldn't at least be rejected out of hand when he read it.

Q. I see. What your minute did provoke, though, was a number of diverse responses from other ministers with an interest in the issue, and we can deal with those quite briefly. First of all, the Lord Chancellor.

A. That's correct, yes. I mean, these -- the responses that were elicited by my minute to the Prime Minister I think can be summarised as simply being a rerun of the discussion that had gone on within the government to prepare the draft White Paper that I'd inherited from the Lord Chancellor.
Q. The Home Secretary -- I'm looking now at tab 6 -- first of all expressed some concern about the proposals which he says depart significantly from those previously agreed by colleagues after lengthy deliberation. He expressed actual scepticism about the criminal offences that would, in my view, be a most unsatisfactory course. First, it does not recognise the limitations on what can be achieved through the criminal process."

And then he goes on to set out a number of practical problems that he thinks would ensue if criminal offences were enacted, including defendants exploiting privilege to make allegations in public they wouldn't dare print and so on.

Did that opposition remain a constant from the Attorney General?

A. Yes. I think it's fair to say these were in the form of the Lord Chancellor and the Attorney General, the two senior lawyers in the government and the Home Secretary at the time was Michael Howard who himself is a QC, so...

A. Correct.

Q. You produce a further minute to the Prime Minister. I'm looking now at tab 8. It's clear, isn't it, that there needs now to be a move towards a collective discussion, so a position can be agreed. I'd like to pick up on some of the things that you bring to the Prime Minister's attention. In relation to the proposed tort on the first page, just below the bottom hole punch, it's quite difficult to read because it's photocopied highlighting, but the document says:

"The tort would be the wrong thing at the wrong time. Most importantly, it would mean a major row with the press (the Daily Mail editorial of 16 March, annex B, is a good indication of the strength of feeling). By contrast, the press has never been in serious doubt that the criminal offences would be enacted."

And if we turn to -- there are several sets of pagination, but if you follow the internal pagination, top right, and go to page 5 of 5, we see the Daily Mail editorial you're referring to. It's entitled "Who are they to cry foul?" And, in somewhat unrestrained language --

LORD JUSTICE LEVESON: Somewhat unrestrained? You've already commented to the understatement of civil servants, Mr Barr.

A. This is the opposite extreme.

MR BARR: I certainly can detect a contrast in the style.

It refers to a number of the scandals in public life which had been exposed by the tabloids. It talks about a tort being a suppressive weapon to keep the press quiet, and concludes, referring to the Prime Minister:

"He must know, therefore, that in the current climate of sleaze and corruption any concerted political clamour for privacy legislation is liable to be dismissed as little better than a self-protection racket."

How concerned were you about press coverage of this nature?

A. Well, as I've already referred to the fact that a government is a political organisation and it has to -- I was told early in my political life: any fool can have friends, it takes a wise man to have the right enemies. You have to pick your -- pick which battles you're going to fight.

I'm not in favour of having government policy determined by press editorial, but nor am I in favour, in the real world, of government policy being determined blind to press editorial. You have to choose which arguments you're going to have.

One of the elements of that choice is that there's...
not much point in the government committing itself to a course of action which, because of press hostility, it is profoundly unlikely to get through the House of Commons. That was in my judgment the position that we would have been in if we'd contemplated going down the route of introducing legislation around privacy.

Q. I do not begin to suggest that the Daily Mail were controlling the government, and please don't take this as suggesting anything like that, but it seems that editorials from the more influential papers like the Daily Mail were certainly having an effect on your thinking?

A. Of course. That's part of the public discussion, and I think it would be -- for a politician to deny that the views of newspaper editorials are taken into account in policy making would be both implausible and actually wrong in principle.

Q. Over the page you express the view that the government should not exhaust all its armoury at once, and I think the point you're making in a nutshell is that if the government enacted the tort, it would be left with nothing but the nuclear sanction of statutory regulation in the event of another breakdown in press discipline. Does that fairly summarise the point?

A. Yes. Reflecting on what I said earlier about my desire to try to create a clear government position rather than the continuation of rhetoric around the last chance saloon, this paragraph includes -- doesn't fully comply with that test. I would acknowledge that. But you're correct in your summary of why that was written, what it was intended to mean.

Q. That's a somewhat controversial position because it might be said that the alternative is simply to do the utmost to make them regulate themselves effectively and to ensure that regulation with a statutory tort in the context of this particular activity, which was defensible in principle and in political terms if they didn't apply just to the press but they applied to anybody engaging in that course of action, but I had been persuaded out of that primarily by discussion -- by representation from the Home Office, that that would undermine various activities of the Security Services, and that therefore it was necessary that if these tests -- if these offences were going to be introduced, they were narrowly defined and only applied to activities that led to material for publication.

Q. We can deal with the responses of the Lord Chancellor and the -- well, deal with the Lord Chancellor and then move on to deal with Michael Howard.

A. That had in reality been the government's position for some years, hadn't it? But the press was encouraged to go down the self-regulatory route because, quotes, it was in the last-chance saloon, and the government had a willingness to take more radical action if the press didn't act in a way that satisfied the government -- satisfied the government. I've already said I felt that was an increasingly implausible threat, which was why I was actually in favour of taking it off the table, although this paragraph of this minute effectively at least in private leaves it on the table.

Q. Your document, and we see a pattern here, it provokes another round of comment, doesn't it? If we look at those very briefly --

A. It came off the word processor, I think.

Q. At tab 9 we have Downing Street and Downing Street raises a concern that a criminal offence might lead to the martyrdom of a journalist, and suggests that one way of defusing the temperature or lowering the temperature would be to explore an offence which wasn't just targeted at journalists but also at private detectives, a generally wider ambit. He asks also about what evidence you have that the press would be prepared to countenance the criminal offences.

A. Can I just comment on the point about for publication.

The minute reads: "In addition, it may be unavoidable we should employ a for publication test."

I had actually, as the earlier correspondence I think suggests, sought to exclude the for publication test, because it did seem to me that the Calcutt offences, the criminal offences, were more easily defensible in principle and in political terms if they didn't apply just to the press but they applied to anybody engaging in that course of action, but I had been persuaded out of that primarily by discussion -- by representation from the Home Office, that that would
they're the people whose private lives are paraded for public entertainment, and those are precisely the people who are not protected by a privacy tort.

Q. The Lord Chancellor's position, which I've just drawn to your attention, was different, wasn't it? He thought that legal aid in fact covered quite a lot of people, there was a prospect in the future of a CFA, and in effect the fact that not everybody might have access to the law is no reason for not enacting it. That was his position?

A. That was his position; correct.

Q. And then, coming on to the Home Secretary, Michael Howard, he was very much against holding anything in reserve. He didn't think there would be the political will to come back for a second bite of the cherry, and --

A. Well, he had good reason for saying that because there was demonstrated political will in this correspondence for not taking the first bite of the cherry.

Q. And he was in view of taking as much action as possible at that stage?

A. Yes.

Q. And so again it goes back to the Prime Minister, and you at tab 12 produce another minute for him. This one's dated 24 April 1995. There seems to have been a development here, which I'd like to ask you about.

A. I think it's relatively hard to draw any other conclusion from this correspondence. The government was arguing itself to a standstill, and therefore there had to be -- it was a reasonable question for him to ask. We had an obligation to reply to Calcutt. We also had an obligation to reply to a Select Committee report, which this response was by then two years behind an obligation to reply to Calcutt. We also had to bring the matter to a conclusion from this correspondence. The government was

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Q. You say you are not attracted at all to that prospect, because it would be extremely difficult to find a justification for ruling out in principle the criminal offences to which the government is already publicly committed?

A. And which had been recommended twice by Sir David Calcutt. Well, first by the Privacy Committee and secondly by his personal inquiry.

Q. You say:

"The White Paper would either have to argue that government action is unnecessary because self-regulation is already effective [which you describe as 'wholly unconvincing'] or it would have to accept that self-regulation remains ineffective but that there is nothing we can in practice do about it."

Which you say is worse, because it sends all the wrong signals.

LORD JUSTICE LEVESON: Yes.

A. I tried to avoid the Civil Service trap of understatement.

LORD JUSTICE LEVESON: Yes. Why do I see all this coming back to hit me?

A. I hope that's a rhetorical question.

MR BARR: And then number (iii):

"Make a statement which (a) confirms our intention would simply have been a two-line letter."

MR BARR: And then number (iii):

"Make a statement which (a) confirms our intention would simply have been a two-line letter."

A. Saying, "Could you look at a 'do nothing' option?"

MR BARR: The strategy, and I'm looking at page 2 of this document, the strategic choices that you put before the Prime Minister are:

(a) legislating the criminal offences in 1995-6, or
(b) doing nothing.

You stake your colours very much to the first option, don't you?

A. I do.

Q. But in response to the Prime Minister's request, you explore the "do nothing" option. You describe it as creating its own political risks, which include criticism from Calcutt, the Select Committee, MPs, peers and the judiciary, and then you move on to consider how the government might present a "do nothing" option, and you give three approaches potentially to that. The first is -- and I'm looking at page 3 of 4:

"Make no statement at all. This has worked surprisingly well so far."

But then you go on effectively to say, well, that position cannot last.

A. Precisely.

Q. "(ii) announce that we shall do nothing."

A. I hope that's a rhetorical question.

MR BARR: And then number (iii):

"Make a statement which (a) confirms our intention would simply have been a two-line letter."

LORD JUSTICE LEVESON: Oh, I see.
to legislate the intrusion offences when Parliamentary
time permits [that's in italics], and (b) reasserts our
preference for self-regulation in the wider field of
privacy law but underlines that continued public
confidence in this approach depends upon the
effectiveness of the PCC."
And of course the reason why the words "when
Parliamentary time permits" were in italics is because,
as it's a "do nothing" option, the real intention would
be in fact simply not to enact?
Q. It might be said that that would be a rather cynical
approach.
15. A. Realistic, might be a word I prefer.
Q. You say about that:
"The latter would take a good deal of brazening out
given the history, but I nonetheless think it is the
least bad choice. It cannot be criticised as
a substantive retreat, it avoids a head-on collision
with the press and it gets the Select Committee off our
backs."
22. LORD JUSTICE LEVESON: This is true politics.
23. A. I tried, when I was writing minutes within the
government -- and this is perhaps an example of it -- to
write them in English that didn't require decoding.
24. LORD JUSTICE LEVESON: Did you see the PCC as a regulator?
1. MR BARR: Can I suggest that this political debate and the
consideration of the announcing "do nothing" and the
third option of saying that you're going to legislate
when Parliamentary time permits, is that an example of
a phenomenon which has been referred to by Tony Blair of
not being able to be entirely frank for fear of how
matters will be perceived?
A. I think that is a reasonable way of putting it, and
I think it's pretty explicit in the minute. I was asked
to dress up a "do nothing" option. One way of doing
nothing is to announce that you're going to do nothing,
and I made it clear in the minute why, as a member of
the government, that didn't seem to me to be an
attractive way of announcing it, but clearly the option
came to the same thing.
Q. Indeed it wasn't your preferred way forward, but
a variation of the "do nothing" option was in fact what
happened, wasn't it?
A. Substantively, yes.
Q. To look at what action there was, you wrote to
Lord Wakeham, and I'm looking now at tab 13, on 2 June
1995, and the thrust of your letter is to suggest to him
improvements which you thought could be made to the PCC.
24. Lord Wakeham, and I'm looking now at tab 13, on 2 June
1995, and the thrust of your letter is to suggest to him
improvements which you thought could be made to the PCC.
25. It's quite a long letter and we've already been over the
territory to some extent so I won't go into the detail.
26. LORD JUSTICE LEVESON: I think you eventually got a reply to that just as you
were handing over to Virginia Bottomley and she replied
to Lord Wakeham, so there is an exchange of letters with
Lord Wakeham that certainly expresses a commitment in
plain terms to make progress.
A. And it was part of the specific -- this wasn't an
exchange of letters that was independent of the
government's process. Clearly it was -- part of the
intention in preparing the government's response,
whatever it ultimately said, would be that there would
be an exchange of letters between the Secretary of State
and the Chairman of the PCC that set out what was being
done to make the PCC more effective. That was part of
the plan.
Q. And perhaps again we can deal with that in a nutshell.
The actual practical effect of that process was that
some progress was made but the results were rather mixed
because there were many recommendations which the PCC
never adopted?
A. True. Clearly it was -- it didn't get us to the final
result of what we might now in retrospect have regarded
as the best possible outcome, but I certainly would
defend the proposition that we made progress as a result
of those exchanges.
28. LORD JUSTICE LEVESON: Did you think the PCC was a regulator?
A. I saw it as an organisation with a responsibility to
promote standards -- higher -- define standards within
the press and an organisation that gave people who were
injured by failure to meet those standards some form of
redress. If that's what's meant by a regulator, then
yes, but I think -- I thought then and still think now
that it's important that it's something that is done --
has its roots within the press. It's part of the press
recognition of their own responsibility. It's not
something that is defined for them from outside.
29. LORD JUSTICE LEVESON: Do you think it's possible for that
body to consider itself also the champion of the press?
A. I think it's possible --
30. LORD JUSTICE LEVESON: And all that goes with it, the
freedom of expression, all that goes with it?
A. That was the point I was going to make. I think it
absolutely is possible for a PCC seen in that light to
be a champion of freedom of the press, yes, I do think
it's possible for it to be a champion of the principle
of a free press as a key part of a free society and
indeed arguably it's in a stronger position to define
what good standards are for a free press and to
recognise circumstances when those standards aren't met,
if it is explicitly itself a champion of the principle
of the free press. So it's in favour of the principle,
it has a proper understanding of what that means in practice and it recognises circumstances where those principles aren't met.

LORD JUSTICE LEVESON: And do you think that generates sufficient public confidence in a complaints mechanism if it is thought that actually the only person to whom I can complain is the champion of the press itself?

A. Well, my hesitation in answer to your first question was: can it be a champion of the press? Certainly the PCC cannot be a champion of every individual organ of the press, whatever it does. It can be a champion of the principle of press freedom, but it has to be willing to be critical of its own when the standards that it espouses as an organisation aren't met.

LORD JUSTICE LEVESON: Do you think that's entirely straightforward if it comprises not wholly but even largely of editors who are themselves in the business and in competition with other editors?

A. One of the tensions I think in this -- the press has to -- I would hope that might be explored by your Inquiry, sir, is the extent to which the press is willing to be critical of the press when standards espoused by the press body are not met, because the whole point of press freedom as a principle is supposed to be that in a free society this is one of the most effective ways of holding power to account.

Now, if that applies to politics, and I think it should, or the law, and I think it should, it ought also to apply to the press, but too often when individuals within the press are challenged, the tendency is to say, well, the press won't apply those principles to itself, the same principles that it applies to other parts of public life.

LORD JUSTICE LEVESON: That's the problem.

A. And that's -- but it doesn't make it right for that responsibility, which I think is intrinsic to the claims that are made about the importance of press freedom, it doesn't make it right to remove -- to walk away from that principle.

LORD JUSTICE LEVESON: Well --

A. I think the principle is right. It's the application of that principle in practice which is why we're here.

LORD JUSTICE LEVESON: Of course, and why we've been here several times since the last war, again and again and again, and that's what troubles me. I mean, I said -- I made light of it, but actually the debate -- we might not be talking about the criminal law, we might not be talking quite in the same language of your correspondence that is now 16 years old, because things have moved on with the human rights legislation, with freedom of information, features that are mentioned, hinted at in the correspondence, but in reality the points that are being made are absolutely the same.

A. Mm.

LORD JUSTICE LEVESON: Because whatever one does, it works for a bit and then collapses.

A. But this is part of a much bigger issue in my view. I'm not sure how far down this road you want to go, but if we take the opposite road and say we're going to take away from the press the responsibility of recognising what's right, what's proper, what's good, and criticising that which falls short, then we pass that responsibility to somebody else. Then what should be internalised as a commitment to a set of principles within the press industry profession becomes simply, "Well, we'll do it because it passes the test that somebody else says is good enough".

LORD JUSTICE LEVESON: But you might say the same for lawyers or anybody.

A. It's an argument that in a quite different world I am developing within the health professions, that actually the only people who really know what's good in the consulting room whether between a doctor and a patient is the doctor, and any attempt to define what's good through a regulator other than the professional ownership of standards is second best.

LORD JUSTICE LEVESON: -- a lay majority, it has a statutory framework that doesn't seem to stand in the way of proper exercise of professional judgments, and doctors being judged by the standards of acceptable medical practice. One goes to the law or whatever, Bolam test, with which I'm sure you're extremely familiar.

A. Indeed, and the -- I accept that if you use the GMC standard or the Law Society -- is it the Law Society?

LORD JUSTICE LEVESON: The Legal Services Board, which then operates the Law Society and the bar and the legal executives.

A. They have a statutory basis, but it's a statutory basis that has grown out of very long practice, and what they have critically is an understanding or a set of professional commitments. In order to be a doctor or in order to be a lawyer, you have to be engaged -- you have to personally be responsible for a set of professional standards. Now, none of that exists within the press industry. There are no -- there isn't an ownership of professional standards between editors and journalists, or a definition of press professional standards.
me, that something that the press -- the world of journalism and the press needs to own and develop, and I know that you've been discussing with David Hunt the possibility that this could be based on the law of contract between the PCC and the press industry.

LORD JUSTICE LEVESON: David Hunt has been discussing with me rather than me discussing with him. That's quite an important distinction. I don't want to take Mr Barr out of order. We'll doubtless come to this. Yes?

MR BARR: To return to the government's consideration of Calcutt 2, and we are nearing the end of the journey, you produce a further draft White Paper, and that goes to a Cabinet Committee meeting which was held on 15 June 1995; is that right?

A. That's correct.

Q. We can deal, I think, with the White Paper quite succinctly. It essentially set out your preferred option, namely to legislate on the criminal but not the tort, and to encourage the PCC to raise its game but not to pursue statutory regulation. That then goes to the Cabinet Committee meeting on 15 June, which we can deal with similarly briefly. Incidentally, Mr Hunt attended that Cabinet meeting, I see, along with yourself and many others. The upshot of that meeting was that no clear view was reached; is that right?

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A. Correct.

Q. Could you help us, as best you can remember, as to why that was the ultimate position?

A. I think that this was a group of ministers that clearly included those who had been party to the correspondence; the business managers, in other words the whips and the people who are responsible for actually delivering government business through the House of Commons, and the Lords, and other interested ministers. The people who had been party to the correspondence made the points that they'd made in the correspondence. I think that this was a group of ministers that clearly argued that the solution to the problem was to allow the PCC to make rules on the criminal but not on the tort.

Q. We can deal, I think, with the White Paper quite succinctly. It essentially set out your preferred option, namely to legislate on the criminal but not the tort, and to encourage the PCC to raise its game but not to pursue statutory regulation. That then goes to the Cabinet Committee meeting on 15 June, which we can deal with similarly briefly. Incidentally, Mr Hunt attended that Cabinet meeting, I see, along with yourself and many others. The upshot of that meeting was that no clear view was reached; is that right?

Page 34

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the public don't want it. Insufficient public consensus.

A. Insufficient public consensus.

Q. Looking back now, do you think that the government's consideration of Calcutt 2 and its response amount to a missed opportunity to do more to improve behaviour in the press?

A. My basic response to that is no I don't. First of all, at a purely mechanistic level, the ability to do anything fundamental in legislative terms I don't think was there because, as I've already said, I don't think in reality we'd have been able to carry legislation, so there was no opportunity, if that's what you wanted to do. But as we were beginning to develop in the earlier exchange with Lord Leveson, even given what's happened in the intervening period, I am not persuaded that if we go down the legislative route here we don't create a problem that's -- a cure that's worse than the disease.

Q. We can pick up now some of the thinking behind how to deal with the problems that we now have, and to take them forward. I'm looking at the concluding section of your witness statement, and you point out, as many others have, that much of the recent acknowledged wrongdoing is already against the law. That in itself,Page 37

though, isn't a reason not to try and improve regulation of the press, is it?

A. It's not an argument against it, but I would argue strongly that we already have a set of legal standards that are not being met, we should ask ourselves why that is and address the cause of the problem rather than the symptom of the problem. As I say in my witness statement, I believe that the issue that's come to light in recent times is an issue of -- that has much more to do with management, culture and responsibility within an organisation for what goes on within that organisation than it has to the legal framework, whether it's voluntary through the PCC or statutory through Parliamentary or other processes.

Q. If we start with that then, if there's a need to improve culture, how can that be done?

A. Well, it's -- the answer is the only people who can do it are the people who hold -- who are the managers, the editors, the people with that responsibility in the press world, and it's part of the -- my preferred -- my instinctive response -- I'd be the first to say this isn't based on elaborate consideration of all of the alternatives in the way that you do when you're a minister, but my instinctive response is the principles on which the PCC has been built can be reinforced along the lines that Lord Hunt has been developing, and that the principle that a free press is part of the accountability checks and balances in a free society, the lacuna in that argument is the proposition I already made to Lord Leveson, that that applies to the world of politics, the law and other parts of public life, and quite rightly, but it hasn't applied with the same force in the world of the press. And that seems to me to be part of the challenge that I would throw back to the world of the press.

Q. There must be room for concern, though, that looking at the very long history of repeated difficulties with press standards and press behaviour, that the industry will not reform itself sufficiently to prevent a repeat of this behaviour. Would you agree?

A. Well, I would, but the question, it seems to me, is more precise than that. It isn't: why will the industry as a group of people reform its behaviour? It is: why -- it's a question that can be put to an individual editor or to an individual press proprietor: why, if you embrace the standards set out in the Editors' Code, do you not accept a responsibility to conduct investigative journalism and to apply those principles to other organs of the press? To call to account other organs of the press? That is the case for press freedom, which I am in favour of.

Q. But isn't the difficulty that in practice there are occasions when the press doesn't hold itself to account?

A. When one organisation within the press calls another organisation within the press to account.

Q. LORD JUSTICE LEVESON: Well, when are the occasions that it has?

A. LORD JUSTICE LEVESON: Yes.

Q. A. That's a proper question, it seems to me, to put to organs of the press.

A. LORD JUSTICE LEVESON: But we know, don't we, we know about the Guardian article in July 2009 and we know about the New York Times article in 2010. We know what the reaction was to the Guardian article in July 2009, which was to lead to criticism by the self-regulator about the Guardian.

Q. A. Which is clearly a completely perverse outcome.

A. LORD JUSTICE LEVESON: Well, yes. So that being the case, one first has to go back and say whether what the PCC does is truly a regulator at all, which is one of the questions that we started to discuss before, and it is interesting that I think it is only Sir Christopher Meyer who has come along and said, "Oh yes, it was a regulator" -- no, maybe he didn't. Maybe he said, "It never was a regulator", although the language of his...
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that the important people for you were the protection of the "little guy".

A. Mm.

LORD JUSTICE LEVESON: And one of the ideas that I have been postulating -- and you may be aware -- is some sort of swifter mechanism for the resolution of privacy or other complaints, which doesn't require litigation, which is expensive, it's time-consuming, and all the disadvantages of which you are aware.

A. It is exactly what the PCC, the privacy commissioner concept was originally designed to address, precisely that issue.

LORD JUSTICE LEVESON: But if you're going to have a way for the small -- for the little guy to get a remedy that is enforceable, aren't you going to have to have somewhere in the background some framework against which you attach it? I'm not suggesting that it should be -- I'm absolutely not suggesting government regulation. I've never said that. But I am concerned about ensuring there is a mechanism that can be seen to work, particularly for the little guy.

A. Well, I agree with the objective. I don't personally think that's the whole -- I'm sure you're not suggesting that that's the whole issue.

LORD JUSTICE LEVESON: No, it's merely -- I mean, I pick up a phrase of yours, with which I entirely empathise, and has actually -- is responsible for some of my thinking for ways to achieve just that end, and I'm not sure that a contractual remedy, which is only contractual between the press itself, it doesn't bind a third person and has all sorts of enforcement problems, would necessarily help the little guy.

A. What the little guy most wants, if there is a threat of their private life being paraded for public entertainment, is the ability to stop it. It's not about recompense, it's not about reaction post the event. It's about the ability to prevent the wrong arising in the first place.

LORD JUSTICE LEVESON: I understand that, but one has to be very careful -- here I'm going to sound like an apologist for the press, but I'm comfortable about that because if one requires all form of -- if one requires the opportunity to obtain prior restraint, then you run the very risk that you express yourself concerned about, namely that the rich and powerful and the famous will use that to gag legitimate public interest stories, which itself would not be in the public interest.

A. Mm.

LORD JUSTICE LEVESON: So I entirely agree with the proposition that the little guy, and indeed the rich guy, it doesn't really matter, would want to prevent a story emerging, but there has to be some mechanism whereby the press decides -- this is the ultimate exercise of press freedom -- that we're prepared to take the risk because the evidence will be destroyed, because we'll be tied up in 18 months of litigation. There have been lots of examples spoken about during the course of the Inquiry, and therefore one has to hold the press to account for that decision, and the only way we can do that is to say: we encourage you to warn in advance, to pre-notify. If you choose not to and you're wrong, then there has to be some mechanism for there to be a real remedy for the person who is affected.

Now, that again is likely to require in some way, somewhere in the distance, a framework that permits the law to provide that remedy, and if you don't -- you can't do it just consensually. That's what concerns me.

A. There has to be a definition of what the -- of what's acceptable and what the consequences are when behaviour is unacceptable. A straightforward principle of legal certainty. I agree with that. The more that that is owned by the press and the editors in particular, senior journalists as well, own that definition of what's good and own the determination of what's unacceptable, the more comfortable I feel that that is, first of all,
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<td>1. consistent with the principles of press freedom, but also likely to be consistent with good journalism, good accountability and so forth. Those issues need to be internalised within the press, not taken away from them.</td>
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<td>1. A. Going through the stages of that, you don't need a statutory framework to set up an ombudsman who can provide that sort of independent advice. It's only when you get to the end of the road that you need to go beyond the consensual approach, as I hear that formulation.</td>
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<td>2. LORD JUSTICE LEVESON: But when the story becomes so big, all the rules go out of the window. That's precisely what people have said time and time again. They've not articulated it in quite that way, but if the story is big enough -- actually, I'm not sure Piers Morgan didn't say something like that, in terms. But if it's big enough, then the story takes control, so one gets -- and if I take some examples of little people, Christopher Jeffries is a very, very good one. The story was so big, so important, of such public interest over that new year period that all restraint is lost.</td>
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<td>2. He wasn't in a position to seek to obtain prior restraint. There are stories where that might be possible, and one might want to encourage editors to say: well, let's go to somebody independent, whether you call it an ombudsman or whatever, and if you have a story, you say: I have this story and I don't want to show it because I think the evidence will be destroyed, or whatever, and I'd like a view, and the ombudsman can say: yes, I think that's reasonable. And then the editor takes his view and moves on. And he can then</td>
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<td>1. prove, in I would hope a swifter type of dispute resolution mechanism than the court necessarily is able to provide, that he took a responsible decision, that he sought the views of the ombudsman, and that's all relevant to the ultimate deciding question of whether it was appropriate to invade privacy in that way without prior notification.</td>
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<td>1. defensible in a free society.</td>
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<td>2. LORD JUSTICE LEVESON: They may say no.</td>
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<td>3. Christopher Jeffries actually it occurred to me isn't a very good example because libel to some extent solves his position but one of the issues about privacy of course is that it's true. So it's not libellous, it just goes beyond that which is fair, appropriate, legal, whatever word you want to use.</td>
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<td>4. But to throw it to the press requires them to be a judge in their own cause and they've not shown a remarkable appetite to do that. And indeed, even if you did you'd then have to find some mechanism to enforce it, because the press as a whole may say: well, we think this is appropriate, but the relevant journal may say: well, thank you very much. And indeed, one of the reasons that Northern &amp; Shell left the PCC was because they had no confidence in their competitors judging their behaviour. That's how Mr Desmond has explained it. At a quite different level, Mr Hislop has made it abundantly clear that he spends a very great deal of his publication criticising what the press are doing and the press are the last people that he wants to judge the standards that are appropriate.</td>
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<td>5. There is something systemic here that I struggle to see how it could be done simply by the proprietors and</td>
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the editors getting together to think: well, we can
agree.
I'm not suggesting for one moment that there isn't
enormous room for engagement with the press, because the
trick is going to be to try to get a mechanism that
works for everybody, that does represent a proper
reflection of a free press and freedom of expression in
its highest forms, but which does cope not merely with
the very rich who can then indulge in enormously
expensive proceedings, but for everybody, and I struggle
to see how that's possible on a model that doesn't have
something somewhere, and even if you say, well, of
course the ombudsman could be set up, there does have to
be some principles which the state would recognise as
being sufficient to trigger off whatever type of
additional remedy the state was going to provide,
because damages would be a remedy provided by the state.
A. When I said the ombudsman can be -- as in the set of
circumstances you describe, the ombudsman exists as
somebody to whom the editor goes to seek an external
view. That doesn't require statutory framework.
LORD JUSTICE LEVESON: No, of course it doesn't. But what
does is the recognition of the significance of his view.
In other words, for his view to be relevant in civil
proceedings, however one mediates it and whether it's
some fast-track system or whether it's through the
court, the law has to say: that's a relevant view.
A. You would know infinitely more about this than me, but
it seems to me a tribunal could ultimately take a view
about what's relevant and what isn't without necessarily
Parliament having to get involved.
The one thing that I also don't agree with is the
proposition that the state should have a view about what
the -- what good practice is in a newspaper.
LORD JUSTICE LEVESON: With great respect, I've not said the
state should have a view in what is good practice. I'm
saying the state should have a view in the mechanisms
that are set up to ensure by the press, if you like,
that there is good practice, which is rather different.
In other words, I am not suggesting that the state
should have any view at all about content.
A. Mm-hm.
LORD JUSTICE LEVESON: I'm simply talking about structures.
A. Because -- and the reason I come back to that, what
I obviously misunderstood to be --
LORD JUSTICE LEVESON: I may have expressed it badly.
A. -- what you were saying -- is that the Editors' Code, as
it has evolved within the PCC, seems to me something --
as I already said, I am not here to defend the PCC, but
is something that they can reasonably claim credit for
having not merely set out a piece of work that sets out
some important standards, but then to have evolved it,
and part of the preparation for coming here this morning
was looking and was quite impressed actually by the
development that had gone on in the Editors' Code over
recent years.
LORD JUSTICE LEVESON: Although each step -- and every time
something happens and there are suggestions of this
amendment to the code or that amendment to the code, the
editors are there -- and the editors are only there
controlling the code, I think there is -- it's a long
time -- I say a long time, it's some months since I was
actually focusing precisely on the detail and a lot has
happened since, but ultimately the editors can control
what goes in the code. There isn't -- they're important
advisers. Whether they should be determinative is
another question.
A. I don't dissent from -- I don't disagree with that, but
as an observed -- as an observation about what's
happened in this field, area, during a period of time
when I haven't really been watching it closely, it seems
to me that the development of principles set out in the
Editors' Code of Standards which should be met by good
and responsible journalism, there's clearly been
a commitment to trying to follow that process through,
which I think should be welcomed.
LORD JUSTICE LEVESON: Oh, and needs to be pursued. But
then comes the question about how it's enforced.
A. Mm.
LORD JUSTICE LEVESON: And that raises quite other different
problems.
A. Also, as Mr Barr was saying earlier on, there is
a rather obvious sort of common sense observation here
that we can define the Editors' Code, we can define the
criminal law, we can even introduce civil law, if we
want to, but actually what we're talking -- the reason
we're sat here is that existing laws that nobody
disputes haven't been observed and enforced.
LORD JUSTICE LEVESON: Yes. Then you'll get me on another
topic, and that is the analogy I've thrown at a number
of people about speeding. Speeding is a crime. There
is no question about it. But we can't put a policeman
on everybody's shoulder and say -- and we wouldn't think
very much of a motorist who said, "Well, it's true that
I speeded, I broke the law, but that's your fault for
not enforcing the law."
A. Indeed.
LORD JUSTICE LEVESON: Well, the parallel -- there is
a parallel there, a little bit of a parallel, but the
suggestion -- and it has been said, "Well, of course

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1. this isn't a problem for the press, this is all
2. a question of the failure to enforce the law” --
3. A. No, that's not what I'm saying.
4. LORD JUSTICE LEVESON: I know it's not what you're saying,
5. but it is the next step along from what you have said.
6. A. No, I don't agree with that. I think that the -- the
7. conclusion I draw from recent events is that of course
8. we should -- we're always looking for more effective
9. enforcement, but actually, what's wrong, the breaking of
10. the law is the symptom of what is wrong in a culture and
11. in an organisation which tolerates criminality.
12. LORD JUSTICE LEVESON: Well, I agree with that.
13. A. And that's a challenge that has to be thrown back to
14. those responsible, and no amount of rewriting the
15. Editors' Code or introduction of new forms of regulation
16. is going to deliver the outcome that's wanted if the
17. core problem remains: a willingness to tolerate
18. criminality within the organisations themselves.
19. Extending the concept of criminality doesn't help us.
20. LORD JUSTICE LEVESON: I understand that point entirely.
21. MR BARR: Sir, I think you have thoroughly explored all the
22. areas that I was going to go into, and so I don't have
23. any further questions.
24. LORD JUSTICE LEVESON: Well, I'm sorry, Mr Barr, and I'm
25. sure you'd have done it much more effectively.

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1. MR BARR: I'm certain I wouldn't, sir. Is this a convenient
2. point to take our morning break?
3. LORD JUSTICE LEVESON: Yes, it is. Mr Dorrell, is there
4. anything you feel that you've not had the opportunity to
5. develop which you would like to?
6. A. I think I've had more opportunity than I deserve. Thank
7. you very much.
8. LORD JUSTICE LEVESON: Thank you very much indeed. We'll
9. take a few minutes.
10. (11.27 am)
11. (A short break)
12. 11.38 am)
13. MS PATRY HOSKINS: Good morning, sir.
14. LORD JUSTICE LEVESON: Good morning.
15. MS PATRY HOSKINS: The next witness is Mr Marr.
16. LORD JUSTICE LEVESON: Thank you.
17. MR ANDREW WILLIAM STEVENSON MARR (affirmed)
18. Questions by MS PATRY HOSKINS
19. MS PATRY HOSKINS: Please sit down. First of all, could you
20. state -- you already have, but could you state again
21. your full name to the Inquiry, please?
22. A. Andrew William Stevenson Marr.
23. Q. You should find behind tab 1 of the bundle in front of
24. you your witness statement. My version is unsigned and
25. undated. Could you, please, confirm that the contents

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1. Express, political editor of the BBC from 2000 to 2005,
2. and you host the Sunday morning Andrew Marr Show, which
3. generally features prominent politicians being
4. interviewed on current topics.
5. You explain therefore that most of your contact with
6. politicians has therefore been of a straightforward
7. reporting nature rather than from any proprietorial or
8. commercial angle?
9. A. That's right.
10. Q. Can I add this to your career history: you're the author
11. of a book called "My Trade: A Short History of British
13. Have you seen a copy of that, sir?
14. LORD JUSTICE LEVESON: I've seen it. I don't have it here.
15. MS PATRY HOSKINS: I will refer to some sections, but I'll
16. read them aloud and make sure you're provided with
17. a copy.
18. LORD JUSTICE LEVESON: Thank you.
19. MS PATRY HOSKINS: In your book and in your witness
20. statement, Mr Marr, you advance various arguments and
21. express certain views which are of interest to this
22. Inquiry. I'd like to start with an analysis of some of
23. those articles. I'm going to start, please, with "My
24. Trade", which includes a chapter within it entitled "The
25. dirty art of political journalism", and it's at pages
"Alastair Campbell, Tony Blair’s former spin doctor, argued in 2001 that because London was one of the world’s most competitive media marketplaces in which there’s frankly not that much news around most days, the commentators were taking over. The separation of news and comment has effectively gone in most newspapers. News is now largely comment and agenda in the press, and on TV and radio far more time is now given to mediated commentary by experts and far less to politicians.”

You point out that many journalists may be reluctant to listen to any analysis from Mr Campbell, but you agree nevertheless this is only a mild exaggeration of the situation.

You go on to say that news and comment are separated, but loaded descriptions and aggressive campaigning style prose infects many news stories, and when Mr Campbell argues that the opinionating of news began in the tabloids and then migrated to the broadsheets, you take the view that he is absolutely right about that as well.

You also say that this is something that’s simply nothing new. If we look at your statement, I’m going to refer to the page numbers in the bottom right-hand side of each -- do you have those? The number should say 1299.

Q. There’s a sentence which starts:

A. I certainly will.

Q. Is this view that you expressed in 2004 in “My Trade” and comment has now become fused a view that you have that?

A. Absolutely.

Q. -- over the page.

Q. Is this view that you expressed in 2004 in “My Trade” that news and comment have now become fused a view that you still hold? You wrote that book some eight years ago.

A. Yes, a lot has changed since I wrote the book, but I think this part hasn’t changed, if I can put it that way. If you look back at early newspapers, right up to sort of mid-Victorian times, you will find extremely aggressive, scabrous, sometimes insulting commentary and journalism all the way through them, and that is clearly partly what sold them.

We then went through a long period where there was more and more emphasis on journalism becoming some kind of quasi profession, where the job was to give people what I’ve called plain-vanilla news and fact. When I came into the trade, that was still very clear. I started as a Parliamentary correspondent, literally taking down in shorthand what politicians were saying in the House of Commons and that would then be almost without any further comment put into a full page on the Scotsman newspaper every day. And every Scottish MP expected, if they said anything in the House of Commons of any significance, that they would read it the next day in the Scotsman.

That world has gone. That was a particular kind of reporting, but I think if you look at newspapers in the late 1970, early 1980s, broadsheet newspapers, you will
| Page 61 | 1 | find page after page after page of completely dry factual reporting of what people have said and what has happened, and I think if you looked at the Telegraph's report of an event and the Guardian's report, you would find them remarkably similar, and I don’t think that would happen – that’s quite the case now. |
| Page 61 | 2 | Q. And now? |
| Page 61 | 3 | A. Now I think what’s happened is the newspapers are selling themselves more and more on political – their political views and rousing the emotion of the reader. Why would you pick up a newspaper when you can get all the facts, you can get what happened in Parliament, you can read official documents and so on online if you choose to? What is the so-called USP of the newspaper? What makes it different? It gets you somehow emotionally engaged and interested in the news, and the temptation therefore to salt and pepper the news more and more strongly has been irresistible. |
| Page 61 | 4 | Q. Is it a good or a bad thing in your view? |
| Page 61 | 5 | A. I mourn for the old clear distinction between news and comment, but I’m very old fashioned in that, I’m sure, and I certainly think it’s a lost cause and there’s no going back. |
| Page 63 | 1 | MS PATRY HOSKINS: Moving on in "My Trade" to page 161, please, I want to ask you -- this is where you discuss the Editors’ Code of Practice? I appreciate that doesn’t there anything that could be done to achieve that? |
| Page 63 | 2 | A. I fear this is a lost cause. I don’t think much can be done. I, as a reader, as a consumer, I want to know what is factual, old-fashioned straight reporting, I want that, I like it, I value it. It's very expensive, a lot of it, particularly if you’re talking about investigative journalism, but -- and it’s much easier these days to pay a column to fill the space sometimes than to have teams of unruly reporters who may be spending beyond their budgets and so on, but I do regret that and I much enjoyed the days when you would turn to certain newspapers and get an absolutely plain-vanilla account with no whiff of political influence on it. |
| Page 63 | 3 | Q. Some witnesses giving evidence to this Inquiry have actually come and said that there should be an absolutely clear distinction between the two. You’re not one of those, from what you said? |
| Page 63 | 4 | A. I would recoil from seeing any outside body order newspaper editors how to arrange their pages or staff their papers. I think that would be oppressive. |
| Page 63 | 5 | LORD JUSTICE LEVESON: Don't worry about that, Mr Marr. |
| Page 63 | 6 | A. Good. |
| Page 63 | 7 | MS PATRY HOSKINS: |
| Page 63 | 8 | 161. |
| Page 63 | 9 | A. Yes. |
| Page 63 | 10 | Q. You're here discussing New Labour and in the beginning of that paragraph you discuss bullying of junior reporters, which isn't relevant, but about two-thirds of the way down the page you explain: "Political correspondents have a certain esprit de corps alongside their professional rivalry and the cynical way in which some were favoured because they worked for Rupert Murdoch while others were sneered at because they worked for Conrad Black disgusted many who worked for neither.” |
| Page 63 | 11 | A. That's right. |
| Page 63 | 12 | Q. Is it your evidence to this Inquiry that New Labour may have favoured some political journalists because they worked for Rupert Murdoch or his newspapers? |
| Page 63 | 13 | A. Yes, absolutely. Absolutely. I think that a decision was taken that it was very important to keep the Murdoch papers, so far as was possible -- it wasn't always |
possible -- on side and to have a close relationship
with their leading journalists and their leading
reporters. They were inside of the tent, if you like,
as were some Labour friendly newspapers too, while
papers like the Daily Telegraph were indeed kept at
arm's length, made to feel unwelcome. From time to time
their correspondents like George Owens would be mocked
during lobby briefings. There was very much an attempt,
I felt, to divide this core -- this group of journalists
into the favoured ones, the ones who were sort of part
of the project, almost, and the ones who were off in the
wilderness.

Q. You pick up on this in your statement. It's in response
to question 2b(iv).
A. Right.

Q. And for those who have numbers in the bottom right-hand
corner, it's 1298. Under the heading "Selectivity and
discrimination -- as between titles on the one hand, and
as between political parties on the other", do you see
that?
A. Yes.

Q. You explain:
"There is always a hierarchy of media contacts. For
a Conservative minister, contacts at the Daily
Telegraph, Daily Mail, the Spectator ..." et cetera, are

particularly valuable, and you explain it's valuable to
the Liberal Democrats and Labour. Then you say this:
"Throughout the Thatcher, Major and Blair
governments, the Murdoch stable was always perceived by
its rivals to have a privileged position."
A. Yes.

Q. I think you have explained what the privileged position
was. Why do you think this was?
A. I think it was because News International at its height
had a very, very powerful position in the television
world as well as the newspaper world. They had not only
the traditionally most respected broadsheet newspaper --
it's not a broadsheet any more -- the Times; they had
the huge-selling Sun and then they were doing the same
thing in the Sunday market as well with the News of the
World and the Sunday Times. That was an enormously
powerful position to hold.

Therefore, particularly for a Labour government or
a New Labour government who felt that they would sort of
automatically get the Mirror, the Guardian and some of
the time the Independent, to have all of those papers as
well didn't give you quite the royal flush but it gave
you a very, very large segment of the media, and so
that, I'm sure, from the Labour point of view was
something well worth doing, and if that meant ensuring

that from time to time the political editors of some of
those papers were getting exciting exclusives, were
being told what was really going on ahead of other
papers -- a price well worth paying.

LORD JUSTICE LEVESON: Do you think it's because
News International were prepared to change allegiance,
whereas the Mirror was never going to change allegiance
and the Telegraph was never going to change allegiance?
A. I certainly think the fact that they had come across was
absolutely crucial. There would have been no point in
New Labour being helpful if News International were
hostile. I have no evidence that there was a sort of
darker or dirtier deal being done than the fact --

LORD JUSTICE LEVESON: Let's not get into deals, implied or
express. That becomes difficult. But just an
understanding in the sense that -- an appreciation of
what's going on rather than anything else.
A. Yes, absolutely. I mean, I felt that -- from the
outside, it felt quite cold and chilly sometimes not to
be part of that group, and I feel that what happened is
that Rupert Murdoch decided he was going to support
Tony Blair when Tony Blair looked like being a winner,
and he has a propensity to support winners, and from the
government's point of view, having that great swathe, as
I say, of media influence inside was extremely helpful.
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<table>
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<th>One of the few examples actually, I know he's a discredited figure in many ways these days, but Conrad Black, when he was editing the Daily Telegraph, rather than sort of arm-twisting his editors behind the scenes or shouting at them on the phone, wrote long letters to his own newspapers expressing his contempt and anger about the way that they'd reported something. That seemed to me to be a much healthier way of doing it.</th>
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<td>Page 70</td>
<td>Q. Did that affect your decisions or the stories that you continue to hold that view? A. I think that's true. I think that's true of all editors.</td>
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<td>Page 71</td>
<td>LORD JUSTICE LEVESON: And I'm very keen to make that clear.</td>
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| Page 72 | If you come into — and I'm sure it's the same now as it was when I went there — if you come into the House of Commons or the Parliamentary reporting gallery and you're told that your job is to get stories that nobody else has got, one of the things you absolutely have to have is decent contacts with politicians. I had to be able to phone up at least two people who would take my phone call and tell me what had happened in the Cabinet when I was a senior political reporter. Many of the stories that I got I couldn't possibly have had if I didn't have a sort of certain element of a trusting relationship with politicians who were prepared to talk to me, and therefore I hope it's understood that those kind of relationships may be different in kind from some of the sort of partying between proprietors and ministers. |
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1. each in relation to the other --
2. A. Indeed.
3. LORD JUSTICE LEVESON: -- because of the way in which it
4. might impact on the conduct -- culture, practice and
5. ethics of the press.
6. A. Yes, sir.
7. LORD JUSTICE LEVESON: It's really only that that I am
8. concerned with, but in the same way that I would not
9. want to discourage journalists from speaking to
10. neighbourhood police officers about what's going on in
11. their locality and learning about crime, so nothing that
12. I am doing is intended to prevent the very important
13. discourse that is essential between those in politics
14. and those in journalism, the former to get their message
15. across and the latter to challenge them and then to put
16. it across. I wouldn't want that to be misunderstood at
17. all. I hope it isn't.
18. MS PATRY HOSKINS: That leads us neatly on to the power of
19. political journalists, of course.

20. A. Yes.
21. Q. At page 186 onwards of your book, you explicitly address
22. the question of whether political journalists have in
23. fact now acquired too much power and you conclude that
24. they have. Let me find the section.
25. A. Yes.

Page 73

1. Q. You note that there's now been a shift and that it used
2. to be that journalists would call up politicians and try
3. and court them, but now you say the politicians call
4. them up and invite them to lunch or to parties and not
5. the other way around. Do you still -- actually, before
6. I ask the question, if you turn over to page 188, you
7. conclude this:
8. "We have become too powerful, too much the
9. interpreters, using our talents as communicators to
10. crowd them out. On paper we mock them more than ever
11. before and report them less than ever before. On
12. television and radio, we commentators are edging them
13. out ever more carelessly."
14. Do you still hold that view now?
15. A. I think --
16. Q. I ask you simply because the book was written some time
17. ago.
18. A. It was written nine years ago and that certainly felt to
19. be the case then. There was -- it was not just in this
20. country. There was an American commentator at that time
21. who said, "We used to hang around outside politicians' houses while they dined, and then we dined with them and
22. now we dine on them". I think you could see something
23. of the same happening here, but I do think this is one
24. of the areas perhaps where there is good news. I think

Page 74

1. that interestingly, partly as a result of the great
2. flushing out and the crisis caused by the expenses
3. scandal, political authority in the House of Commons is
4. higher than it was when I wrote this book, and I think
5. that for all the commercial reasons and the arrival of
6. the Internet and many other factors, I think the status
7. of even the leading journalists is a bit lower. So this
8. is an area where I think there has been a sort of
9. natural correction of the system, as it were.
10. Q. "On paper we mock them more than ever before and report
11. them less than ever before."
12. Is there still an element of that?
13. A. There is an element of truth on that still, that's
14. absolutely right. We don't have those pages and pages
15. of Parliamentary report and we do jump very, very fast
16. to analysis and comment, almost before we've laid out
17. the facts of the case, sometimes.
18. Q. On the issue of whether political journalists do go too
19. far, that leads me on to the questions that you famously
20. put to Gordon Brown when he was Prime Minister in 2009.
21. If you look behind tab 4, you'll find all the relevant
22. articles about that.
23. A. Oh yes.
24. Q. In a nutshell, for those who don't remember that
25. particular occasion, in September 2009, in a live TV

Page 75

1. interview broadcast from the Labour Party Conference in
2. Brighton, you asked Gordon Brown a number of questions
3. about his medical history. The exact exchange is
4. reported on the second and third pages of the Guardian
5. news article there. Do you see that?
7. Q. First of all, you preface it by referring to the fact
8. that an American President would need to disclose his
9. full medical history and then you say this:
10. "Let me ask you something else everybody has been
11. talking about, a lot of people use
12. prescription pain killers and pills to help them get
13. through. Are you one of those?"
14. He says:
15. "No. I think this is the sort of questioning that
16. is --"
17. Then he's interrupted. You say:
18. "It's a fair question, I think."
19. And then he says -- he finishes his sentence:
20. "-- is all to often entering the lexicon of British
21. politics."
22. He then discusses the fact that he's had serious
23. problems with his eyesight. You refer back to the first
24. question about prescription painkillers and pills by
25. saying, "What about my other question?" and he says
"I've answered your other question" and then goes on to discuss again the problems with his eyesight.

This line of questioning drew some serious criticism at the time.

**A. It did.**

Q. I should make absolutely clear that both during the interview, as I've read out, and thereafter, Mr Brown denied that he did take prescription drugs or pills in this way.

The comments about this at the time were essentially that this was a form of mockery, as you have described in your book, that it was repeating claims that had been made initially on a sort of right wing blog and that it tested the limits of legitimate inquiry. Is this, Mr Marr, in your view an example of political behaviour, if I can put it like that, things being smashed, enormous arguments and so on, and in the context of all of that, I thought a single question, without a follow-up, was reasonable. Plenty of other people took another view. Gordon Brown himself said in the course of that exchange, "You might be right to ask them", that's these sort of questions, and after the interview he seemed perfectly relaxed and relatively at ease.

**A. It's not a moment in my career that I look back on with enormous enthusiasm or pride. However, I would like to say a little bit about the context in which this question was asked.**

Q. Of course.

**A. First of all, I hadn't read any blogs about it or seen anything on the Internet about it, and was barely on the Internet in those days. I had seen references to this in, I think, two newspapers. One of them was the Independent, and I suspect another one was the Telegraph. And in the party conference bubble, people were talking about it quite a lot, so I discussed it with my editor, Barney Jones.**

There were two other parts to this which I think are relevant. I mentioned the American presidency questions because I'd just interviewed David Owen, Lord Owen, who produced a book arguing very eloquently that we had a right to know much more about the medical history of our leading political figures than we do at the moment and he gave lots of examples ranging right from the sort of post-war years to very recent ones where people had had things wrong with them.

But the third and probably most important factor was that there were a huge number of stories coming out of Number 10, Number 11 at the time, about intertemporar...
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<td>really aimed at the enormous amount of anger and</td>
<td>1</td>
<td>decision and any discussion.</td>
<td>24</td>
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<td>vituperation that seemed to me to be swilling around</td>
<td>2</td>
<td>LORD JUSTICE LEVESON: You probably heard Mr Straw -- you</td>
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<td>parts of the Internet, most of it anonymous. I was</td>
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<td>may not have done -- explain that actually that's</td>
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<td>probably a bit out of date even if I was saying that.</td>
<td>4</td>
<td>precisely what they in reality did when they passed the</td>
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<td>Now, you know, you look around and a lot of the most</td>
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<td>Human Rights Act. They were conscious of the</td>
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<td>influential highly respected political commentators</td>
<td>6</td>
<td>consequences and, as it were, to try and define the</td>
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<td>aren't newspaper journalists, actually, they are</td>
<td>7</td>
<td>boundaries felt, for good reason or bad, and it's</td>
<td>10</td>
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<td>bloggers. I'm thinking of people like Tim Montgomery on</td>
<td>8</td>
<td>absolutely not for me to say which that is, that the</td>
<td>11</td>
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<td>Conservativehome or Mr Pack on the Liberal website or</td>
<td>9</td>
<td>judges would be the best place to fill in the gaps.</td>
<td>12</td>
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<td>there's plenty more on the Labour side, and they have</td>
<td>10</td>
<td>A. I think -- I do understand that, sir, and I think many</td>
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<td>become a very, very important, very influential part of</td>
<td>11</td>
<td>people would say that given what has happened and given</td>
<td>14</td>
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<td>the process.</td>
<td>12</td>
<td>how controversial this whole area of privacy law has</td>
<td>15</td>
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<td>So I wouldn't want to say -- I don't know how many</td>
<td>13</td>
<td>been, nonetheless -- and despite the fact that there was</td>
<td>16</td>
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<td>of them are pimpled or inadequate or single, but</td>
<td>14</td>
<td>a discussion during the legislation, the human rights</td>
<td>17</td>
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<td>I wouldn't really want to go for them in that way. I'm</td>
<td>15</td>
<td>legislation -- it would be a good thing for Parliament</td>
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<td>more, I think in today's terms, talking about people who</td>
<td>16</td>
<td>to go back and look at it again, and of course there has</td>
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<td>are posting, that is anonymously posting comments</td>
<td>17</td>
<td>been a Parliamentary inquiry of both houses on this</td>
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<td>outside politics. It's often called trolling, I'm not</td>
<td>18</td>
<td>subject as well.</td>
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<td>sure what the phrase is, but I think the world has moved</td>
<td>19</td>
<td>LORD JUSTICE LEVESON: Yes.</td>
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<td>on since I said that.</td>
<td>20</td>
<td>MS PATRY HOSKINS: One of the most controversial areas has</td>
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<td>Q. You mean the people who post comments on other</td>
<td>21</td>
<td>been the issue of superinjunctions.</td>
<td>24</td>
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<td>people's --</td>
<td>22</td>
<td>A. Sure.</td>
<td>25</td>
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<td>A. Exactly.</td>
<td>23</td>
<td>Q. It's a matter of public record that you in 2008 secured</td>
<td>26</td>
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<td>Q. -- web page entries?</td>
<td>24</td>
<td>a superinjunction. That was revealed by you in April</td>
<td>27</td>
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<td>A. Yes. I think, if I may say, the crucial thing is</td>
<td>25</td>
<td>2011, as I understand it. We have no interest in the</td>
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<td>anonymity. You know, in newspapers, if you write an</td>
<td>1</td>
<td>facts of that. Just in case there's anyone who isn't</td>
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<td>angry letter to a newspaper, you have to give your name</td>
<td>2</td>
<td>entirely familiar with what a superinjunction is,</td>
<td>2</td>
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<td>and address, and rightly so, and I think the fact that</td>
<td>3</td>
<td>someone who may have not read a newspaper in the last</td>
<td>3</td>
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<td>so much of the web is anonymous has encouraged an</td>
<td>4</td>
<td>few years, it's obviously an injunction which not only</td>
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<td>extreme form of vituperative comment which I deprecate.</td>
<td>5</td>
<td>prohibits the media from reporting the facts of a story</td>
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<td>Q. Let me ask you now to turn back to your statement and</td>
<td>6</td>
<td>or the people involved, but also prohibits any reporting</td>
<td>6</td>
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<td>your response to question 9, please. For those of us</td>
<td>7</td>
<td>of the very fact that the injunction has been obtained.</td>
<td>7</td>
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<td>who have page numbers it's page 1303 in the bottom</td>
<td>8</td>
<td>A. Yes.</td>
<td>8</td>
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<td>right-hand corner. You're being asked here about what</td>
<td>9</td>
<td>Q. And that's the type of injunction you obtained in 2008?</td>
<td>9</td>
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<td>influence the media have on the content or timing of the</td>
<td>10</td>
<td>A. Exactly.</td>
<td>10</td>
</tr>
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<td>formulation of a party's or a government's media</td>
<td>11</td>
<td>Q. You've spoken publicly about your reasons for wanting to</td>
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<td>policies and if we look at the bottom of the paragraph</td>
<td>12</td>
<td>obtain the injunction and that's fine. As I say, we</td>
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<td>which contains your answer, you say this:</td>
<td>13</td>
<td>don't want to know about the facts of that. But what</td>
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<td>&quot;I have always believed privacy law is something for</td>
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<td>I want to understand is, as someone who felt the need to</td>
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<td>Parliament to take a clear stand on.&quot;</td>
<td>15</td>
<td>resort to the courts in this way, and one of the facts</td>
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<td>First of all, let me just ask you: does this simply</td>
<td>16</td>
<td>that's in the public domain is that a child was</td>
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<td>mean that you consider it better for Parliament to</td>
<td>17</td>
<td>involved, why did you take the decision to go to the</td>
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<td>legislate or not legislate on such a topic than for the</td>
<td>18</td>
<td>courts? The PCC has a code, which in theory at least</td>
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<td>courts and judges to develop the law themselves; is that</td>
<td>19</td>
<td>should protect you and any minor child from publishing</td>
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<td>essentially what you're saying?</td>
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<td>stories of this nature. Why did you take the decision</td>
<td>20</td>
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<td>A. Yes. A Parliamentary decision, whatever it might be,</td>
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<td>that you did?</td>
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<td>I'm a sort of Parliamentary extremist in that sense.</td>
<td>22</td>
<td>A. I think, putting to one side whether it was the right</td>
<td>22</td>
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<td>I think it's -- you know, on a matter which is so</td>
<td>23</td>
<td>decision to take or not, I think very few journalists in</td>
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<td>difficult and there's so much that is sensitive and</td>
<td>24</td>
<td>any position would go themselves to the PCC if they were</td>
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<td>argued about, Parliament is the proper place for a</td>
<td>25</td>
<td>looking for swift redress or help, frankly. I think</td>
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there is a perception with a great deal of legitimacy
that the PCC simply isn't strong enough, isn't fast
enough, isn't powerful enough and isn't going to give
the kind of redress or protection that you'd want.
Q. Why did you take that view?
A. Because I'd looked at the operation of the PCC over many
years, as an editor, as a journalist and all the rest of
it. Though it's had no doubt many, many fine chairmen,
it's not exactly the Waffen-SS. It's not something that
most newspapers are much frightened of.

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<td>1. Yes, I did.</td>
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<td>2. Q. Did you feel that you had any alternative to doing it?</td>
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| 3. A. I could have not gone to the courts and let the story

out. That was the obvious alternative. For

various reasons at the time I thought it was worth going

the other way. As I understand it, and I may be wrong

about this, the super bit of the superinjunction was

a reaction entirely to so-called jigsaw identification

where X has got the injunction and here's a picture of X

and Y and Z and the reader can put two and two together

instantly and in those circumstances it was felt in the

Family Division that there was no effective right of

privacy or it was crumbling almost immediately and that

was why it was created, but certainly this was intended

to damp things down, and it felt more like flaring them

up, which was why in the end it was right to get rid of

it. |
| 4. LORD JUSTICE LEVESON: You might have read -- Mr Flitcroft
gave evidence to me last year on the same general

subject. |
| 5. A. Yes, indeed. |
| 6. MS PATRY HOSKINS: One of the publications which challenged

the injunction was Private Eye, of course, who don't

sign up to the PCC. Was that a factor that influenced

your decision in going to court rather than going down

to the courts in this way. |
| 7. LORD JUSTICE LEVESON: So you agree with the concept that

the route of the PCC? |
| 2. A. No. Private Eye came to this much later, and I had

felt, clearly wrongly, that I had been as helpful as

I possibly could to them, but not helpful enough. |
| 9. Q. I turn back to your response to question 9, witness

statement page 1303. You say this at the end of the

paragraph:

"Public funding of defamation and privacy cases

should be limited to a very few particularly serious

examples where claimants are effectively penniless."

Why do you take that view, Mr Marr?
A. Because I think that if it was -- if defamation and

indeed privacy cases became a way of -- an easy way of

redress for very large numbers of people, you would get

large, large numbers of people piling in, you would get

legals piling in and all the rest it, and it just seems

to me in a time of relative austerity that the public

would not want that to be a large drain on public

resources. |
| 10. Q. Doesn't it just mean that it becomes the premise of the

very rich? |
| 11. A. Well, it depends what happens to these laws and how

they're changed. |
| 12. Q. Yes. |
| 13. LORD JUSTICE LEVESON: So you agree with the concept that

there should be some mechanism that is fast, reliable,

cheap? |
| 14. A. Yes. |
| 15. LORD JUSTICE LEVESON: To resolve -- |
| 16. A. Absolutely. |
| 17. LORD JUSTICE LEVESON: -- these issues? |
| 18. A. Absolutely. |
| 19. LORD JUSTICE LEVESON: Do you have any ideas in that? |
| 20. A. Sir, I think it's unfortunately my job at the BBC to

criticise the Inquiry for whatever ideas it comes up

with rather than offer my own. |
| 21. LORD JUSTICE LEVESON: Yes. I think I'll note that answer,

thank you. |
| 22. MS PATRY HOSKINS: Two final subject matters I want to ask

you about, Mr Marr. The first is contacts again. We

touched on this briefly. If you look at your response

to question 2(b) in your statement, you touched on this

earlier. You were saying that developing a relationship

with politicians is important as a journalist, it

requires some social interaction. Previously, you say

that a lot of socialising went on. |
| 23. A. Mm. |
| 24. Q. It's page 1297, for those who have the page, and it's

the first paragraph in response to question 2b. You see

that? |
| 25. Page 88 |
A. Yes, I do.

Q. Has it come up?

A. Yes.

Q. Okay, good. You say getting stories requires journalist to foster a personal relationship and you say that traditionally the relationship develops through private lunches, drinks and occasion weekend visits. In the next paragraph you say that that was less so by the 1980s but still happened. Then go on to say that in the 1990s you visited politicians’ homes on only perhaps eight or nine occasions and now you're not a personal friend of any of them.

A. Mm.

Q. Is that a personal, a conscious decision that you have made?

A. No, and I mean I’m friendly with politicians, and many politicians I like and some I admire, but for me, contacts with politicians were really something that was part of my professional life. It was never easy because the time would often come when you had to in effect betray that relationship because you wrote something that was disobliger about the politicians that you’d had many, many lunches with and whose children’s names you knew and all the rest of it and that would be difficult, but it seemed to me to be an essential moment.

Q. And you say:

“A. Although it makes it harder for the political recorders to get deep insights, I think this change is to be welcomed. If the public wants to know about subterranean business contacts with politicians or lobby groups they ought to know about journalistic meetings too.”

Now, is that the answer, greater transparency? Is there anything else that you would suggest?

A. I don’t think there is -- I should emphasise that I perhaps didn’t put that as well as I might have done. I’m really talking here about meetings between journalists and, for instance, the Prime Minister or the Chancellor of the Exchequer. I think to try and create a sort of general record of all contacts between journalists and politicians would be excessive, wouldn't work.

As I say, if you try and get them to write down all their lunches, then journalists would just have coffee with them and eventually they'll end up walking in the park together. These kind of contacts will always be made. I just think it would be impractical to have yet another great list of every journalist who's having coffee or sharing a chocolate bar or a glass of wine with every politician.

99 per cent of the time the journalists and the politicians both understand the nature of the relationship and their own role in it, and most of the time I think the public is served by these kind of contacts because of the stories that would come out, that wouldn’t otherwise come out.

Q. Where do you draw the line, Mr Marr? What should be logged, what should be recorded?

A. Well, I think – I would have thought visits to the official residence of the Prime Minister, probably the Chancellor of the Exchequer, Dorneywood and the Foreign Secretary, that would be reasonable. I think the public has the right to know who is being entertained perhaps over a weekend at those great and favoured houses.

I think the guest lists for dinners at Number 10, Number 11, I think that’s reasonable. I wouldn’t push it a great deal further than that.

Q. Not further than that?

A. No.

LORD JUSTICE LEVESON: And not for other of the major offices of state?

A. It’s not a terribly logical answer, I agree, sir, but I think once you start to push it down -- we see this in other areas too -- it quite quickly becomes a sort of general rule. If the minister – if the Secretary of State has to have a lunch logged with him, what about the Minister of State? Will the Secretary of State simply send his political adviser? Should the political adviser’s lunch be logged?

LORD JUSTICE LEVESON: It depends whether somebody wants to see the spirit of what is intended and follow it, or simply find a way of getting around it, doesn’t it?

A. Yes, it does, but I think in both cases, once you start a general assumption that leading politicians must have every contact with a journalist logged, recorded and published, then very swiftly it won't be leading politicians, it will be the next layer down and the layer down after that.
A. Yes. If I can give an example, without individual contacts, and probably a bit of wining and dining and drinking and so on, between political journalists and politicians, I don't think the public would have known about the difficulties in the Blair/Brown relationship for years and years and years, and I think that would have been a significant absence in the public debate. That was a really important story and it came out because politicians were talking privately to journalists.

LORD JUSTICE LEVESON: I understand, but of course in the same way that I agree with your distinction with proprietors and editors on the one hand and journalists on the other, of course one has to then guard against the editor saying, "Well, I can't go and push this policy, therefore you, who as it were fall under the radar, do", but there has to be an understanding on every side about what's appropriate, I suppose.

A. Indeed, sir. In the end, one can't legislate for a perfect world in this and the sense of sort of self-respect of politicians on the one hand and quite strong internal cultures in newspapers on the other hand, where they -- you know, they really care about their relationship of trust with their readers and so on, that is the best protection.

I knew many, many very eminent political journalists who spent a great deal of time not just having a meal with a politician but endless games of golf or going on skiing trips and all the rest of it, and I am absolutely sure, in the case that I'm thinking about, that these people didn't hold back at all when it came to the story that was going to be unpleasant for the reputation of the person they'd been swinging the golf club with. You know, propinquity, if that's the word, and corruption, I think, don't always go side by side.

LORD JUSTICE LEVESON: Of course, I'm thinking of rather less than corruption.

A. Mm.
or ridiculed the paper, orubbished a policy it favours...or simply look a little vulnerable. Much of the campaigning against individuals is in the nature of a speculative hunting trip, when it is not clear whether someone is politically badly wounded or not, and papers compete to see who can bring him or her down. Once the pack groups and attacks day after day, the sheer pressure can destroy careers which would otherwise survive. This is perhaps unedifying and is certainly cruel, but greatly entertains the public...or I suspect it does. Parliamentary performances no longer destroy careers and the party machines are slickly efficient so it might be argued that some aggressive system of testing is needed."

A. Yes.

Q. First of all, in your view, is this negative coverage that someone, an individual might face actually more damaging or more important than, say, positive coverage -- I mean, as a minister, imagine you're a minister who is facing negative coverage, is that more damaging than, say -- I'm phrasing this badly. I'll start again. We've heard a lot of evidence at this Inquiry of the impact of positive coverage.

A. Yes.

Q. Support by a particular newspaper.

A. Sure.

Q. And we've heard a bit about negative coverage which particular individuals may have or a particular party may have in a particular newspaper. What would a party rather have?

A. That's -- that is hard for me to answer. I think probably the absence of the negative coverage. It is a brutal thing when a minister is being assailed by the pack, and it goes on day after day and it's relentless.

I do think there is a case -- that is when ministers are really tested. That's when their stamina is tested, what they're made of is tested. You could argue that part of the consequence of that is the obsessive interest in headlines, media management, PR and all the rest of it that has characterised politics over the last 20 years. In other words, the fire storms have been so hot that ministers have been pushed away from thinking long-term or more deeply about policy and too much into thinking about what's going to happen on the front page of X or Y newspaper tomorrow.

Q. So is it a healthy thing? Despite being unedifying and cruel, is it something which --

A. It's purging. It's purging. Well, it's difficult to tell. Every case it different, isn't it? There have been cases of ministers who perhaps have been unfairly hounded out of a particular job simply because the media noise was too much and it just became -- they became exhausted, the Prime Minister became exhausted. On the other hand, there are some equally interesting cases where a minister has clung on and fought on and it's been a long campaign against them and it turns out that the minister has done something wrong and should have gone.

My point there is the testing, certainly at the time I was writing -- I'm less well-informed now -- wasn't so great in the House of Commons chamber as it might have been and perhaps this was a way of compensating for that.

MS PATRY HOSKINS: Mr Marr, those are my questions. I don't know if the judge has some.

LORD JUSTICE LEVESON: I have a slightly different topic to raise with you. It's one of the reasons that I was particularly interested to hear your view. Most of your professional life you've worked in print journalism, and the last years for the BBC, which is regulated very differently to the way in which print journalism is regulated. You've offered your views about the PCC, and all your views I recognise and underline are personal, not BBC's views.
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<td>First of all, when it comes to my experience as a BBC journalist, I have to say that it's the BBC code of conduct and editorial code that weighs on me far more than anything else. And I've barely been aware of Ofcom, Ofcom is somewhere out there, because the BBC code is, for someone from a newspaper background, so stringent and so carefully monitored. If I do or say something inappropriate or whatever, it's the BBC that come down on me fast and heavily, not Ofcom. We don't get to the Ofcom stage, by and large.</td>
<td>very short of money, they're losing large amounts of money, and none of them yet has found a plausible answer to the challenges, revenue brought by the Internet. A new system of regulation placed on top of that, you know, might be like taking away the feeding tube right at the end, or the oxygen mask. So those would be my worries.</td>
<td>LORD JUSTICE LEVESON: Because it's not necessary, the BBC have done it? A. The BBC have done it. I actually suspect the same is true of the other broadcasters as well, I don't know. Coming from a newspaper background into this BBC world felt very strange to start with, because, really, every phrase that you use, every sentence, exactly how long you talk to people for, all of that is being watched -- LORD JUSTICE LEVESON: That's the impartiality bit. A. It is, yes, the impartiality bit. And of course, you know, other requirements such as you must have more than one absolutely key source before you break a story, which I had difficulty with, because as a newspaper journalist, if I had a really good source, if I had the home secretary talking off the record, I would go with that, and the sense of having to go around and find another source wouldn't have -- so it was an odd transition into the world of broadcasting. In terms of holding the powerful to account, the worlds are so different. The only way that I could claim to do that either as political editor -- well, as political editor the way of doing that was by breaking stories, and I didn't feel that I was -- it was harder for me to break stories on the BBC, maybe because I got more access, actually, because you're slightly higher up the food chain as a political editor, you meet more people, you do get the chance to break stories. And now holding power to account just means asking people questions. What I would say is I think that the two ecologies are so different. If one took a Ofcom-style regulatory system and put it on top of the press at this stage, you would be introducing something that they'd never experienced before and would feel, I suspect, more oppressive and difficult than -- broadcasters have grown up in a different world. The other thing I'd say is that it seems to me that newspapers are in a very, very parlous state in this country now. Most of them are hollowed out, they are...</td>
<td>Conservativehome is an obvious example, are now as influential as any newspaper and that's going to become more and more so. I would have thought that any system of redress would have to include those alongside newspapers or it simply -- you know, it would be out of time. LORD JUSTICE LEVESON: I think you are absolutely right. Let me deal with your two points in turn and just investigate them for another couple of moments with you if you're happy to do so. A. Of course. LORD JUSTICE LEVESON: In relation to buy-in, of course, if I'm going to recommend any system, it has to be a system that everybody has to buy into. A. Yes. LORD JUSTICE LEVESON: It will only have a chance of working if it works for the press, it works for the public as well. A. Mm. LORD JUSTICE LEVESON: And it's very difficult to say, well, the press can have a trump card: we don't like this, that's the end. It requires the press to be prepared to engage in the process. Now, of course they are, in the course of the Inquiry, and indeed some editors have come along and said,&quot;We have to have things different&quot;, but...</td>
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then of course what they're prepared to accept should be
different is itself debatable. But there can't be
a trump, otherwise --

A. Sure.

LORD JUSTICE LEVESON: -- that just won't work.

Could you visualise, using your experience,
admittedly from years ago, but at the time of
Princess Diana and all the other calamities that befell
the press, and you lived through Calcutt --

A. Indeed.

LORD JUSTICE LEVESON: -- and all those attempts that put in
a structure as not impacting adversely on the freedom of
the press, if it did no more than that?

A. If it did no more than that, I would say that, as I say,
I think newspapers are in a very, very weak state at the
moment, most of them, and the thing that most editors
fear above all is having to put a timely and
proportionate apology into a newspaper. I think for
many newspapers that is the form of sanction that is
most painful to contemplate, rather than money or
anything like that.

I mean I am, perhaps like the Inquiry, struggling to
understand exactly what such a system might actually
look like and how it might work, and I accept that there
is a gap between state control of the press on the one

hand and free-for-all or the current system on the
other, and --

LORD JUSTICE LEVESON: I'm pleased you put those two phrases
together.

A. Yes. Indeed. Indeed. But there is a gap. It's
a difficult gap.

LORD JUSTICE LEVESON: Yes.

A. And it's a new place to build something.

LORD JUSTICE LEVESON: All right. The second point you make
about the Internet and blogging I entirely accept, and
I'd be grateful for your view as to whether a system
could work, if you have one to express, that engaged not
merely the mechanism through which the news was
disseminated, whether, as I think Mr Lebedev described
it, dead wood, or through the ether, but those who are
in the course of a trade or business of the
dissemination of news, which might, of course,
encapsulate some of the other blogs to which you refer.

A. I think just to complicate things further, if I may,
I think what the world of the influential political
blogger has done is introduced a new player into the
system who isn't the full-time professional journalist
with a press card working at Westminster under an editor
and isn't a politician, but is somewhere between the
two. A lot of these people are card carrying party

members. They know their part of the system well. They
have particularly strong contacts with their side. And
therefore you can't treat them as old-fashioned
journalists under old-fashioned journalistic codes, nor
are they -- they're a new thing, and they're an
influential new thing. I mean, even a lot of the papers
are picking people up and using them as commentators
now.

I think the old distinction between a political
player and would-be professional journalist is breaking
down, and any system which is built upon the old system
will quickly look out of date as well.

Of course, the successful blogs survive by
advertising, by and large, just like many newspapers, so
there is -- they're not so far away as they might at
first appear, and they're becoming closer.

LORD JUSTICE LEVESON: That's why I talked about trade or
business. I can see an enormous spectrum. On the one
hand there is the text that you might send a friend,
making some comment. The next layer up might be
a social conversation or then you can move up to
Twitter, and you have Facebook and all the various
mechanisms for the dissemination of information, which
then lead into blogging. Initially those who are merely
commenting on affairs not for money, but they are part
of the system and they're putting their views out.

A. Absolutely.

LORD JUSTICE LEVESON: And of course for politicians it's an
opportunity to put their views out in a way that is
available to all without substantial cost.

A. Yes. And any regulatory system is going to find it very
hard.

LORD JUSTICE LEVESON: Absolutely.

A. At what point does andrewmarr.com ranting on about this
or that become big enough to be brought into the
regulatory system, as it were?

LORD JUSTICE LEVESON: Absolutely. This is exactly what I'm
trying to explore with you. And big enough might not be
the test, because it can't be, well, he has 100,000
followers. It has to be something rather clearer, which
is why I asked you about those that are in the course of
a -- if you like, a trade or business. That's why
I talk about bloggers and you picked it up immediately
by saying, yes, they obtain money through advertising.
So if you're doing that, the analogy that I thought of
in my mind as I've thought this through is a rather
prosaic piece of legislation that takes me back to an
earlier life called the Trade Descriptions Act. People
used to sell cars through classified ads, but as you're
aware, if I sell my car through a classified ad, the
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<td>2</td>
<td>If I'm in the course of a business of selling motorcars,</td>
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<td>then it does. And Trading Standards in the days when</td>
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<td>I was a young barrister would find the same telephone</td>
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<td>numbers advertising three or four different cars every</td>
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<td>week, and so would conclude that that particular trader</td>
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<td>was in the course of a trade or business.</td>
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<td>Now, I'm using that analogy to try to find</td>
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<td>a mechanism to distinguish between those who are</td>
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<td><strong>A. Simply commenting.</strong></td>
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<td>LORD JUSTICE LEVESON: -- simply commenting and those who</td>
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<td>are doing more and getting towards the business end of</td>
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<td>journalism. Now, does it work?</td>
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<td>**A. It is a nightmarishly difficult problem, it seems to</td>
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<td>me, but there's no doubt that once there's money to be</td>
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<td>made, then people are going to be much more, if I can</td>
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<td>put it this way, vulnerable to a system of outside</td>
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<td>scrutiny or monitoring, though albeit many of these</td>
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<td>businesses are based offshore, of course.</td>
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<td>LORD JUSTICE LEVESON: I understand that too, which adds</td>
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<td>yet further complications.</td>
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<td>22</td>
<td><strong>A. Yes.</strong></td>
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<td>23</td>
<td>LORD JUSTICE LEVESON: Well, Mr Marr, thank you very</td>
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<td>24</td>
<td>much. All I can do is ask you to remember, when you're</td>
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<td>required to criticise whatever I produce, your word</td>
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"nightmarish". That's all I ask you to remember.

**A. Thank you.**

LORD JUSTICE LEVESON: Thank you very much.

2 o'clock.

(12.54 pm)

(The luncheon adjournment)
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