

<p>1 Wednesday, 23 May 2012</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: Yes, Mr Barr.</p> <p>4 MR BARR: Good morning, sir. Our first witness is the Right</p> <p>5 Honourable Stephen Dorrell.</p> <p>6 LORD JUSTICE LEVESON: Thank you.</p> <p>7 MR STEPHEN JAMES DORRELL (sworn)</p> <p>8 Questions by MR BARR</p> <p>9 MR BARR: Could you confirm your full name, please?</p> <p>10 A. I'm Stephen James Dorrell.</p> <p>11 Q. And are the contents of your witness statement true and</p> <p>12 correct to the best of your knowledge and belief?</p> <p>13 A. To the best of my knowledge and belief they are, yes.</p> <p>14 LORD JUSTICE LEVESON: Mr Dorrell, as I've said to many</p> <p>15 others, I'm equally as grateful to you for the obvious</p> <p>16 work that you've put into the statement and for the</p> <p>17 assistance that you're providing. Thank you very much.</p> <p>18 A. Thank you.</p> <p>19 MR BARR: You've been a Member of Parliament since 1979.</p> <p>20 Between 1987 and 1997, you held various ministerial</p> <p>21 offices and you are now the Chair of the Health</p> <p>22 Committee of the House of Commons; is that right?</p> <p>23 A. That's correct, yes.</p> <p>24 Q. You were the Secretary of State for National Heritage</p> <p>25 from July 1994 to July 1995, and in that capacity you</p> <p style="text-align: center;">Page 1</p>	<p>1 Q. Is it fair to say that from a very early stage indeed</p> <p>2 the government's response to the proposal for statutory</p> <p>3 regulation was to the effect that it could be a step of</p> <p>4 some constitutional significance and something which the</p> <p>5 government would be extremely reluctant to do?</p> <p>6 A. That's correct, yes.</p> <p>7 Q. And so that we can deal with that aspect of things very</p> <p>8 shortly, that effectively remained the position</p> <p>9 throughout the history of the response to Calcutt 2?</p> <p>10 A. It's been the position -- it certainly was the position</p> <p>11 throughout the time that I was responsible as</p> <p>12 a minister, and for a long time since. If you're asking</p> <p>13 me the question about the period that I was a minister,</p> <p>14 it's absolutely right that the government had a strong</p> <p>15 preference to avoid any form of statutory regulation.</p> <p>16 Q. And perhaps you could briefly explain the thinking</p> <p>17 behind that position?</p> <p>18 A. I think it starts as an issue of principle, that there</p> <p>19 is -- it was described by Peter Brooke in his original</p> <p>20 statement in reaction to Calcutt 2 that it would be</p> <p>21 a step of considerable constitutional significance.</p> <p>22 I think there are all kinds of issues of principle that</p> <p>23 are raised by the suggestion of statutory regulation of</p> <p>24 the press that I personally would be uncomfortable with,</p> <p>25 and I think that was a view reflected within the</p> <p style="text-align: center;">Page 3</p>
<p>1 were responsible for the ongoing coordination of the</p> <p>2 government's response to the Calcutt reports?</p> <p>3 A. The second Calcutt report, yes.</p> <p>4 Q. We'll deal with the background very quickly.</p> <p>5 David Calcutt had produced two reports, the first one</p> <p>6 expressing concern about media behaviour but effectively</p> <p>7 recommending that the press be given a chance to put its</p> <p>8 own house in order, and the second report in 1993</p> <p>9 expressing the view that the press had not done enough</p> <p>10 and the time had come for statutory regulation, amongst</p> <p>11 other things. He also recommended, didn't he, that</p> <p>12 there ought to be criminal offences enacted to deal with</p> <p>13 physical intrusions, that there should be consideration</p> <p>14 of a privacy tort and various other provisions affecting</p> <p>15 the Data Protection Act, the non-identification of</p> <p>16 minors and the victims in criminal proceedings, and</p> <p>17 improving existing legislation in relation to the</p> <p>18 interception of communication?</p> <p>19 A. That's a fair summary.</p> <p>20 Q. Your predecessor was Peter Brooke, and in the period of</p> <p>21 time between the Calcutt report and your taking over the</p> <p>22 portfolio, it's fair to say, isn't it, that he embarked</p> <p>23 on quite a lengthy process of consultation as to the</p> <p>24 appropriate response to Mr Calcutt's recommendations?</p> <p>25 A. (Nods head).</p> <p style="text-align: center;">Page 2</p>	<p>1 government at the time.</p> <p>2 There also, because this was a real political world</p> <p>3 and a real political set of decisions, there was the</p> <p>4 reality that if you were going to even contemplate going</p> <p>5 down that road, you would encounter huge opposition from</p> <p>6 the press themselves, based both on principle and it's</p> <p>7 often argued on self-interest, but it would be powerful,</p> <p>8 vigorous opposition, and that would, as a practical</p> <p>9 matter, have made it I think impossible for such</p> <p>10 a proposal to have been carried through the House of</p> <p>11 Commons.</p> <p>12 So whether you address it as an issue of principle</p> <p>13 or reality, it wasn't an option that merited very</p> <p>14 serious consideration.</p> <p>15 Q. You inherited a draft White Paper in the summer of 1994</p> <p>16 when you took over the portfolio. The thinking at that</p> <p>17 time -- and I'll deal with it briefly -- you thought</p> <p>18 that there were signs of self-restraint on the part of</p> <p>19 the press?</p> <p>20 A. I think there's -- yes, that's true. I think there was</p> <p>21 a recognition within the press industry that things</p> <p>22 weren't as they should be, from the point of view of the</p> <p>23 majority of the press community, and their decision as</p> <p>24 an industry to appoint John Wakeham as chairman of the</p> <p>25 PCC later that year I think reflected a willingness to</p> <p style="text-align: center;">Page 4</p>

<p>1 take seriously the need to do something more effective 2 through the PCC.</p> <p>3 Q. And you thought in picking that up that there had been 4 some improvement to the way the PCC was operating?</p> <p>5 A. I think there was a willingness to improve and that that 6 was developed through the 12 months that I was engaged 7 in these issues, yes.</p> <p>8 Q. But nevertheless the message from the draft White Paper 9 was that further improvement was needed and that if it 10 wasn't forthcoming then the government would be inclined 11 to introduce either intrusion offences or a privacy tort 12 or even both?</p> <p>13 A. Well, at the time of the draft White Paper that 14 I inherited, the -- that was built, of course, on 15 a position where the government had a longstanding 16 commitment to legislate intrusion offences. That was 17 a matter of public record. So a move in the 18 government's position merely to consider intrusion 19 offences would have been a step backwards from previous 20 commitments. There had been a commitment given to 21 legislate the intrusion offences as recommended, in 22 fact, by Calcutt 1 and repeated by Calcutt 2.</p> <p>23 The question of a privacy tort was something that 24 had been recommended for serious consideration by 25 Calcutt 2, and the government was -- had engaged in</p> <p style="text-align: center;">Page 5</p>	<p>1 it was carried on at that time, between the intrusion 2 offences, where there was a commitment, and a tort, 3 where there was a willingness to consider.</p> <p>4 Q. You set out in the following paragraph, paragraph 13, 5 some of the matters which the draft White Paper 6 considered were areas for improvement for the PCC. 7 Dealing with these briefly, they included a desire for 8 an independent appointments commission, a concern that 9 the privacy commissioner lacked powers and that there 10 was a need for a hotline to enable the PCC to intercede 11 directly with editors with a view to proactively 12 preventing breaches of the code. There was a desire for 13 a compensation fund, and it was thought desirable that 14 the scope of the code of practice should be expanded so 15 it was comparable with the thinking around a draft tort 16 for the invasion of privacy. Does that fairly summarise 17 the position?</p> <p>18 A. Yes.</p> <p>19 Q. When you considered the draft White Paper, you tell us 20 at paragraph 15 of your witness statement that you're 21 personally hostile to any proposal for official 22 regulation of the freedom of expression, so I take it 23 that you were fully on board with the effective decision 24 not to introduce statutory regulation?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 7</p>
<p>1 a process of serious consideration, including publishing 2 some consultation documents in the period before 3 I became Secretary of State.</p> <p>4 Q. I was looking at page 5 of your witness statement, 5 paragraph 12(b), where you tell us that the draft White 6 Paper was stating in paragraphs 1.19 and 1.20 that the 7 government's key conclusions were as follows, and you 8 set them out. At the bottom of 12(b):</p> <p>9 "Failure to implement these changes, particularly if 10 any such failure coincided with further press abuse, 11 will incline the Government to introduce, or give 12 support to any Private Members' Bills introducing 13 intrusion offences, a privacy tort, or both."</p> <p>14 So certainly the draft White Paper was talking about 15 an inclination to legislate.</p> <p>16 A. No, that's correct, and I saw that in the quote that 17 I included in my witness statement, and I don't remember 18 why the draft White Paper was couched in those terms, 19 but if you read the government's reaction to Calcutt 2, 20 when it was originally published, it was clear that 21 there was an existing commitment and the government felt 22 there to be an existing political commitment to the 23 intrusion offences.</p> <p>24 Q. I see.</p> <p>25 A. There's therefore a distinction in this discussion, as</p> <p style="text-align: center;">Page 6</p>	<p>1 Q. You talk about the political risks you've already 2 mentioned, but you say that you were reluctant to 3 publish the draft White Paper because it combined 4 a theoretical willingness to legislate with a practical 5 unwillingness to do it. Could you explain that 6 a little, please?</p> <p>7 A. Well, there was a phrase that was in the culture at the 8 time that this was the press in the last chance saloon, 9 it was a phrase that David Mellor had used I think in 10 1989, four years previously, and I think it was time in 11 my mind for the government to stop talking in terms of 12 threats, which it had no willingness to carry out, and 13 indeed no ability to carry out, and everybody knew both 14 of those things were true. So to be implying threats 15 that were unrealistic seemed to me merely to advertise 16 the government's weakness, and that was a broader 17 political issue for the government at the time. So 18 I was in favour of the government seeking to conclude 19 public discussion on this subject by setting out a clear 20 set of positions rather than leaving things open with 21 the kind of sword of Damocles hanging over people.</p> <p>22 Q. Did that unwillingness extend beyond statutory 23 regulation to the privacy tort as well?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. Notwithstanding the fact there had already been a very</p> <p style="text-align: center;">Page 8</p>

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<p>1 substantial period of debate to get to the draft White 2 Paper, you decided that you wanted time to reassess the 3 options. Given the background and the time already 4 spent debating this matter within government, that was 5 quite a significant step, wasn't it?</p> <p>6 A. Well, I was a new minister being appointed to a brief 7 that had obvious sensitivity in this subject, and of 8 course a wide range of other subjects involved in the 9 department at that time as well, and although the 10 government had had a very protracted internal discussion 11 to get itself to the point of the draft White Paper, it 12 didn't achieve the clarity that I had an instinctive 13 preference for, and so I felt that although it wasn't 14 the highest priority on my plate to bring it to 15 a conclusion, since it was going to be a field of policy 16 that I was responsible for in the public mind, I wanted 17 to be clear that it was a set -- it reflected the best 18 policy mix that I could achieve as an incoming Secretary 19 of State.</p> <p>20 Q. Now you receive a submission and you develop a position 21 which is essentially to try and encourage the PCC to 22 improve itself, to proceed with criminal legislation, 23 but to expressly abandon the idea of a privacy tort?</p> <p>24 A. Correct.</p> <p>25 Q. The paper, which we'll touch on very briefly, is at Page 9</p>	<p>1 the recommendations is certainly not underpinned by any 2 complacency about the performance of the PCC?</p> <p>3 A. That's true.</p> <p>4 Q. Looking at the bottom of the page, paragraph 5, we see 5 some suggested improvements, some of which we've already 6 touched upon. They are "more independence for the 7 privacy commissioner", procedural improvements including 8 the hotline, third-party complaints, general enquiries, 9 oral hearings and more thorough investigations. 10 "Content of the code. 11 "(vii) amendments to give better protection for the 12 individual ..." and I'm summarising, "incorporation of 13 elements of tort into Code." 14 And sanctions, incorporation of Code into 15 newspapermen's contracts, compensation; and on 16 publicity, any steps which bring the PCC to a wider 17 public. 18 So it's also fair to say, isn't it, there was no 19 shortage of ideas about how the PCC might be improved?</p> <p>20 A. Correct.</p> <p>21 Q. All of this is reported to the Prime Minister, isn't it? 22 We see at tab 4 that there's a document which goes from 23 you to the Prime Minister setting out the state of play. 24 It refers in its first paragraph to your discussions on 25 this topic. I appreciate that I'm asking you to cast Page 11</p>
<p>1 tab 3 of your bundle. I'd just like to pause to look at 2 that to consider what your department felt were the 3 abiding weaknesses -- and I'm quoting -- of the PCC. 4 The phrase "abiding weaknesses" appears at the bottom of 5 the first page, and that introduces a list at the top of 6 the second page of five perceived weaknesses. 7 "(i) the fact that many people do not complain to it 8 (because they do not know of its existence, because they 9 think it is ineffective or, in privacy cases, because 10 they fear the further publicity which PCC involvement 11 would bring); 12 "(ii) its lack of perceived independence from the 13 industry; 14 "(iii) its rather vague and weak Code; 15 "(iv) its somewhat perfunctory procedures; 16 "(v) its lack of real sanctions." 17 Allowing for the traditional understatement of Civil 18 Service drafting, that amounts to a scathing attack on 19 the state of play, doesn't it?</p> <p>20 A. It clearly reflects a view that the PCC hadn't 21 discharged its responsibilities to general satisfaction, 22 which was, of course, the view of Calcutt himself as 23 well.</p> <p>24 Q. And we can take it from that that the approach the 25 government is developing in holding back from some of Page 10</p>	<p>1 your mind back a very long time indeed, but can you help 2 us with the then Prime Minister's thinking at this 3 stage?</p> <p>4 A. I think the honest answer to that is no, I'm afraid. 5 I would certainly, before sending him a minute of this 6 nature, have sought to have an informal conversation 7 with him about where his thinking was and what -- 8 whether he had any sort of personal input in order to 9 understand what I was aiming at as a minister, so 10 I would have had a preliminary discussion, but I don't 11 remember what it was. I suspect it would have led me to 12 some form of comfort level that this was a minute that 13 wouldn't at least be rejected out of hand when he read 14 it.</p> <p>15 Q. I see. What your minute did provoke, though, was 16 a number of diverse responses from other ministers with 17 an interest in the issue, and we can deal with these 18 quite briefly. First of all, the Lord Chancellor. 19 I think would it be fair to say that he was keen on the 20 tort but not so concerned about the criminal offence?</p> <p>21 A. That's correct, yes. I mean, these -- the responses 22 that were elicited by my minute to the Prime Minister 23 I think can be summarised as simply being a rerun of the 24 discussion that had gone on within the government to 25 prepare the draft White Paper that I'd inherited from Page 12</p>

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<p>1 Peter Brooke.</p> <p>2 Q. The Home Secretary -- I'm looking now at tab 6 -- first</p> <p>3 of all expressed some concern about the proposals which</p> <p>4 he says depart significantly from those previously</p> <p>5 agreed by colleagues after lengthy deliberation. He</p> <p>6 expressed actual scepticism about the criminal offence</p> <p>7 and had a clear view that he thought the privacy tort</p> <p>8 was a way forward.</p> <p>9 And the Attorney General thought -- and I'm reading:</p> <p>10 "I regret [and then he's referring to the criminal</p> <p>11 offences] that that would, in my view, be a most</p> <p>12 unsatisfactory course. First, it does not recognise the</p> <p>13 limitations on what can be achieved through the criminal</p> <p>14 process."</p> <p>15 And then he goes on to set out a number of practical</p> <p>16 problems that he thinks would ensue if criminal offences</p> <p>17 were enacted, including defendants exploiting privilege</p> <p>18 to make allegations in public they wouldn't dare print</p> <p>19 and so on.</p> <p>20 Did that opposition remain a constant from the</p> <p>21 Attorney General?</p> <p>22 A. Yes. I think it's fair to say these were in the form of</p> <p>23 the Lord Chancellor and the Attorney General, the two</p> <p>24 senior lawyers in the government and the Home Secretary</p> <p>25 at the time was Michael Howard who himself is a QC, so</p> <p style="text-align: center;">Page 13</p>	<p>1 A. Correct.</p> <p>2 Q. You produce a further minute to the Prime Minister. I'm</p> <p>3 looking now at tab 8. It's clear, isn't it, that there</p> <p>4 needs now to be a move towards a collective discussion,</p> <p>5 so a position can be agreed. I'd like to pick up on</p> <p>6 some of the things that you bring to the</p> <p>7 Prime Minister's attention. In relation to the proposed</p> <p>8 tort on the first page, just below the bottom hole</p> <p>9 punch, it's quite difficult to read because it's</p> <p>10 photocopied highlighting, but the document says:</p> <p>11 "The tort would be the wrong thing at the wrong</p> <p>12 time. Most importantly, it would mean a major row with</p> <p>13 the press (the Daily Mail editorial of 16 March, annex</p> <p>14 B, is a good indication of the strength of feeling). By</p> <p>15 contrast, the press has never been in serious doubt that</p> <p>16 the criminal offences would be enacted."</p> <p>17 And if we turn to -- there are several sets of</p> <p>18 pagination, but if you follow the internal pagination,</p> <p>19 top right, and go to page 5 of 5, we see the Daily Mail</p> <p>20 editorial you're referring to. It's entitled "Who are</p> <p>21 they to cry foul?" And, in somewhat unrestrained</p> <p>22 language --</p> <p>23 LORD JUSTICE LEVESON: Somewhat unrestrained? You've</p> <p>24 already commented to the understatement of civil</p> <p>25 servants, Mr Barr.</p> <p style="text-align: center;">Page 15</p>
<p>1 three senior lawyers within the government were broadly</p> <p>2 in favour of the tort and against the criminal charges.</p> <p>3 We've already said, however, that the criminal offences</p> <p>4 were an existing government commitment, and the tort was</p> <p>5 in my mind a proposal of much greater significance, both</p> <p>6 constitutionally and politically, and so what was going</p> <p>7 on in this correspondence was a rerun of the discussion,</p> <p>8 as I said, that had led to the draft White Paper in</p> <p>9 July.</p> <p>10 The Lord Chancellor, of course, had been the sponsor</p> <p>11 of the public consultation on the proposed tort that had</p> <p>12 been published 12 months previously.</p> <p>13 Q. I'm again looking at the Attorney General's response,</p> <p>14 the second page of it, just to gauge the strength with</p> <p>15 which some of these differing views were held. In the</p> <p>16 penultimate paragraph he writes:</p> <p>17 "I recognise that this is a difficult issue but</p> <p>18 I have to say that I am deeply unhappy with your</p> <p>19 proposal and would wish there to be a collective</p> <p>20 discussion."</p> <p>21 So it seems --</p> <p>22 A. That was the Attorney General?</p> <p>23 Q. The Attorney General, yes, or Mr Weaver on his behalf.</p> <p>24 A. Mm.</p> <p>25 Q. So there was a degree of entrenchment in the positions?</p> <p style="text-align: center;">Page 14</p>	<p>1 A. This is the opposite extreme.</p> <p>2 MR BARR: I certainly can detect a contrast in the style.</p> <p>3 It refers to a number of the scandals in public life</p> <p>4 which had been exposed by the tabloids. It talks about</p> <p>5 a tort being a suppressive weapon to keep the press</p> <p>6 quiet, and concludes, referring to the Prime Minister:</p> <p>7 "He must know, therefore, that in the current</p> <p>8 climate of sleaze and corruption any concerted political</p> <p>9 clamour for privacy legislation is liable to be</p> <p>10 dismissed as little better than a self-protection</p> <p>11 racket."</p> <p>12 How concerned were you about press coverage of this</p> <p>13 nature?</p> <p>14 A. Well, as I've already referred to the fact that</p> <p>15 a government is a political organisation and it has</p> <p>16 to -- I was told early in my political life: any fool</p> <p>17 can have friends, it takes a wise man to have the right</p> <p>18 enemies. You have to pick your -- pick which battles</p> <p>19 you're going to fight.</p> <p>20 I'm not in favour of having government policy</p> <p>21 determined by press editorial, but nor am I in favour,</p> <p>22 in the real world, of government policy being determined</p> <p>23 blind to press editorial. You have to choose which</p> <p>24 arguments you're going to have.</p> <p>25 One of the elements of that choice is that there's</p> <p style="text-align: center;">Page 16</p>

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<p>1 not much point in the government committing itself to 2 a course of action which, because of press hostility, it 3 is profoundly unlikely to get through the House of 4 Commons. That was in my judgment the position that we 5 would have been in if we'd contemplated going down the 6 route of introducing legislation around privacy. 7 Q. I do not begin to suggest that the Daily Mail were 8 controlling the government, and please don't take this 9 as suggesting anything like that, but it seems that 10 editorials from the more influential papers like the 11 Daily Mail were certainly having an effect on your 12 thinking? 13 A. Of course. That's part of the public discussion, and 14 I think it would be -- for a politician to deny that the 15 views of newspaper editorials are taken into account in 16 policy making would be both implausible and actually 17 wrong in principle. 18 Q. Over the page you express the view that the government 19 should not exhaust all its armoury at once, and I think 20 the point you're making in a nutshell is that if the 21 government enacted the tort, it would be left with 22 nothing but the nuclear sanction of statutory regulation 23 in the event of another breakdown in press discipline. 24 Does that fairly summarise the point? 25 A. Yes. Reflecting on what I said earlier about my desire Page 17</p>	<p>1 another round of comment, doesn't it? If we look at 2 those very briefly -- 3 A. It came off the word processor, I think. 4 Q. At tab 9 we have Downing Street and Downing Street 5 raises a concern that a criminal offence might lead to 6 the martyrdom of a journalist, and suggests that one way 7 of defusing the temperature or lowering the temperature 8 would be to explore an offence which wasn't just 9 targeted at journalists but also at private detectives, 10 a generally wider ambit. He asks also about what 11 evidence you have that the press would be prepared to 12 countenance the criminal offences. 13 A. Can I just comment on the point about for publication. 14 The minute reads: 15 "In addition, it may be unavoidable we should employ 16 a for publication test." 17 I had actually, as the earlier correspondence 18 I think suggests, sought to exclude the for publication 19 test, because it did seem to me that the Calcutt 20 offences, the criminal offences, were more easily 21 defensible in principle and in political terms if they 22 didn't apply just to the press but they applied to 23 anybody engaging in that course of action, but I had 24 been persuaded out of that primarily by discussion -- by 25 representation from the Home Office, that that would Page 19</p>
<p>1 to try to create a clear government position rather than 2 continuation of rhetoric around the last chance saloon, 3 this paragraph includes -- doesn't fully comply with 4 that test. I would acknowledge that. But you're 5 correct in your summary of why that was written, what it 6 was intended to mean. 7 Q. That's a somewhat controversial position because it 8 might be said that the alternative is simply to do the 9 utmost to make them regulate themselves effectively and 10 to ensure that regulation with a statutory tort in the 11 background is the way to go in the light of the events 12 which had led to the Calcutt recommendations? 13 A. That had in reality been the government's position for 14 some years, hadn't it? But the press was encouraged to 15 go down the self-regulatory route because, quotes, it 16 was in the last-chance saloon, and the government had 17 a willingness to take more radical action if the press 18 didn't act in a way that satisfied the government -- 19 satisfied the government. 20 I've already said I felt that was an increasingly 21 implausible threat, which was why I was actually in 22 favour of taking it off the table, although this 23 paragraph of this minute effectively at least in private 24 leaves it on the table. 25 Q. Your document, and we see a pattern here, it provokes Page 18</p>	<p>1 undermine various activities of the Security Services, 2 and that therefore it was necessary that if these 3 tests -- if these offences were going to be introduced, 4 they were narrowly defined and only applied to 5 activities that led to material for publication. 6 Q. We can deal with the responses of the Lord Chancellor 7 and the -- well, deal with the Lord Chancellor and then 8 move on to deal with Michael Howard. 9 The position seems to have been, as you say, much 10 the same. Michael Howard makes a point that he doesn't 11 think the legal aid argument is a good argument against 12 a tort, because he says it's available to almost 13 50 per cent of households. He makes a reference to the 14 potential availability in the future of conditional fee 15 arrangements. 16 Over the page at tab 11 -- sorry, this is 17 Michael Howard's -- 18 A. I think it's worth just repeating the point, the 19 fundamental reason why I'm not in favour -- wasn't in 20 favour then and I'm not really in favour now of the 21 introduction of a tort of privacy is that I think it 22 doesn't deal with the issue of the protection of the 23 little guy, and that was -- the worst malpractices of 24 the press, it seems to me, are not the ones that cause 25 concern among the prominent people in the community, Page 20</p>

5 (Pages 17 to 20)

<p>1 they're the people whose private lives are paraded for 2 public entertainment, and those are precisely the people 3 who are not protected by a privacy tort. 4 Q. The Lord Chancellor's position, which I've just drawn to 5 your attention, was different, wasn't it? He thought 6 that legal aid in fact covered quite a lot of people, 7 there was a prospect in the future of a CFA, and in 8 effect the fact that not everybody might have access to 9 the law is no reason for not enacting it. That was his 10 position? 11 A. That was his position; correct. 12 Q. And then, coming on to the Home Secretary, 13 Michael Howard, he was very much against holding 14 anything in reserve. He didn't think there would be the 15 political will to come back for a second bite of the 16 cherry, and -- 17 A. Well, he had good reason for saying that because there 18 was demonstrated political will in this correspondence 19 for not taking the first bite of the cherry. 20 Q. And he was in view of taking as much action as possible 21 at that stage? 22 A. Yes. 23 Q. And so again it goes back to the Prime Minister, and you 24 at tab 12 produce another minute for him. This one's 25 dated 24 April 1995. There seems to have been</p> <p style="text-align: center;">Page 21</p>	<p>1 would simply have been a two-line letter. 2 LORD JUSTICE LEVESON: Oh, I see. 3 A. Saying, "Could you look at a 'do nothing' option?" 4 MR BARR: The strategy, and I'm looking at page 2 of this 5 document, the strategic choices that you put before the 6 Prime Minister are: 7 "(a) legislating the criminal offences in 1995-6, or 8 "(b) doing nothing." 9 You stake your colours very much to the first 10 option, don't you? 11 A. I do. 12 Q. But in response to the Prime Minister's request, you 13 explore the "do nothing" option. You describe it as 14 creating its own political risks, which include 15 criticism from Calcutt, the Select Committee, MPs, peers 16 and the judiciary, and then you move on to consider how 17 the government might present a "do nothing" option, and 18 you give three approaches potentially to that. The 19 first is -- and I'm looking at page 3 of 4: 20 "Make no statement at all. This has worked 21 surprisingly well so far." 22 But then you go on effectively to say, well, that 23 position cannot last. 24 A. Precisely. 25 Q. "(ii) announce that we shall do nothing."</p> <p style="text-align: center;">Page 23</p>
<p>1 a development here, which I'd like to ask you about. 2 It's evident from the first page, from the fourth indent 3 to the first paragraph, it says: 4 "This minute responds to various pieces of 5 outstanding correspondence on this issue." 6 And the fourth indent reads: 7 "You have asked (Rachael Reynolds' letter of 8 18 April) how we might present a 'do nothing' option." 9 So can I take it from that that the Prime Minister 10 was beginning to think in terms of a "do nothing" 11 option? 12 A. I think it's relatively hard to draw any other 13 conclusion from this correspondence. The government was 14 arguing itself to a standstill, and therefore there had 15 to be -- it was a reasonable question for him to ask. 16 We had an obligation to reply to Calcutt. We also had 17 an obligation to reply to a Select Committee report, 18 which this response was by then two years behind 19 schedule, so we had to bring the matter to a conclusion 20 somehow. 21 LORD JUSTICE LEVESON: We don't have that letter, do we? 22 MR BARR: I don't think so. 23 LORD JUSTICE LEVESON: I couldn't find it. 24 A. I think -- I think that it's a letter -- no, I don't 25 remember whether I've seen the letter, but I suspect it</p> <p style="text-align: center;">Page 22</p>	<p>1 You say you are not attracted at all to that 2 prospect, because it would be extremely difficult to 3 find a justification for ruling out in principle the 4 criminal offences to which the government is already 5 publicly committed? 6 A. And which had been recommended twice by Sir David 7 Calcutt. Well, first by the Privacy Committee and 8 secondly by his personal inquiry. 9 Q. You say: 10 "The White Paper would either have to argue that 11 government action is unnecessary because self-regulation 12 is already effective [which you describe as 'wholly 13 unconvincing'] or it would have to accept that 14 self-regulation remains ineffective but that there is 15 nothing we can in practice do about it." 16 Which you say is worse, because it sends all the 17 wrong signals. 18 LORD JUSTICE LEVESON: Yes. 19 A. I tried to avoid the Civil Service trap of 20 understatement. 21 LORD JUSTICE LEVESON: Yes. Why do I see all this coming 22 back to hit me? 23 A. I hope that's a rhetorical question. 24 MR BARR: And then number (iii): 25 "Make a statement which (a) confirms our intention</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 to legislate the intrusion offences when Parliamentary 2 time permits [that's in italics], and (b) reasserts our 3 preference for self-regulation in the wider field of 4 privacy law but underlines that continued public 5 confidence in this approach depends upon the 6 effectiveness of the PCC."</p> <p>7 And of course the reason why the words "when 8 Parliamentary time permits" were in italics is because, 9 as it's a "do nothing" option, the real intention would 10 be in fact simply not to enact?</p> <p>11 A. Correct.</p> <p>12 Q. It might be said that that would be a rather cynical 13 approach.</p> <p>14 A. Realistic, might be a word I prefer.</p> <p>15 Q. You say about that:</p> <p>16 "The latter would take a good deal of brazening out 17 given the history, but I nonetheless think it is the 18 least bad choice. It cannot be criticised as 19 a substantive retreat, it avoids a head-on collision 20 with the press and it gets the Select Committee off our 21 backs."</p> <p>22 LORD JUSTICE LEVESON: This is true politics.</p> <p>23 A. I tried, when I was writing minutes within the 24 government -- and this is perhaps an example of it -- to 25 write them in English that didn't require decoding.</p> <p style="text-align: center;">Page 25</p>	<p>1 I think you eventually got a reply to that just as you 2 were handing over to Virginia Bottomley and she replied 3 to Lord Wakeham, so there is an exchange of letters with 4 Lord Wakeham that certainly expresses a commitment in 5 plain terms to make progress.</p> <p>6 A. And it was part of the specific -- this wasn't an 7 exchange of letters that was independent of the 8 government's process. Clearly it was -- part of the 9 intention in preparing the government's response, 10 whatever it ultimately said, would be that there would 11 be an exchange of letters between the Secretary of State 12 and the Chairman of the PCC that set out what was being 13 done to make the PCC more effective. That was part of 14 the plan.</p> <p>15 Q. And perhaps again we can deal with that in a nutshell. 16 The actual practical effect of that process was that 17 some progress was made but the results were rather mixed 18 because there were many recommendations which the PCC 19 never adopted?</p> <p>20 A. True. Clearly it was -- it didn't get us to the final 21 result of what we might now in retrospect have regarded 22 as the best possible outcome, but I certainly would 23 defend the proposition that we made progress as a result 24 of those exchanges.</p> <p>25 LORD JUSTICE LEVESON: Did you see the PCC as a regulator?</p> <p style="text-align: center;">Page 27</p>
<p>1 MR BARR: Can I suggest that this political debate and the 2 consideration of the announcing "do nothing" and the 3 third option of saying that you're going to legislate 4 when Parliamentary time permits, is that an example of 5 a phenomenon which has been referred to by Tony Blair of 6 not being able to be entirely frank for fear of how 7 matters will be perceived?</p> <p>8 A. I think that is a reasonable way of putting it, and 9 I think it's pretty explicit in the minute. I was asked 10 to dress up a "do nothing" option. One way of doing 11 nothing is to announce that you're going to do nothing, 12 and I made it clear in the minute why, as a member of 13 the government, that didn't seem to me to be an 14 attractive way of announcing it, but clearly the option 15 (c) amounts to the same thing.</p> <p>16 Q. Indeed it wasn't your preferred way forward, but 17 a variation of the "do nothing" option was in fact what 18 happened, wasn't it?</p> <p>19 A. Substantively, yes.</p> <p>20 Q. To look at what action there was, you wrote to 21 Lord Wakeham, and I'm looking now at tab 13, on 2 June 22 1995, and the thrust of your letter is to suggest to him 23 improvements which you thought could be made to the PCC. 24 It's quite a long letter and we've already been over the 25 territory to some extent so I won't go into the detail.</p> <p style="text-align: center;">Page 26</p>	<p>1 A. I saw it as an organisation with a responsibility to 2 promote standards -- higher -- define standards within 3 the press and an organisation that gave people who were 4 injured by failure to meet those standards some form of 5 redress. If that's what's meant by a regulator, then 6 yes, but I think -- I thought then and still think now 7 that it's important that it's something that is done -- 8 has its roots within the press. It's part of the press 9 recognition of their own responsibility. It's not 10 something that is defined for them from outside.</p> <p>11 LORD JUSTICE LEVESON: Do you think it's possible for that 12 body to consider itself also the champion of the press?</p> <p>13 A. I think it's possible --</p> <p>14 LORD JUSTICE LEVESON: And all that goes with it, the 15 freedom of expression, all that goes with it?</p> <p>16 A. That was the point I was going to make. I think it 17 absolutely is possible for a PCC seen in that light to 18 be a champion of freedom of the press, yes, I do think 19 it's possible for it to be a champion of the principle 20 of a free press as a key part of a free society and 21 indeed arguably it's in a stronger position to define 22 what good standards are for a free press and to 23 recognise circumstances when those standards aren't met, 24 if it is explicitly itself a champion of the principle 25 of the free press. So it's in favour of the principle,</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 it has a proper understanding of what that means in 2 practice and it recognises circumstances where those 3 principles aren't met. 4 LORD JUSTICE LEVESON: And do you think that generates 5 sufficient public confidence in a complaints mechanism 6 if it is thought that actually the only person to whom 7 I can complain is the champion of the press itself? 8 A. Well, my hesitation in answer to your first question 9 was: can it be a champion of the press? Certainly the 10 PCC cannot be a champion of every individual organ of 11 the press, whatever it does. It can be a champion of 12 the principle of press freedom, but it has to be willing 13 to be critical of its own when the standards that it 14 espouses as an organisation aren't met. 15 LORD JUSTICE LEVESON: Do you think that's entirely 16 straightforward if it comprises not wholly but even 17 largely of editors who are themselves in the business 18 and in competition with other editors? 19 A. One of the tensions I think in this -- the press has 20 to -- I would hope that might be explored by your 21 Inquiry, sir, is the extent to which the press is 22 willing to be critical of the press when standards 23 espoused by the press body are not met, because the 24 whole point of press freedom as a principle is supposed 25 to be that in a free society this is one of the most</p> <p style="text-align: center;">Page 29</p>	<p>1 freedom of information, features that are mentioned, 2 hinted at in the correspondence, but in reality the 3 points that are being made are absolutely the same. 4 A. Mm. 5 LORD JUSTICE LEVESON: Because whatever one does, it works 6 for a bit and then collapses. 7 A. But this is part of a much bigger issue in my view. I'm 8 not sure how far down this road you want to go, but if 9 we take the opposite road and say we're going to take 10 away from the press the responsibility of recognising 11 what's right, what's proper, what's good, and 12 criticising that which falls short, then we pass that 13 responsibility to somebody else. Then what should be 14 internalised as a commitment to a set of principles 15 within the press industry profession becomes simply, 16 "Well, we'll do it because it passes the test that 17 somebody else says is good enough". 18 LORD JUSTICE LEVESON: But you might say the same for 19 lawyers or anybody. 20 A. It's an argument that in a quite different world I am 21 developing within the health professions, that actually 22 the only people who really know what's good in the 23 consulting room whether between a doctor and a patient 24 is the doctor, and any attempt to define what's good 25 through a regulator other than the professional</p> <p style="text-align: center;">Page 31</p>
<p>1 effective ways of calling power to account. 2 Now, if that applies to politics, and I think it 3 should, or the law, and I think it should, it ought also 4 to apply to the press, but too often when individuals 5 within the press are challenged, the tendency is to say, 6 well, the press won't apply those principles to itself, 7 the same principles that it applies to other parts of 8 public life. 9 LORD JUSTICE LEVESON: That's the problem. 10 A. And that's -- but it doesn't make it right for that 11 responsibility, which I think is intrinsic to the claims 12 that are made about the importance of press freedom, it 13 doesn't make it right to remove -- to walk away from 14 that principle. 15 LORD JUSTICE LEVESON: Well -- 16 A. I think the principle is right. It's the application of 17 that principle in practice which is why we're here. 18 LORD JUSTICE LEVESON: Of course, and why we've been here 19 several times since the last war, again and again and 20 again, and that's what troubles me. I mean, I said -- 21 I made light of it, but actually the debate -- we might 22 not be talking about the criminal law, we might not be 23 talking quite in the same language of your 24 correspondence that is now 16 years old, because things 25 have moved on with the human rights legislation, with</p> <p style="text-align: center;">Page 30</p>	<p>1 ownership of standards is second best. 2 LORD JUSTICE LEVESON: Well, it may be, but the GMC, for 3 example, isn't simply comprised of doctors; it has a -- 4 A. It has a lay majority. 5 LORD JUSTICE LEVESON: -- a lay majority, it has a statutory 6 framework that doesn't seem to stand in the way of 7 proper exercise of professional judgments, and doctors 8 being judged by the standards of acceptable medical 9 practice. One goes to the law or whatever, Bolam test, 10 with which I'm sure you're extremely familiar. 11 A. Indeed, and the -- I accept that if you use the GMC 12 standard or the Law Society -- is it the Law Society? 13 LORD JUSTICE LEVESON: The Legal Services Board, which then 14 operates the Law Society and the bar and the legal 15 executives. 16 A. They have a statutory basis, but it's a statutory basis 17 that has grown out of very long practice, and what they 18 have critically is an understanding or a set of 19 professional commitments. In order to be a doctor or in 20 order to be a lawyer, you have to be engaged -- you have 21 to personally be responsible for a set of professional 22 standards. Now, none of that exists within the press 23 industry. There are no -- there isn't an ownership of 24 professional standards between editors and journalists, 25 or a definition of press professional standards. For</p> <p style="text-align: center;">Page 32</p>

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<p>1 me, that's something that the press -- the world of</p> <p>2 journalism and the press needs to own and develop, and</p> <p>3 I know that you've been discussing with David Hunt the</p> <p>4 possibility that this could be based on the law of</p> <p>5 contract between the PCC and the press industry.</p> <p>6 LORD JUSTICE LEVESON: David Hunt has been discussing with</p> <p>7 me rather than me discussing with him. That's quite an</p> <p>8 important distinction. I don't want to take Mr Barr out</p> <p>9 of order. We'll doubtless come to this. Yes?</p> <p>10 MR BARR: To return to the government's consideration of</p> <p>11 Calcutt 2, and we are nearing the end of the journey,</p> <p>12 you produce a further draft White Paper, and that goes</p> <p>13 to a Cabinet Committee meeting which was held on 15 June</p> <p>14 1995; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. We can deal, I think, with the White Paper quite</p> <p>17 succinctly. It essentially set out your preferred</p> <p>18 option, namely to legislate on the criminal but not the</p> <p>19 tort, and to encourage the PCC to raise its game but not</p> <p>20 to pursue statutory regulation.</p> <p>21 That then goes to the Cabinet Committee meeting on</p> <p>22 15 June, which we can deal with similarly briefly.</p> <p>23 Incidentally, Mr Hunt attended that Cabinet meeting,</p> <p>24 I see, along with yourself and many others. The upshot</p> <p>25 of that meeting was that no clear view was reached; is</p> <p style="text-align: center;">Page 33</p>	<p>1 which was why it went to a Cabinet Committee, at which</p> <p>2 he was not present, and at which his view, so far as</p> <p>3 I remember, was not expressed.</p> <p>4 Q. There's then a hiatus within the Conservative Party: the</p> <p>5 Prime Minister resigned as leader and then was</p> <p>6 re-elected. The consequence of that was that you</p> <p>7 transferred to the health portfolio?</p> <p>8 A. A simple matter.</p> <p>9 Q. Virginia Bottomley took over as your successor at the</p> <p>10 Department of National Heritage and a White Paper was</p> <p>11 actually published on 17 July 1995. There was no clear</p> <p>12 view at the Cabinet meeting, but yet a White Paper does</p> <p>13 get published. Can I ask -- can you help us with what</p> <p>14 happened between the Cabinet meeting and the publication</p> <p>15 of the eventual White Paper to conclude --</p> <p>16 A. Well, the government was in a position where it had to</p> <p>17 draw the process to a close. It had been going on by</p> <p>18 this time for two and a half years. We've already</p> <p>19 referred to the fact that the Select Committee was owed</p> <p>20 a response. The government -- there was no point, it</p> <p>21 seemed to me, and clearly Virginia came to the same</p> <p>22 conclusion, in further drawing this out. The government</p> <p>23 hadn't reached a collective agreement to do anything,</p> <p>24 and we therefore had -- as you were saying earlier, we</p> <p>25 had to present our conclusion that we were going to do</p> <p style="text-align: center;">Page 35</p>
<p>1 that right?</p> <p>2 A. Correct.</p> <p>3 Q. Could you help us, as best you can remember, as to why</p> <p>4 that was the ultimate position?</p> <p>5 A. I think that this was a group of ministers that clearly</p> <p>6 included those who had been party to the correspondence;</p> <p>7 the business managers, in other words the whips and the</p> <p>8 people who are responsible for actually delivering</p> <p>9 government business through the House of Commons, and</p> <p>10 the Lords, and other interested ministers. The people</p> <p>11 who had been party to the correspondence made the points</p> <p>12 that they'd made in the correspondence. I think that</p> <p>13 the first independent -- I don't remember, but I'm</p> <p>14 guessing the first point made in discussion was,</p> <p>15 I suspect, made by the business managers who I think</p> <p>16 were concerned that any proposal that required</p> <p>17 legislation was unlikely -- was likely to be difficult.</p> <p>18 Q. Can you recall what the Prime Minister's view at this</p> <p>19 time was on the draft White Paper?</p> <p>20 A. I think by this time the -- by engaging -- by going</p> <p>21 through the correspondence that we've talked about, what</p> <p>22 I was seeking to do was to engage the Prime Minister in</p> <p>23 resolving this deadlock within the government. I think</p> <p>24 he'd recognised by this time that there were different</p> <p>25 views and they were unlikely to be resolved, and --</p> <p style="text-align: center;">Page 34</p>	<p>1 nothing in the least bad way.</p> <p>2 Q. We can see what that was at paragraph 28 of your witness</p> <p>3 statement, where you say the key points were:</p> <p>4 "(a) The government does not find the case for</p> <p>5 statutory measures in this area compelling. It believes</p> <p>6 that, in principle, industry self-regulation is much to</p> <p>7 be preferred.</p> <p>8 "(b) The government has long recognised that there</p> <p>9 is, in principle, a case for the introduction of [new</p> <p>10 physical intrusion] offences ... The government has</p> <p>11 however so far been unable to construct legislation</p> <p>12 which in practice would be sufficiently workable to be</p> <p>13 responsibly brought to the statute book.</p> <p>14 "(c) In considering the results of the consultation</p> <p>15 [on the feasibility of introducing a new tort of the</p> <p>16 infringement of privacy] the government draws two</p> <p>17 conclusions. First it does not believe there is</p> <p>18 a sufficient public consensus on which to base statutory</p> <p>19 intervention in this area. Secondly it strongly prefers</p> <p>20 the principle of self-regulation ... it therefore has no</p> <p>21 present intention to legislate a new civil remedy."</p> <p>22 So essentially on the question of the criminal</p> <p>23 matter it's the Attorney General's practical objections</p> <p>24 which become the public face of the decision not to</p> <p>25 proceed, and in relation to the tort, what is said is</p> <p style="text-align: center;">Page 36</p>

<p>1 the public don't want it. Insufficient public 2 consensus.</p> <p>3 A. Insufficient public consensus.</p> <p>4 Q. Looking back now, do you think that the government's 5 consideration of Calcutt 2 and its response amount to 6 a missed opportunity to do more to improve behaviour in 7 the press?</p> <p>8 A. My basic response to that is no I don't. First of all, 9 at a purely mechanistic level, the ability to do 10 anything fundamental in legislative terms I don't think 11 was there because, as I've already said, I don't think 12 in reality we'd have been able to carry legislation, so 13 there was no opportunity, if that's what you wanted to 14 do. But as we were beginning to develop in the earlier 15 exchange with Lord Leveson, even given what's happened 16 in the intervening period, I am not persuaded that if we 17 go down the legislative route here we don't create 18 a problem that's -- a cure that's worse than the 19 disease.</p> <p>20 Q. We can pick up now some of the thinking behind how to 21 deal with the problems that we now have, and to take 22 them forward. I'm looking at the concluding section of 23 your witness statement, and you point out, as many 24 others have, that much of the recent acknowledged 25 wrongdoing is already against the law. That in itself,</p> <p style="text-align: center;">Page 37</p>	<p>1 reinforced along the lines that Lord Hunt has been 2 developing, and that the principle that a free press is 3 part of the accountability checks and balances in a free 4 society, the lacuna in that argument is the proposition 5 I already made to Lord Leveson, that that applies to the 6 world of politics, of the law and other parts of public 7 life, and quite rightly, but it hasn't applied with the 8 same force in the world of the press. And that seems to 9 me to be part of the challenge that I would throw back 10 to the world of the press.</p> <p>11 Q. There must be room for concern, though, that looking at 12 the very long history of repeated difficulties with 13 press standards and press behaviour, that the industry 14 will not reform itself sufficiently to prevent a repeat 15 of this behaviour. Would you agree?</p> <p>16 A. Well, I would, but the question, it seems to me, is more 17 precise than that. It isn't: will the industry as 18 a group of people reform its behaviour? It is: why -- 19 it's a question that can be put to an individual editor 20 or to an individual press proprietor: why, if you 21 embrace the standards set out in the Editors' Code, do 22 you not accept a responsibility to conduct investigative 23 journalism and to apply those principles to other organs 24 of the press? To call to account other organs of the 25 press? That is the case for press freedom, which I am</p> <p style="text-align: center;">Page 39</p>
<p>1 though, isn't a reason not to try and improve regulation 2 of the press, is it?</p> <p>3 A. It's not an argument against it, but I would argue 4 strongly that we already have a set of legal standards 5 that are not being met, we should ask ourselves why that 6 is and address the cause of the problem rather than the 7 symptom of the problem. As I say in my witness 8 statement, I believe that the issue that's come to light 9 in recent times is an issue of -- that has much more to 10 do with management, culture and responsibility within an 11 organisation for what goes on within that organisation 12 than it has to the legal framework, whether it's 13 voluntary through the PCC or statutory through 14 Parliamentary or other processes.</p> <p>15 Q. If we start with that then, if there's a need to improve 16 culture, how can that be done?</p> <p>17 A. Well, it's -- the answer is the only people who can do 18 it are the people who hold -- who are the managers, the 19 editors, the people with that responsibility in the 20 press world, and it's part of the -- my preferred -- my 21 instinctive response -- I'd be the first to say this 22 isn't based on elaborate consideration of all of the 23 alternatives in the way that you do when you're 24 a minister, but my instinctive response is the 25 principles on which the PCC has been built can be</p> <p style="text-align: center;">Page 38</p>	<p>1 in favour of.</p> <p>2 Q. But isn't the difficulty that in practice there are 3 occasions when the press doesn't hold itself to account?</p> <p>4 LORD JUSTICE LEVESON: Well, when are the occasions that it 5 has?</p> <p>6 A. When one organisation within the press calls another 7 organisation within the press to account.</p> <p>8 LORD JUSTICE LEVESON: Yes.</p> <p>9 A. That's a proper question, it seems to me, to put to 10 organs of the press.</p> <p>11 LORD JUSTICE LEVESON: But we know, don't we, we know about 12 the Guardian article in July 2009 and we know about the 13 New York Times article in 2010. We know what the 14 reaction was to the Guardian article in July 2009, which 15 was to lead to criticism by the self-regulator about the 16 Guardian.</p> <p>17 A. Which is clearly a completely perverse outcome.</p> <p>18 LORD JUSTICE LEVESON: Well, yes. So that being the case, 19 one first has to go back and say whether what the PCC 20 does is truly a regulator at all, which is one of the 21 questions that we started to discuss before, and it is 22 interesting that I think it is only Sir Christopher 23 Meyer who has come along and said, "Oh yes, it was 24 a regulator" -- no, maybe he didn't. Maybe he said, "It 25 never was a regulator", although the language of his</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 letters suggests it was. But the general line has been 2 that it never was a regulator. So one's talking about 3 improved self-regulation when actually it's not doing 4 that at all.</p> <p>5 A. But then the question -- I'm not here to defend the 6 record of the PCC.</p> <p>7 LORD JUSTICE LEVESON: No, no, no. Mr Dorrell, I'm not 8 inviting you to, although I welcome any contribution you 9 want to make across the board. I am actually seeking 10 the help of somebody who has clearly, at least in the 11 past, focused very closely on the issues and is aware of 12 the wider picture, of which I am equally aware, as one 13 tries to grapple to find a solution that works. But 14 a solution that has to work, not merely for the press, 15 but it has to work for the public as well, because 16 I think you'll find that one of your conclusions in 17 1995, namely there was no public appetite for something 18 very different, is no longer the position.</p> <p>19 A. I'm not certain that there would be public appetite 20 following public discussion for a regime that was 21 seen -- that was represented as protecting the rich and 22 the powerful.</p> <p>23 LORD JUSTICE LEVESON: I agree with that entirely. I'm not 24 seeking to protect the rich and the powerful. I happen 25 to agree with you, with what you said somewhat earlier,</p> <p style="text-align: center;">Page 41</p>	<p>1 a phrase of yours, with which I entirely empathise, and 2 has actually -- is responsible for some of my thinking 3 for ways to achieve just that end, and I'm not sure that 4 a contractual remedy, which is only contractual between 5 the press itself, it doesn't bind a third person and has 6 all sorts of enforcement problems, would necessarily 7 help the little guy.</p> <p>8 A. What the little guy most wants, if there is a threat of 9 their private life being paraded for public 10 entertainment, is the ability to stop it. It's not 11 about recompense, it's not about reaction post the 12 event. It's about the ability to prevent the wrong 13 arising in the first place.</p> <p>14 LORD JUSTICE LEVESON: I understand that, but one has to be 15 very careful -- here I'm going to sound like an 16 apologist for the press, but I'm comfortable about that 17 because if one requires all form of -- if one requires 18 the opportunity to obtain prior restraint, then you run 19 the very risk that you express yourself concerned about, 20 namely that the rich and powerful and the famous will 21 use that to gag legitimate public interest stories, 22 which itself would not be in the public interest.</p> <p>23 A. Mm.</p> <p>24 LORD JUSTICE LEVESON: So I entirely agree with the 25 proposition that the little guy, and indeed the rich</p> <p style="text-align: center;">Page 43</p>
<p>1 that the important people for you were the protection of 2 the "little guy".</p> <p>3 A. Mm.</p> <p>4 LORD JUSTICE LEVESON: And one of the ideas that I have been 5 postulating -- and you may be aware -- is some sort of 6 swifter mechanism for the resolution of privacy or other 7 complaints, which doesn't require litigation, which is 8 expensive, it's time-consuming, and all the 9 disadvantages of which you are aware.</p> <p>10 A. It is exactly what the PCC, the privacy commissioner 11 concept was originally designed to address, precisely 12 that issue.</p> <p>13 LORD JUSTICE LEVESON: But if you're going to have a way for 14 the small -- for the little guy to get a remedy that is 15 enforceable, aren't you going to have to have somewhere 16 in the background some framework against which you 17 attach it? I'm not suggesting that it should be -- I'm 18 absolutely not suggesting government regulation. I've 19 never said that. But I am concerned about ensuring 20 there is a mechanism that can be seen to work, 21 particularly for the little guy.</p> <p>22 A. Well, I agree with the objective. I don't personally 23 think that's the whole -- I'm sure you're not suggesting 24 that that's the whole issue.</p> <p>25 LORD JUSTICE LEVESON: No, it's merely -- I mean, I pick up</p> <p style="text-align: center;">Page 42</p>	<p>1 guy, it doesn't really matter, would want to prevent 2 a story emerging, but there has to be some mechanism 3 whereby the press decides -- this is the ultimate 4 exercise of press freedom -- that we're prepared to take 5 the risk because the evidence will be destroyed, because 6 we'll be tied up in 18 months of litigation. There have 7 been lots of examples spoken about during the course of 8 the Inquiry, and therefore one has to hold the press to 9 account for that decision, and the only way we can do 10 that is to say: we encourage you to warn in advance, to 11 pre-notify. If you choose not to and you're wrong, then 12 there has to be some mechanism for there to be a real 13 remedy for the person who is affected.</p> <p>14 Now, that again is likely to require in some way, 15 somewhere in the distance, a framework that permits the 16 law to provide that remedy, and if you don't -- you 17 can't do it just consensually. That's what concerns me.</p> <p>18 A. There has to be a definition of what the -- of what's 19 acceptable and what the consequences are when behaviour 20 is unacceptable. A straightforward principle of legal 21 certainty. I agree with that. The more that that is 22 owned by the press and the editors in particular, senior 23 journalists as well, own that definition of what's good 24 and own the determination of what's unacceptable, the 25 more comfortable I feel that that is, first of all,</p> <p style="text-align: center;">Page 44</p>

<p>1 consistent with the principles of press freedom, but 2 also likely to be consistent with good journalism, good 3 accountability and so forth. Those issues need to be 4 internalised within the press, not taken away from them. 5 LORD JUSTICE LEVESON: But when the story becomes so big, 6 all the rules go out of the window. That's precisely 7 what people have said time and time again. They've not 8 articulated it in quite that way, but if the story is 9 big enough -- actually, I'm not sure Piers Morgan didn't 10 say something like that, in terms. But if it's big 11 enough, then the story takes control, so one gets -- and 12 if I take some examples of little people, Christopher 13 Jefferies is a very, very good one. The story was so 14 big, so important, of such public interest over that new 15 year period that all restraint is lost. 16 He wasn't in a position to seek to obtain prior 17 restraint. There are stories where that might be 18 possible, and one might want to encourage editors to 19 say: well, let's go to somebody independent, whether you 20 call it an ombudsman or whatever, and if you have 21 a story, you say: I have this story and I don't want to 22 show it because I think the evidence will be destroyed, 23 or whatever, and I'd like a view, and the ombudsman can 24 say: yes, I think that's reasonable. And then the 25 editor takes his view and moves on. And he can then</p> <p style="text-align: center;">Page 45</p>	<p>1 A. Going through the stages of that, you don't need 2 a statutory framework to set up an ombudsman who can 3 provide that sort of independent advice. It's only when 4 you get to the end of the road that you need to go 5 beyond the consensual approach, as I hear that 6 formulation. 7 So what we're dealing with is a set of circumstances 8 where an editor made a decision, may have sought 9 external advice from a figure who is able to give 10 a third-party view of the judgment that the editor is 11 being asked to make. All of that can happen. The 12 question is: what happens in the circumstance like 13 Christopher Jefferies where a judgment is made and 14 a major injustice is done? 15 In those circumstances, you either give people the 16 right to a remedy and recovery in civil law or you ask 17 the press -- or you throw it back to the editor and the 18 proprietor and require them to -- require the industry 19 as a whole to think about what are the consequences that 20 should flow in that particular set of circumstances. 21 It's a completely fair question to put to the press 22 industry, given that's a story that's now passed: what 23 should have happened? Do they think that what happened 24 to Christopher Jefferies is right and proper? And we 25 ended up with a set of circumstances which are</p> <p style="text-align: center;">Page 47</p>
<p>1 prove, in I would hope a swifter type of dispute 2 resolution mechanism than the court necessarily is able 3 to provide, that he took a responsible decision, that he 4 sought the views of the ombudsman, and that's all 5 relevant to the ultimate deciding question of whether it 6 was appropriate to invade privacy in that way without 7 prior notification. 8 He can choose not to go to the ombudsman or he can 9 choose to ignore the ombudsman who says he should use 10 restraint in these circumstances, in which event that 11 would emerge and then whoever decides the ultimate issue 12 can say -- he can disagree with the ombudsman and say 13 no, I think that's a perfectly reasonable decision, but 14 if he decides actually the ombudsman was absolutely 15 right, then there is possibly the risk of exemplary 16 damages -- I'm just throwing out ideas, but this is 17 obviously, as I say, something you've thought about, so 18 I would welcome your view -- to represent in the 19 editor's mind the need for caution. The need, if you 20 like, to hold himself or herself to account for the 21 standards of journalism to which they wish to aspire. 22 Now, all that doesn't interfere with the freedom of 23 the press to publish what they wish, but it does require 24 a mechanism which surrounds it which cannot simply be 25 consensual.</p> <p style="text-align: center;">Page 46</p>	<p>1 defensible in a free society. 2 LORD JUSTICE LEVESON: They may say no. 3 Christopher Jefferies actually it occurred to me isn't 4 a very good example because libel to some extent solves 5 his position but one of the issues about privacy of 6 course is that it's true. So it's not libellous, it 7 just goes beyond that which is fair, appropriate, legal, 8 whatever word you want to use. 9 But to throw it to the press requires them to be 10 a judge in their own cause and they've not shown 11 a remarkable appetite to do that. And indeed, even if 12 you did you'd then have to find some mechanism to 13 enforce it, because the press as a whole may say: well, 14 we think this is appropriate, but the relevant journal 15 may say: well, thank you very much. And indeed, one of 16 the reasons that Northern & Shell left the PCC was 17 because they had no confidence in their competitors 18 judging their behaviour. That's how Mr Desmond has 19 explained it. At a quite different level, Mr Hislop has 20 made it abundantly clear that he spends a very great 21 deal of his publication criticising what the press are 22 doing and the press are the last people that he wants to 23 judge the standards that are appropriate. 24 There is something systemic here that I struggle to 25 see how it could be done simply by the proprietors and</p> <p style="text-align: center;">Page 48</p>

<p>1 the editors getting together to think: well, we can 2 agree. 3 I'm not suggesting for one moment that there isn't 4 enormous room for engagement with the press, because the 5 trick is going to be to try to get a mechanism that 6 works for everybody, that does represent a proper 7 reflection of a free press and freedom of expression in 8 its highest forms, but which does cope not merely with 9 the very rich who can then indulge in enormously 10 expensive proceedings, but for everybody, and I struggle 11 to see how that's possible on a model that doesn't have 12 something somewhere, and even if you say, well, of 13 course the ombudsman could be set up, there does have to 14 be some principles which the state would recognise as 15 being sufficient to trigger off whatever type of 16 additional remedy the state was going to provide, 17 because damages would be a remedy provided by the state. 18 A. When I said the ombudsman can be -- as in the set of 19 circumstances you describe, the ombudsman exists as 20 somebody to whom the editor goes to seek an external 21 view. That doesn't require statutory framework. 22 LORD JUSTICE LEVESON: No, of course it doesn't. But what 23 does is the recognition of the significance of his view. 24 In other words, for his view to be relevant in civil 25 proceedings, however one mediates it and whether it's</p> <p style="text-align: center;">Page 49</p>	<p>1 having not merely set out a piece of work that sets out 2 some important standards, but then to have evolved it, 3 and part of the preparation for coming here this morning 4 was looking and was quite impressed actually by the 5 development that had gone on in the Editors' Code over 6 recent years. 7 LORD JUSTICE LEVESON: Although each step -- and every time 8 something happens and there are suggestions of this 9 amendment to the code or that amendment to the code, the 10 editors are there -- and the editors are only there 11 controlling the code, I think there is -- it's a long 12 time -- I say a long time, it's some months since I was 13 actually focusing precisely on the detail and a lot has 14 happened since, but ultimately the editors can control 15 what goes in the code. There isn't -- they're important 16 advisers. Whether they should be determinative is 17 another question. 18 A. I don't dissent from -- I don't disagree with that, but 19 as an observed -- as an observation about what's 20 happened in this field, area, during a period of time 21 when I haven't really been watching it closely, it seems 22 to me that the development of principles set out in the 23 Editors' Code of Standards which should be met by good 24 and responsible journalism, there's clearly been 25 a commitment to trying to follow that process through,</p> <p style="text-align: center;">Page 51</p>
<p>1 some fast-track system or whether it's through the 2 court, the law has to say: that's a relevant view. 3 A. You would know infinitely more about this than me, but 4 it seems to me a tribunal could ultimately take a view 5 about what's relevant and what isn't without necessarily 6 Parliament having to get involved. 7 The one thing that I also don't agree with is the 8 proposition that the state should have a view about what 9 the -- what good practice is in a newspaper. 10 LORD JUSTICE LEVESON: With great respect, I've not said the 11 state should have a view in what is good practice. I'm 12 saying the state should have a view in the mechanisms 13 that are set up to ensure by the press, if you like, 14 that there is good practice, which is rather different. 15 In other words, I am not suggesting that the state 16 should have any view at all about content. 17 A. Mm-hm. 18 LORD JUSTICE LEVESON: I'm simply talking about structures. 19 A. Because -- and the reason I come back to that, what 20 I obviously misunderstood to be -- 21 LORD JUSTICE LEVESON: I may have expressed it badly. 22 A. -- what you were saying -- is that the Editors' Code, as 23 it has evolved within the PCC, seems to me something -- 24 as I already said, I am not here to defend the PCC, but 25 is something that they can reasonably claim credit for</p> <p style="text-align: center;">Page 50</p>	<p>1 which I think should be welcomed. 2 LORD JUSTICE LEVESON: Oh, and needs to be pursued. But 3 then comes the question about how it's enforced. 4 A. Mm. 5 LORD JUSTICE LEVESON: And that raises other quite different 6 problems. 7 A. Also, as Mr Barr was saying earlier on, there is 8 a rather obvious sort of common sense observation here 9 that we can define the Editors' Code, we can define the 10 criminal law, we can even introduce civil law, if we 11 want to, but actually what we're talking -- the reason 12 we're sat here is that existing laws that nobody 13 disputes haven't been observed and enforced. 14 LORD JUSTICE LEVESON: Yes. Then you'll get me on another 15 topic, and that is the analogy I've thrown at a number 16 of people about speeding. Speeding is a crime. There 17 is no question about it. But we can't put a policeman 18 on everybody's shoulder and say -- and we wouldn't think 19 very much of a motorist who said, "Well, it's true that 20 I speeded, I broke the law, but that's your fault for 21 not enforcing the law." 22 A. Indeed. 23 LORD JUSTICE LEVESON: Well, the parallel -- there is 24 a parallel there, a little bit of a parallel, but the 25 suggestion -- and it has been said, "Well, of course</p> <p style="text-align: center;">Page 52</p>

<p>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.</p> <p style="text-align: center;">Page 53</p>	<p>1 of it are true to the best of your knowledge and belief? 2 A. Yes, they are. 3 Q. And that it forms your formal evidence to this Inquiry? 4 A. It does indeed. 5 LORD JUSTICE LEVESON: Mr Marr, thank you very much for 6 responding. I'm very conscious that you're entitled to 7 say that at least in the recent past you work in 8 a different medium responsible for different people, to 9 different people. That's absolutely right and it's 10 actually why you're here. Thank you. 11 A. Thank you, sir. 12 MS PATRY HOSKINS: I'd like to draw the Inquiry's attention 13 to paragraph C of your introduction to the witness 14 statement, where you make it clear that the views 15 expressed in this statement are entirely your own and 16 not those of the BBC. 17 A. That is absolutely right. 18 Q. I'm going to start with a brief summary of your career 19 history. If we look at your response to question 1, you 20 explain that you do currently work for the BBC. You 21 have spent the bulk of the last 25 years reporting or 22 commentating on politics. You explain that you've been 23 a political correspondent or editor at Westminster for 24 the Scotsman, the Independent, the Economist, 25 a political commentator for the Observer and the</p> <p style="text-align: center;">Page 55</p>
<p>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</p> <p style="text-align: center;">Page 54</p>	<p>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 12 Journalism" published in 2004. 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</p> <p style="text-align: center;">Page 56</p>

<p>1 117 onwards. Do you have a copy of it with you?</p> <p>2 A. I have a copy of the relevant chapter.</p> <p>3 Q. Fine.</p> <p>4 A. I've given all my copies away.</p> <p>5 Q. That's very helpful.</p> <p>6 LORD JUSTICE LEVESON: But I'm sure it's still available,</p> <p>7 Mr Marr.</p> <p>8 A. In all good second-hand book shops, sir.</p> <p>9 MR WHITE: We have a copy of the relevant extracts.</p> <p>10 LORD JUSTICE LEVESON: I'd be very grateful, thank you.</p> <p>11 It's not depriving you?</p> <p>12 MR WHITE: No, we have one to share.</p> <p>13 LORD JUSTICE LEVESON: Thank you. Forgive the breach of</p> <p>14 copyright, Mr Marr.</p> <p>15 A. I certainly will.</p> <p>16 LORD JUSTICE LEVESON: Right.</p> <p>17 MS PATRY HOSKINS: The first issue I'd like to touch on is</p> <p>18 the issue of separation between news and comment. At</p> <p>19 pages 143 onwards of "My Trade", you appear to endorse</p> <p>20 Mr Alastair Campbell's view that to a large extent news</p> <p>21 and comment has now become fused. If we look under the</p> <p>22 heading "Bent and twisted journalism" on page 143, do</p> <p>23 you have that?</p> <p>24 A. I do.</p> <p>25 Q. There's a sentence which starts:</p> <p style="text-align: center;">Page 57</p>	<p>1 A. On the statement, no. Mine is unnumbered, I'm afraid.</p> <p>2 Q. All right. It will then be the response to question 2f.</p> <p>3 A. 2f, right.</p> <p>4 Q. For everyone who has a number, it's MOD and then 1299.</p> <p>5 A. Yes, I have that.</p> <p>6 Q. At the bottom of that page you explain that there's been</p> <p>7 a move away from strict news reporting to more</p> <p>8 campaigning or politically-edged reporting and you</p> <p>9 explain further down that paragraph:</p> <p>10 "... there has been a blurring between reporting and</p> <p>11 commentary, led by papers which like the Daily Mail have</p> <p>12 been the most successfully commercially."</p> <p>13 But it's not just limited to the Daily Mail. You</p> <p>14 explain that "papers on the centre-left like the</p> <p>15 Guardian and Independent try to rouse their readers</p> <p>16 too". Overall anyway you say that you would argue that</p> <p>17 "the plain-vanilla, straight-news model was a historical</p> <p>18 anomaly"?</p> <p>19 A. Yes.</p> <p>20 Q. And you simply say we may be reverting to type --</p> <p>21 A. Yes.</p> <p>22 Q. -- over the page.</p> <p>23 A. Absolutely.</p> <p>24 Q. Is this view that you expressed in 2004 in "My Trade"</p> <p>25 that news and comment have now become fused a view that</p> <p style="text-align: center;">Page 59</p>
<p>1 "Alastair Campbell, Tony Blair's former spin doctor,</p> <p>2 argued in 2001 that because London was one of the</p> <p>3 world's most competitive media marketplaces in which</p> <p>4 there's frankly not that much news around most days, the</p> <p>5 commentators were taking over. The separation of news</p> <p>6 and comment has effectively gone in most newspapers.</p> <p>7 News is now largely comment and agenda in the press, and</p> <p>8 on TV and radio far more time is now given to mediated</p> <p>9 commentary by experts and far less to politicians."</p> <p>10 You point out that many journalists may be reluctant</p> <p>11 to listen to any analysis from Mr Campbell, but you</p> <p>12 agree nevertheless this is only a mild exaggeration of</p> <p>13 the situation.</p> <p>14 You go on to say that news and comment are</p> <p>15 separated, but loaded descriptions and aggressive</p> <p>16 campaigning style prose infects many news stories, and</p> <p>17 when Mr Campbell argues that the opinionating of news</p> <p>18 began in the tabloids and then migrated to the</p> <p>19 broadsheets, you take the view that he is absolutely</p> <p>20 right about that as well.</p> <p>21 You also say that this is something that's simply</p> <p>22 nothing new. If we look at your statement, I'm going to</p> <p>23 refer to the page numbers in the bottom right-hand side</p> <p>24 of each -- do you have those? The number should say</p> <p>25 1299.</p> <p style="text-align: center;">Page 58</p>	<p>1 you still hold? You wrote that book some eight years</p> <p>2 ago.</p> <p>3 A. Yes, a lot has changed since I wrote the book, but</p> <p>4 I think this part hasn't changed, if I can put it that</p> <p>5 way. If you look back at early newspapers, right up to</p> <p>6 sort of mid-Victorian times, you will find extremely</p> <p>7 aggressive, scabrous, sometimes insulting commentary and</p> <p>8 journalism all the way through them, and that is clearly</p> <p>9 partly what sold them.</p> <p>10 We then went through a long period where there was</p> <p>11 more and more emphasis on journalism becoming some kind</p> <p>12 of quasi profession, where the job was to give people</p> <p>13 what I've called plain-vanilla news and fact. When</p> <p>14 I came into the trade, that was still very clear.</p> <p>15 I started as a Parliamentary correspondent, literally</p> <p>16 taking down in shorthand what politicians were saying in</p> <p>17 the House of Commons and that would then be almost</p> <p>18 without any further comment put into a full page on the</p> <p>19 Scotsman newspaper every day. And every Scottish MP</p> <p>20 expected, if they said anything in the House of Commons</p> <p>21 of any significance, that they would read it the next</p> <p>22 day in the Scotsman.</p> <p>23 That world has gone. That was a particular kind of</p> <p>24 reporting, but I think if you look at newspapers in the</p> <p>25 late 1970, early 1980s, broadsheet newspapers, you will</p> <p style="text-align: center;">Page 60</p>

<p>1 find page after page after page of completely dry 2 factual reporting of what people have said and what has 3 happened, and I think if you looked at the Telegraph's 4 report of an event and the Guardian's report, you would 5 find them remarkably similar, and I don't think that 6 would happen -- that's quite the case now. 7 Q. And now? 8 A. Now I think what's happened is the newspapers are 9 selling themselves more and more on political -- their 10 political views and rousing the emotion of the reader. 11 Why would you pick up a newspaper when you can get all 12 the facts, you can get what happened in Parliament, you 13 can read official documents and so on online if you 14 choose to? What is the so-called USP of the newspaper? 15 What makes it different? It gets you somehow 16 emotionally engaged and interested in the news, and the 17 temptation therefore to salt and pepper the news more 18 and more strongly has been irresistible. 19 Q. Is it a good or a bad thing in your view? 20 A. I mourn for the old clear distinction between news and 21 comment, but I'm very old fashioned in that, I'm sure, 22 and I certainly think it's a lost cause and there's no 23 going back. 24 LORD JUSTICE LEVESON: What about paragraph 1(iii) of the 25 Editors' Code of Practice? I appreciate that doesn't</p> <p style="text-align: center;">Page 61</p>	<p>1 there anything that could be done to achieve that? 2 A. I fear this is a lost cause. I don't think much can be 3 done. I, as a reader, as a consumer, I want to know 4 what is factual, old-fashioned straight reporting. 5 I want that, I like it, I value it. It's very 6 expensive, a lot of it, particularly if you're talking 7 about investigative journalism, but -- and it's much 8 easier these days to pay a column to fill the space 9 sometimes than to have teams of unruly reporters who may 10 be spending beyond their budgets and so on, but I do 11 regret that and I much enjoyed the days when you would 12 turn to certain newspapers and get an absolutely 13 plain-vanilla account with no whiff of political 14 influence on it. 15 Q. Some witnesses giving evidence to this Inquiry have 16 actually come and said that there should be an 17 absolutely clear distinction between the two. You're 18 not one of those, from what you said? 19 A. I would recoil from seeing any outside body order 20 newspaper editors about how to arrange their pages or 21 staff their papers. I think that would be oppressive. 22 LORD JUSTICE LEVESON: Don't worry about that, Mr Marr. 23 A. Good. 24 MS PATRY HOSKINS: Moving on in "My Trade" to page 161, 25 please, I want to ask you -- this is where you discuss</p> <p style="text-align: center;">Page 63</p>
<p>1 bite upon you any more. 2 A. No. 3 LORD JUSTICE LEVESON: "The press, while free to be 4 partisan, must distinguish clearly between comment, 5 conjecture and fact." 6 A. An interesting but relatively easily evadable 7 aspiration. For instance, I can report, if I was 8 a reporter working for almost any newspaper, I can 9 report on a court event or a Parliamentary event. The 10 words I use, the words I report, will be accurate. The 11 account of where it happened and what was said may be 12 accurate. But the choice -- the way I balance that 13 story and push that story will almost certainly be with 14 an idea in my head about what these viewers -- these 15 readers, rather, are going to want. The Independent and 16 the Daily Express going to the same event may produce 17 stories which are factually correct and well reported, 18 but have very, very different emotional or political 19 implications. 20 MS PATRY HOSKINS: Do you think there should be a clearer 21 distinction? I appreciate you say you think you're 22 old-fashioned. 23 A. Yes. 24 Q. You think the position is now irreversible, but should 25 there be a clearer distinction between the two? Is</p> <p style="text-align: center;">Page 62</p>	<p>1 whether or not certain political journalists were 2 favoured because they work for a particular news 3 organisation. 4 A. Yes. 5 Q. You are discussing here New Labour. If you look at the 6 second substantive paragraph on that page, it starts "As 7 trust crumbled ...", 161. 8 A. Yes. 9 Q. You're here discussing New Labour and in the beginning 10 of that paragraph you discuss bullying of junior 11 reporters, which isn't relevant, but about two-thirds of 12 the way down the page you explain: 13 "Political correspondents have a certain esprit de 14 corps alongside their professional rivalry and the 15 cynical way in which some were favoured because they 16 worked for Rupert Murdoch while others were sneered at 17 because they worked for Conrad Black disgusted many who 18 worked for neither." 19 A. That's right. 20 Q. Is it your evidence to this Inquiry that New Labour may 21 have favoured some political journalists because they 22 worked for Rupert Murdoch or his newspapers? 23 A. Yes, absolutely. Absolutely. I think that a decision 24 was taken that it was very important to keep the Murdoch 25 papers, so far as was possible -- it wasn't always</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

1 possible -- on side and to have a close relationship
 2 with their leading journalists and their leading
 3 reporters. They were inside of the tent, if you like,
 4 as were some Labour friendly newspapers too, while
 5 papers like the Daily Telegraph were indeed kept at
 6 arm's length, made to feel unwelcome. From time to time
 7 their correspondents like George Owens would be mocked
 8 during lobby briefings. There was very much an attempt,
 9 I felt, to divide this core -- this group of journalists
 10 into the favoured ones, the ones who were sort of part
 11 of the project, almost, and the ones who were off in the
 12 wilderness.

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

15 A. Right.

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

21 A. Yes.

22 Q. You explain:

23 "There is always a hierarchy of media contacts. For
 24 a Conservative minister, contacts at the Daily
 25 Telegraph, Daily Mail, the Spectator ..." et cetera, are

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

6 A. Yes.

7 Q. I think you have explained what the privileged position
 8 was. Why do you think this was?

9 A. I think it was because News International at its height
 10 had a very, very powerful position in the television
 11 world as well as the newspaper world. They had not only
 12 the traditionally most respected broadsheet newspaper --
 13 it's not a broadsheet any more -- the Times; they had
 14 the huge-selling Sun and then they were doing the same
 15 thing in the Sunday market as well with the News of the
 16 World and the Sunday Times. That was an enormously
 17 powerful position to hold.

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

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

5 LORD JUSTICE LEVESON: Do you think it's because
 6 News International were prepared to change allegiance,
 7 whereas the Mirror was never going to change allegiance
 8 and the Telegraph was never going to change allegiance?

9 A. I certainly think the fact that they had come across was
 10 absolutely crucial. There would have been no point in
 11 New Labour being helpful if News International were
 12 hostile. I have no evidence that there was a sort of
 13 darker or dirtier deal being done than the fact --

14 LORD JUSTICE LEVESON: Let's not get into deals, implied or
 15 express. That becomes difficult. But just an
 16 understanding in the sense that -- an appreciation of
 17 what's going on rather than anything else.

18 A. Yes, absolutely. I mean, I felt that -- from the
 19 outside, it felt quite cold and chilly sometimes not to
 20 be part of that group, and I feel that what happened is
 21 that Rupert Murdoch decided he was going to support
 22 Tony Blair when Tony Blair looked like being a winner,
 23 and he has a propensity to support winners, and from the
 24 government's point of view, having that great swathe, as
 25 I say, of media influence onside was extremely helpful.

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1 MS PATRY HOSKINS: You also say in your statement in the
 2 bottom paragraph on that page that this was also maybe
 3 because Mr Murdoch was ready to use papers such as the
 4 Sun to "intervene aggressively". What do you mean by
 5 that?

6 A. If we take a specific issue, because it's what -- we
 7 often talk in generalities. I vividly remember when
 8 I was editing the Independent, a pro-European newspaper,
 9 and Mr Blair would be constantly saying how pro-European
 10 he was, he had a problem with the Sun because the Sun
 11 was vehemently sceptic, generally on Europe but
 12 particularly on the subject of the euro. One might say
 13 they were thoroughly vindicated in that. Nonetheless,
 14 what happened was that there was clearly a lot of work
 15 going on about how to reconcile a pro-European
 16 Prime Minister with a Eurosceptical newspaper, and so
 17 Tony Blair wrote an article saying -- I think it was on
 18 St George's Day in the Sun saying that he was determined
 19 to slay the dragon of Eurofederalism and so on. I can
 20 remember phoning up in an irate state Alastair Campbell
 21 and saying what's going on and being laughed at: for
 22 goodness sake, you know exactly what's going on.

23 The fact that these papers did hold strong views,
 24 every right to, meant that New Labour had to be
 25 constantly looking at what they were saying and finding

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<p>1 ways to adjust.</p> <p>2 Q. You say this was throughout the Thatcher, Major and</p> <p>3 Blair governments, the Murdoch stable was always</p> <p>4 perceived by its rivals to have a privileged position.</p> <p>5 Does that mean that since the end of the Blair era the</p> <p>6 position has changed, or would you say that that has</p> <p>7 continued?</p> <p>8 A. I think the country has been looking agog at some of the</p> <p>9 evidence to this Inquiry. If that's an answer, I don't</p> <p>10 know. Clearly, if parties and meetings and so on are</p> <p>11 evidence of a continued close relationship, if the</p> <p>12 position of people like Mr Coulson is evidence of</p> <p>13 a continued relationship, then that evidence is out</p> <p>14 there in the public domain.</p> <p>15 Q. I think the question was really whether they continued</p> <p>16 to have a privileged position?</p> <p>17 A. A privileged position? Difficult, in fact impossible</p> <p>18 for me to say. I'm now out of the lobby and</p> <p>19 Parliamentary reporting game, so I don't know quite</p> <p>20 what's been going on.</p> <p>21 Q. Still on "My Trade", you consider the relationship</p> <p>22 between proprietors and journalists at pages 240 onwards</p> <p>23 and you say this, I'll just quote you one line. You</p> <p>24 say:</p> <p>25 "Editors are creatures of the proprietors and that</p> <p style="text-align: center;">Page 69</p>	<p>1 One of the few examples actually, I know he's</p> <p>2 a discredited figure in many ways these days, but</p> <p>3 Conrad Black, when he was editing the Daily Telegraph,</p> <p>4 rather than sort of arm-twisting his editors behind the</p> <p>5 scenes or shouting at them on the phone, wrote long</p> <p>6 letters to his own newspapers expressing his contempt</p> <p>7 and anger about the way that they'd reported something.</p> <p>8 That seemed to me to be a much healthier way of doing</p> <p>9 it.</p> <p>10 Q. I think you wanted to say a word or two about the</p> <p>11 difference between journalists and their relationships</p> <p>12 with politicians and proprietors and their relationships</p> <p>13 with politicians.</p> <p>14 A. Well, I have noticed that of course the Inquiry is very</p> <p>15 interested in the social web of relationships between</p> <p>16 journalists, some of whom, not all of them, but some of</p> <p>17 whom have quite a lot of influence, and politicians, and</p> <p>18 how that has developed. I just wanted to say that</p> <p>19 I feel there is an absolutely crucial distinction</p> <p>20 between proprietors, with or without editors at the</p> <p>21 time, getting together with politicians, where there is</p> <p>22 some sort of suspicion that there is regulatory or other</p> <p>23 discussions to be had on the one hand, and the</p> <p>24 day-to-day job of story-getting political journalists</p> <p>25 having contacts with politicians on the other hand.</p> <p style="text-align: center;">Page 71</p>
<p>1 defines the relationship before anything else."</p> <p>2 A. I think that's true. I think that's true of all</p> <p>3 editors.</p> <p>4 Q. Do you continue to hold that view?</p> <p>5 A. Editors can stand against proprietors and can be</p> <p>6 independent-minded, but I think no editor is unaware of</p> <p>7 the proprietor's view, and no editor who irritates and</p> <p>8 disappoints a proprietor for very long will carry on</p> <p>9 being an editor for very long. I'm not making a point</p> <p>10 about the Murdoch empire so-called in particular,</p> <p>11 I think this is a general thing.</p> <p>12 I had in my brief time in -- brief and inglorious</p> <p>13 time as an editor an enormously forgiving, relaxed and</p> <p>14 arm's length proprietor in Tony O'Reilly, but even then</p> <p>15 I was aware of what he thought.</p> <p>16 Q. Did that affect your decisions or the stories that you</p> <p>17 put in the paper?</p> <p>18 A. I think luckily, except for the matter of Irish rugby,</p> <p>19 we thought alike so it didn't -- and I think to be fair</p> <p>20 of course proprietors are going to choose editors whose</p> <p>21 opinions are likely to chime with their own. Very few</p> <p>22 proprietors, who are losing, many of them, a great deal</p> <p>23 of money, in addition to the loss of money are going to</p> <p>24 want to see a paper coming out with issues they disagree</p> <p>25 with day by day.</p> <p style="text-align: center;">Page 70</p>	<p>1 If you come into -- and I'm sure it's the same now</p> <p>2 as it was when I went there -- if you come into the</p> <p>3 House of Commons or the Parliamentary reporting gallery</p> <p>4 and you're told that your job is to get stories that</p> <p>5 nobody else has got, one of the things you absolutely</p> <p>6 have to have is decent contacts with politicians. I had</p> <p>7 to be able to phone up at least two people who would</p> <p>8 take my phone call and tell me what had happened in</p> <p>9 Cabinet when I was a senior political reporter. Many of</p> <p>10 the stories that I got I couldn't possibly have had if</p> <p>11 I didn't have a sort of certain element of a trusting</p> <p>12 relationship with politicians who were prepared to talk</p> <p>13 to me, and therefore I hope it's understood that those</p> <p>14 kind of relationships may be different in kind from some</p> <p>15 of the sort of partying between proprietors and</p> <p>16 ministers.</p> <p>17 LORD JUSTICE LEVESON: I understand the point you're making</p> <p>18 entirely, Mr Marr. And I wouldn't want the interest in</p> <p>19 the social web, as you describe it, of relationships to</p> <p>20 be misunderstood. There's nothing prurient about my</p> <p>21 concern.</p> <p>22 A. No.</p> <p>23 LORD JUSTICE LEVESON: And I'm very keen to make that clear.</p> <p>24 What I am interested in, because the terms of reference</p> <p>25 require me to consider it, is the contact and conduct of</p> <p style="text-align: center;">Page 72</p>

<p>1 each in relation to the other --</p> <p>2 A. Indeed.</p> <p>3 LORD JUSTICE LEVESON: -- because of the way in which it</p> <p>4 might impact on the conduct -- culture, practice and</p> <p>5 ethics of the press.</p> <p>6 A. Yes, sir.</p> <p>7 LORD JUSTICE LEVESON: It's really only that that I am</p> <p>8 concerned with, but in the same way that I would not</p> <p>9 want to discourage journalists from speaking to</p> <p>10 neighbourhood police officers about what's going on in</p> <p>11 their locality and learning about crime, so nothing that</p> <p>12 I am doing is intended to prevent the very important</p> <p>13 discourse that is essential between those in politics</p> <p>14 and those in journalism, the former to get their message</p> <p>15 across and the latter to challenge them and then to put</p> <p>16 it across. I wouldn't want that to be misunderstood at</p> <p>17 all. I hope it isn't.</p> <p>18 MS PATRY HOSKINS: That leads us neatly on to the power of</p> <p>19 political journalists, of course.</p> <p>20 A. Yes.</p> <p>21 Q. At page 186 onwards of your book, you explicitly address</p> <p>22 the question of whether political journalists have in</p> <p>23 fact now acquired too much power and you conclude that</p> <p>24 they have. Let me find the section.</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 73</p>	<p>1 that interestingly, partly as a result of the great</p> <p>2 flushing out and the crisis caused by the expenses</p> <p>3 scandal, political authority in the House of Commons is</p> <p>4 higher than it was when I wrote this book, and I think</p> <p>5 that for all the commercial reasons and the arrival of</p> <p>6 the Internet and many other factors, I think the status</p> <p>7 of even the leading journalists is a bit lower. So this</p> <p>8 is an area where I think there has been a sort of</p> <p>9 natural correction of the system, as it were.</p> <p>10 Q. "On paper we mock them more than ever before and report</p> <p>11 them less than ever before."</p> <p>12 Is there still an element of that?</p> <p>13 A. There is an element of truth on that still, that's</p> <p>14 absolutely right. We don't have those pages and pages</p> <p>15 of Parliamentary report and we do jump very, very fast</p> <p>16 to analysis and comment, almost before we've laid out</p> <p>17 the facts of the case, sometimes.</p> <p>18 Q. On the issue of whether political journalists do go too</p> <p>19 far, that leads me on to the questions that you famously</p> <p>20 put to Gordon Brown when he was Prime Minister in 2009.</p> <p>21 If you look behind tab 4, you'll find all the relevant</p> <p>22 articles about that.</p> <p>23 A. Oh yes.</p> <p>24 Q. In a nutshell, for those who don't remember that</p> <p>25 particular occasion, in September 2009, in a live TV</p> <p style="text-align: center;">Page 75</p>
<p>1 Q. You note that there's now been a shift and that it used</p> <p>2 to be that journalists would call up politicians and try</p> <p>3 and court them, but now you say the politicians call</p> <p>4 them up and invite them to lunch or to parties and not</p> <p>5 the other way around. Do you still -- actually, before</p> <p>6 I ask the question, if you turn over to page 188, you</p> <p>7 conclude this:</p> <p>8 "We have become too powerful, too much the</p> <p>9 interpreters, using our talents as communicators to</p> <p>10 crowd them out. On paper we mock them more than ever</p> <p>11 before and report them less than ever before. On</p> <p>12 television and radio, we commentators are edging them</p> <p>13 out ever more carelessly."</p> <p>14 Do you still hold that view now?</p> <p>15 A. I think --</p> <p>16 Q. I ask you simply because the book was written some time</p> <p>17 ago.</p> <p>18 A. It was written nine years ago and that certainly felt to</p> <p>19 be the case then. There was -- it was not just in this</p> <p>20 country. There was an American commentator at that time</p> <p>21 who said, "We used to hang around outside politicians'</p> <p>22 houses while they dined, and then we dined with them and</p> <p>23 now we dine on them". I think you could see something</p> <p>24 of the same happening here, but I do think this is one</p> <p>25 of the areas perhaps where there is good news. I think</p> <p style="text-align: center;">Page 74</p>	<p>1 interview broadcast from the Labour Party Conference in</p> <p>2 Brighton, you asked Gordon Brown a number of questions</p> <p>3 about his medical history. The exact exchange is</p> <p>4 reported on the second and third pages of the Guardian</p> <p>5 news article there. Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. First of all, you preface it by referring to the fact</p> <p>8 that an American President would need to disclose his</p> <p>9 full medical history and then you say this:</p> <p>10 "Let me ask you something else everybody has been</p> <p>11 talking about, a lot of people. A lot of people use</p> <p>12 prescription pain killers and pills to help them get</p> <p>13 through. Are you one of those?"</p> <p>14 He says:</p> <p>15 "No. I think this is the sort of questioning that</p> <p>16 is --"</p> <p>17 Then he's interrupted. You say:</p> <p>18 "It's a fair question, I think."</p> <p>19 And then he says -- he finishes his sentence:</p> <p>20 "-- is all to often entering the lexicon of British</p> <p>21 politics."</p> <p>22 He then discusses the fact that he's had serious</p> <p>23 problems with his eyesight. You refer back to the first</p> <p>24 question about prescription painkillers and pills by</p> <p>25 saying, "What about my other question?" and he says</p> <p style="text-align: center;">Page 76</p>

19 (Pages 73 to 76)

1 "I've answered your other question" and then goes on to
 2 discuss again the problems with his eyesight.
 3 This line of questioning drew some serious criticism
 4 at the time.
 5 **A. It did.**
 6 Q. I should make absolutely clear that both during the
 7 interview, as I've read out, and thereafter, Mr Brown
 8 denied that he did take prescription drugs or pills in
 9 this way.
 10 The comments about this at the time were essentially
 11 that this was a form of mockery, as you have described
 12 in your book, that it was repeating claims that had been
 13 made initially on a sort of right wing blog and that it
 14 tested the limits of legitimate inquiry. Is this,
 15 Mr Marr, in your view an example of political
 16 journalists going too far, having too much power, being
 17 able to ask questions which simply go too far?
 18 **A. It's not a moment in my career that I look back on with**
 19 **enormous enthusiasm or pride. However, I would like to**
 20 **say a little bit about the context in which this**
 21 **question was asked.**
 22 Q. Of course.
 23 **A. First of all, I hadn't read any blogs about it or seen**
 24 **anything on the Internet about it, and was barely on the**
 25 **Internet in those days. I had seen references to this**
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1 **in, I think, two newspapers. One of them was the**
 2 **Independent, and I suspect another one was the**
 3 **Telegraph. And in the party conference bubble, people**
 4 **were talking about it quite a lot, so I discussed it**
 5 **with my editor, Barney Jones.**
 6 **There were two other parts to this which I think are**
 7 **relevant. I mentioned the American presidency questions**
 8 **because I'd just interviewed David Owen, Lord Owen, who**
 9 **produced a book arguing very eloquently that we had**
 10 **a right to know much more about the medical history of**
 11 **our leading political figures than we do at the moment**
 12 **and he gave lots of examples ranging right from the sort**
 13 **of post-war years to very recent ones where people had**
 14 **had things wrong with them.**
 15 **But the third and probably most important factor was**
 16 **that there were a huge number of stories coming out of**
 17 **Number 10, Number 11 at the time, about intemperate**
 18 **behaviour, if I can put it like that, things being**
 19 **smashed, enormous arguments and so on, and in the**
 20 **context of all of that, I thought a single question,**
 21 **without a follow-up, was reasonable. Plenty of other**
 22 **people took another view. Gordon Brown himself said in**
 23 **the course of that exchange, "You might be right to ask**
 24 **them", that's these sort of questions, and after the**
 25 **interview he seemed perfectly relaxed and relatively**
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1 **cheerful.**
 2 **So I hadn't -- I didn't come away from that**
 3 **interview feeling that I had sort of broken a terrible**
 4 **taboo. It was only an hour or two later that it**
 5 **appeared that I had.**
 6 Q. I think my question was: was it going too far?
 7 I appreciate you've set out the context, but with the
 8 benefit of hindsight, having looked back it at now --
 9 **A. With the benefit of hindsight would I ask the question**
 10 **again? No, I wouldn't.**
 11 Q. Why not?
 12 **A. Mainly because I felt we had got some very, very good,**
 13 **important, useful mainstream political information or**
 14 **stories out of that interview. Mr Brown had made some**
 15 **big concessions on his handling of the economy and he'd**
 16 **made some very serious-sounding threats about bankers'**
 17 **bonuses and I had thought and assumed that those were**
 18 **the headlines that were going on come out of the**
 19 **interview, and I greatly regret the fact that it was all**
 20 **about the pills question, so I felt I'd lost an**
 21 **opportunity. It wasn't worth it, if I can put it that**
 22 **way.**
 23 Q. So when you say that you wouldn't have asked the
 24 question it's not because it was inappropriate?
 25 **A. Correct.**
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1 Q. My initial question was whether this was an example of
 2 political journalists having too much power and going
 3 too far. You would say in this context --
 4 **A. Pushing at the edges but I think it was legitimate under**
 5 **the circumstances.**
 6 Q. You say that information didn't come from a blog, you'd
 7 read it in various newspapers. While on the issue of
 8 blogs, can we look at the articles behind tab 3 of the
 9 bundle, and your comments made about bloggers.
 10 The first article is an article from the Guardian,
 11 11 October 2010. And it reports you as dismissing
 12 bloggers as "inadequate, pimpled and single" and citizen
 13 journalism as "the spewings and rantings of very drunk
 14 people late at night".
 15 There are also a number of quotes in that article
 16 from Nick Robinson, who previously had criticised the
 17 tone and quality of online debate.
 18 Let me ask you this. Is that comment about bloggers
 19 being "inadequate, pimpled and single" and the comments
 20 about citizen journalism, is this a comment about the
 21 tone and quality of some of the online debate, or is it
 22 a more fundamental criticism of bloggers as being
 23 detrimental to the good name of journalism?
 24 **A. I should say first of all it's partly a symptom of my**
 25 **deadly weakness for a vivid phrase. It was a comment**
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1 really aimed at the enormous amount of anger and
 2 vituperation that seemed to me to be swirling around
 3 parts of the Internet, most of it anonymous. I was
 4 probably a bit out of date even if I was saying that.
 5 Now, you know, you look around and a lot of the most
 6 influential highly respected political commentators
 7 aren't newspaper journalists, actually, they are
 8 bloggers. I'm thinking of people like Tim Montgomery on
 9 Conservativehome or Mr Pack on the Liberal website or
 10 there's plenty more on the Labour side, and they have
 11 become a very, very important, very influential part of
 12 the process.
 13 So I wouldn't want to say -- I don't know how many
 14 of them are pimped or inadequate or single, but
 15 I wouldn't really want to go for them in that way. I'm
 16 more, I think in today's terms, talking about people who
 17 are posting, that is anonymously posting comments
 18 outside politics. It's often called trolling, I'm not
 19 sure what the phrase is, but I think the world has moved
 20 on since I said that.
 21 Q. You mean the people who post comments on other
 22 people's --
 23 A. Exactly.
 24 Q. -- web page entries?
 25 A. Yes. I think, if I may say, the crucial thing is

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1 anonymity. You know, in newspapers, if you write an
 2 angry letter to a newspaper, you have to give your name
 3 and address, and rightly so, and I think the fact that
 4 so much of the web is anonymous has encouraged an
 5 extreme form of vituperative comment which I deprecate.
 6 Q. Let me ask you now to turn back to your statement and
 7 your response to question 9, please. For those of us
 8 who have page numbers it's page 1303 in the bottom
 9 right-hand corner. You're being asked here about what
 10 influence the media have on the content or timing of the
 11 formulation of a party's or a government's media
 12 policies and if we look at the bottom of the paragraph
 13 which contains your answer, you say this:
 14 "I have always believed privacy law is something for
 15 Parliament to take a clear stand on."
 16 First of all, let me just ask you: does this simply
 17 mean that you consider it better for Parliament to
 18 legislate or not legislate on such a topic than for the
 19 courts and judges to develop the law themselves; is that
 20 essentially what you're saying?
 21 A. Yes. A Parliamentary decision, whatever it might be,
 22 I'm a sort of Parliamentary extremist in that sense.
 23 I think it's -- you know, on a matter which is so
 24 difficult and there's so much that is sensitive and
 25 argued about, Parliament is the proper place for a

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1 decision and any discussion.
 2 LORD JUSTICE LEVESON: You probably heard Mr Straw -- you
 3 may not have done -- explain that actually that's
 4 precisely what they in reality did when they passed the
 5 Human Rights Act. They were conscious of the
 6 consequences and, as it were, to try and define the
 7 boundaries felt, for good reason or bad, and it's
 8 absolutely not for me to say which that is, that the
 9 judges would be the best place to fill in the gaps.
 10 A. I think -- I do understand that, sir, and I think many
 11 people would say that given what has happened and given
 12 how controversial this whole area of privacy law has
 13 been, nonetheless -- and despite the fact that there was
 14 a discussion during the legislation, the human rights
 15 legislation -- it would be a good thing for Parliament
 16 to go back and look at it again, and of course there has
 17 been a Parliamentary inquiry of both houses on this
 18 subject as well.
 19 LORD JUSTICE LEVESON: Yes.
 20 MS PATRY HOSKINS: One of the most controversial areas has
 21 been the issue of superinjunctions.
 22 A. Sure.
 23 Q. It's a matter of public record that you in 2008 secured
 24 a superinjunction. That was revealed by you in April
 25 2011, as I understand it. We have no interest in the

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1 facts of that. Just in case there's anyone who isn't
 2 entirely familiar with what a superinjunction is,
 3 someone who may have not read a newspaper in the last
 4 few years, it's obviously an injunction which not only
 5 prohibits the media from reporting the facts of a story
 6 or the people involved, but also prohibits any reporting
 7 of the very fact that the injunction has been obtained.
 8 A. Yes.
 9 Q. And that's the type of injunction you obtained in 2008?
 10 A. Exactly.
 11 Q. You've spoken publicly about your reasons for wanting to
 12 obtain the injunction and that's fine. As I say, we
 13 don't want to know about the facts of that. But what
 14 I want to understand is, as someone who felt the need to
 15 resort to the courts in this way, and one of the facts
 16 that's in the public domain is that a child was
 17 involved, why did you take the decision to go to the
 18 courts? The PCC has a code, which in theory at least
 19 should protect you and any minor child from publishing
 20 stories of this nature. Why did you take the decision
 21 that you did?
 22 A. I think, putting to one side whether it was the right
 23 decision to take or not, I think very few journalists in
 24 any position would go themselves to the PCC if they were
 25 looking for swift redress or help, frankly. I think

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<p>1 there is a perception with a great deal of legitimacy</p> <p>2 that the PCC simply isn't strong enough, isn't fast</p> <p>3 enough, isn't powerful enough and isn't going to give</p> <p>4 the kind of redress or protection that you'd want.</p> <p>5 Q. Why did you take that view?</p> <p>6 A. Because I'd looked at the operation of the PCC over many</p> <p>7 years, as an editor, as a journalist and all the rest of</p> <p>8 it. Though it's had no doubt many, many fine chairmen,</p> <p>9 it's not exactly the Waffen-SS. It's not something that</p> <p>10 most newspapers are much frightened of.</p> <p>11 LORD JUSTICE LEVESON: We're getting back into your phrases</p> <p>12 again, Mr Marr.</p> <p>13 A. Sorry, sorry, no more phrases.</p> <p>14 LORD JUSTICE LEVESON: I don't mind them, but because you're</p> <p>15 making a very serious point, and it's a very important</p> <p>16 point, I wouldn't want it to be lost in the language.</p> <p>17 That's not a criticism, but you understand the point I'm</p> <p>18 making.</p> <p>19 A. I do indeed.</p> <p>20 MS PATRY HOSKINS: As I say, you may be someone who holds</p> <p>21 strong views about whether or not the courts should be</p> <p>22 developing the law of privacy, you may or may not hold</p> <p>23 views about whether superinjunctions are a good or bad</p> <p>24 thing, but necessarily you still made the decision to go</p> <p>25 to the courts in this way.</p> <p style="text-align: center;">Page 85</p>	<p>1 the route of the PCC?</p> <p>2 A. No. Private Eye came to this much later, and I had</p> <p>3 felt, clearly wrongly, that I had been as helpful as</p> <p>4 I possibly could to them, but not helpful enough.</p> <p>5 Q. I turn back to your response to question 9, witness</p> <p>6 statement page 1303. You say this at the end of the</p> <p>7 paragraph:</p> <p>8 "Public funding of defamation and privacy cases</p> <p>9 should be limited to a very few particularly serious</p> <p>10 examples where claimants are effectively penniless."</p> <p>11 Why do you take that view, Mr Marr?</p> <p>12 A. Because I think that if it was -- if defamation and</p> <p>13 indeed privacy cases became a way of -- an easy way of</p> <p>14 redress for very large numbers of people, you would get</p> <p>15 large, large numbers of people piling in, you would get</p> <p>16 legals piling in and all the rest it, and it just seems</p> <p>17 to me in a time of relative austerity that the public</p> <p>18 would not want that to be a large drain on public</p> <p>19 resources.</p> <p>20 Q. Doesn't it just mean that it becomes the premise of the</p> <p>21 very rich?</p> <p>22 A. Well, it depends what happens to these laws and how</p> <p>23 they're changed.</p> <p>24 Q. Yes.</p> <p>25 LORD JUSTICE LEVESON: So you agree with the concept that</p> <p style="text-align: center;">Page 87</p>
<p>1 A. Yes, I did.</p> <p>2 Q. Did you feel that you had any alternative to doing it?</p> <p>3 A. I could have not gone to the courts and let the story</p> <p>4 come out. That was the obvious alternative. For</p> <p>5 various reasons at the time I thought it was worth going</p> <p>6 the other way. As I understand it, and I may be wrong</p> <p>7 about this, the super bit of the superinjunction was</p> <p>8 a reaction entirely to so-called jigsaw identification</p> <p>9 where X has got the injunction and here's a picture of X</p> <p>10 and Y and Z and the reader can put two and two together</p> <p>11 instantly and in those circumstances it was felt in the</p> <p>12 Family Division that there was no effective right of</p> <p>13 privacy or it was crumbling almost immediately and that</p> <p>14 was why it was created, but certainly this was intended</p> <p>15 to damp things down, and it felt more like flaring them</p> <p>16 up, which was why in the end it was right to get rid of</p> <p>17 it.</p> <p>18 LORD JUSTICE LEVESON: You might have read -- Mr Flitcroft</p> <p>19 gave evidence to me last year on the same general</p> <p>20 subject.</p> <p>21 A. Yes, indeed.</p> <p>22 MS PATRY HOSKINS: One of the publications which challenged</p> <p>23 the injunction was Private Eye, of course, who don't</p> <p>24 sign up to the PCC. Was that a factor that influenced</p> <p>25 your decision in going to court rather than going down</p> <p style="text-align: center;">Page 86</p>	<p>1 there should be some mechanism that is fast, reliable,</p> <p>2 cheap?</p> <p>3 A. Yes.</p> <p>4 LORD JUSTICE LEVESON: To resolve --</p> <p>5 A. Absolutely.</p> <p>6 LORD JUSTICE LEVESON: -- these issues?</p> <p>7 A. Absolutely.</p> <p>8 LORD JUSTICE LEVESON: Do you have any ideas in that?</p> <p>9 A. Sir, I think it's unfortunately my job at the BBC to</p> <p>10 criticise the Inquiry for whatever ideas it comes up</p> <p>11 with rather than offer my own.</p> <p>12 LORD JUSTICE LEVESON: Yes. I think I'll note that answer,</p> <p>13 thank you.</p> <p>14 MS PATRY HOSKINS: Two final subject matters I want to ask</p> <p>15 you about, Mr Marr. The first is contacts again. We</p> <p>16 touched on this briefly. If you look at your response</p> <p>17 to question 2(b) in your statement, you touched on this</p> <p>18 earlier. You were saying that developing a relationship</p> <p>19 with politicians is important as a journalist, it</p> <p>20 requires some social interaction. Previously, you say</p> <p>21 that a lot of socialising went on.</p> <p>22 A. Mm.</p> <p>23 Q. It's page 1297, for those who have the page, and it's</p> <p>24 the first paragraph in response to question 2b. You see</p> <p>25 that?</p> <p style="text-align: center;">Page 88</p>

<p>1 A. Yes, I do.</p> <p>2 Q. Has it come up?</p> <p>3 A. Yes.</p> <p>4 Q. Okay, good. You say getting stories requires journalist</p> <p>5 to foster a personal relationship and you say that</p> <p>6 traditionally the relationship develops through private</p> <p>7 lunches, drinks and occasion weekend visits. In the</p> <p>8 next paragraph you say that that was less so by the</p> <p>9 1980s but still happened. Then go on to say that in the</p> <p>10 1990s you visited politicians' homes on only perhaps</p> <p>11 eight or nine occasions and now you're not a personal</p> <p>12 friend of any of them.</p> <p>13 A. Mm.</p> <p>14 Q. Is that a personal, a conscious decision that you have</p> <p>15 made?</p> <p>16 A. No, and I mean I'm friendly with politicians, and many</p> <p>17 politicians I like and some I admire, but for me,</p> <p>18 contacts with politicians were really something that was</p> <p>19 part of my professional life. It was never easy because</p> <p>20 the time would often come when you had to in effect</p> <p>21 betray that relationship because you wrote something</p> <p>22 that was disobliging about the politicians that you'd</p> <p>23 had many, many lunches with and whose children's names</p> <p>24 you knew and all the rest of it and that would be</p> <p>25 difficult, but it seemed to me to be an essential moment</p> <p style="text-align: center;">Page 89</p>	<p>1 Chancellor of the Exchequer. I think to try and create</p> <p>2 a sort of general record of all contacts between</p> <p>3 journalists and politicians would be excessive, wouldn't</p> <p>4 work.</p> <p>5 As I say, if you try and get them to write down all</p> <p>6 their lunches, then journalists would just have coffee</p> <p>7 with them and eventually they'll end up walking in the</p> <p>8 park together. These kind of contacts will always be</p> <p>9 made. I just think it would be impractical to have yet</p> <p>10 another great list of every journalist who's having</p> <p>11 coffee or sharing a chocolate bar or a glass of wine</p> <p>12 with every politician.</p> <p>13 99 per cent of the time the journalists and the</p> <p>14 politicians both understand the nature of the</p> <p>15 relationship and their own role in it, and most of the</p> <p>16 time I think the public is served by these kind of</p> <p>17 contacts because of the stories that would come out,</p> <p>18 that wouldn't otherwise come out.</p> <p>19 Q. Where do you draw the line, Mr Marr? What should be</p> <p>20 logged, what should be recorded?</p> <p>21 A. Well, I think -- I would have thought visits to the</p> <p>22 official residence of the Prime Minister, probably the</p> <p>23 Chancellor of the Exchequer, Dorneywood and the Foreign</p> <p>24 Secretary, that would be reasonable. I think the public</p> <p>25 has the right to know who is being entertained perhaps</p> <p style="text-align: center;">Page 91</p>
<p>1 when both sides understood that their professional</p> <p>2 duties were different.</p> <p>3 It's more that, you know, things have drifted on.</p> <p>4 I now interview politicians, hopefully asking them</p> <p>5 questions that the public would want to ask, and</p> <p>6 therefore there's no need to be, in my view, lunching or</p> <p>7 wining or dining as well.</p> <p>8 Q. You explain over the page that more socialising goes on</p> <p>9 than once did but now of course there's greater</p> <p>10 transparency. Mr Cameron, you say, is expected to</p> <p>11 reveal guest lists for meetings and so on.</p> <p>12 A. Yes.</p> <p>13 Q. And you say:</p> <p>14 "Although it makes it harder for the political</p> <p>15 recorders to get deep insights, I think this change is</p> <p>16 to be welcomed. If the public wants to know about</p> <p>17 subterranean business contacts with politicians or lobby</p> <p>18 groups they ought to know about journalistic meetings</p> <p>19 too."</p> <p>20 Now, is that the answer, greater transparency? Is</p> <p>21 there anything else that you would suggest?</p> <p>22 A. I don't think there is -- I should emphasise that</p> <p>23 I perhaps didn't put that as well as I might have done.</p> <p>24 I'm really talking here about meetings between</p> <p>25 journalists and, for instance, the Prime Minister or the</p> <p style="text-align: center;">Page 90</p>	<p>1 over a weekend at those great and favoured houses.</p> <p>2 I think the guest lists for dinners at Number 10, Number</p> <p>3 11, I think that's reasonable. I wouldn't push it</p> <p>4 a great deal further than that.</p> <p>5 Q. Not further than that?</p> <p>6 A. No.</p> <p>7 LORD JUSTICE LEVESON: And not for other of the major</p> <p>8 offices of state?</p> <p>9 A. It's not a terribly logical answer, I agree, sir, but</p> <p>10 I think once you start to push it down -- we see this in</p> <p>11 other areas too -- it quite quickly becomes a sort of</p> <p>12 general rule. If the minister -- if the Secretary of</p> <p>13 State has to have a lunch logged with him, what about</p> <p>14 the Minister of State? Will the Secretary of State</p> <p>15 simply send his political adviser? Should the political</p> <p>16 adviser's lunch be logged?</p> <p>17 LORD JUSTICE LEVESON: It depends whether somebody wants to</p> <p>18 see the spirit of what is intended and follow it, or</p> <p>19 simply find a way of getting around it, doesn't it?</p> <p>20 A. Yes, it does, but I think in both cases, once you start</p> <p>21 a general assumption that leading politicians must have</p> <p>22 every contact with a journalist logged, recorded and</p> <p>23 published, then very swiftly it won't be leading</p> <p>24 politicians, it will be the next layer down and the</p> <p>25 layer down after that.</p> <p style="text-align: center;">Page 92</p>

<p>1 LORD JUSTICE LEVESON: I see the problem, and of course it's 2 not really necessarily every contact. I've said to 3 a number of people, people are entitled to be friendly 4 with whomsoever they wish. It's a question of the 5 opportunity to exert influence which is not transparent 6 to the world at large, I think.</p> <p>7 A. I think that's right, but I think in the end, and I'm 8 talking about the world of newspapers, which is in 9 retreat at the moment, and things will feel very 10 different, I think, in the online world that's coming, 11 but in the world of newspapers, in the end the 12 journalist very often wrote the column, wrote the 13 commentary, wrote the news story. If the news story is 14 untrue or inaccurate, they'd be found out, and if the 15 commentary is biased and felt to be tilted towards one 16 politician again and again and again, they'll certainly 17 be found out.</p> <p>18 Certainly when I was a working journalist I knew 19 pretty much or had a strong guess, reading what 20 colleagues were writing in other newspapers, who they'd 21 been wining and dining with, and I didn't feel -- people 22 didn't get away with it, put it that way. People didn't 23 sort of produce wonderful propaganda on behalf of 24 a minister for very long before they were mocked and 25 laughed at.</p> <p style="text-align: center;">Page 93</p>	<p>1 A. Yes. If I can give an example, without individual 2 contacts, and probably a bit of wining and dining and 3 drinking and so on, between political journalists and 4 politicians, I don't think the public would have known 5 about the difficulties in the Blair/Brown relationship 6 for years and years and years, and I think that would 7 have been a significant absence in the public debate. 8 That was a really important story and it came out 9 because politicians were talking privately to 10 journalists.</p> <p>11 LORD JUSTICE LEVESON: I understand, but of course in the 12 same way that I agree with your distinction with 13 proprietors and editors on the one hand and journalists 14 on the other, of course one has to then guard against 15 the editor saying, "Well, I can't go and push this 16 policy, therefore you, who as it were fall under the 17 radar, do", but there has to be an understanding on 18 every side about what's appropriate, I suppose.</p> <p>19 A. Indeed, sir. In the end, one can't legislate for 20 a perfect world in this and the sense of sort of 21 self-respect of politicians on the one hand and quite 22 strong internal cultures in newspapers on the other 23 hand, where they -- you know, they really care about 24 their relationship of trust with their readers and so 25 on, that is the best protection.</p> <p style="text-align: center;">Page 95</p>
<p>1 LORD JUSTICE LEVESON: It's not so much producing propaganda 2 for the minister. It's proprietors or editors seeking 3 to or potentially seeking to identify causes without 4 there being any Faustian pact, if I use the expression 5 that's been much deployed.</p> <p>6 A. Yes.</p> <p>7 LORD JUSTICE LEVESON: Without there necessarily being 8 anything explicit at all, but the sort of awareness of 9 which you spoke when you were talking about what had 10 obviously been a subterranean arrangement for the 11 publication of an article on Europe in the Sun, that 12 sort of point. I'm sure it will carry on, because 13 politicians want to get their message across.</p> <p>14 A. Yes.</p> <p>15 LORD JUSTICE LEVESON: It's a question of what should be 16 open and what should be transparent about that sort of 17 thing.</p> <p>18 A. Yes, yes. I think I come back to my original argument 19 that in my view there ought to be a clear distinction 20 made between proprietors and editors on the one hand and 21 working day-to-day journalists who I'd be more concerned 22 with on the other hand who ought to be allowed to make 23 the contacts they need to get the stories.</p> <p>24 LORD JUSTICE LEVESON: I think I've said I understand that 25 and agree with it.</p> <p style="text-align: center;">Page 94</p>	<p>1 I knew many, many very eminent political journalists 2 who spent a great deal of time not just having a meal 3 with a politician but endless games of golf or going on 4 skiing trips and all the rest of it, and I am absolutely 5 sure, in the case that I'm thinking about, that these 6 people didn't hold back at all when it came to the story 7 that was going to be unpleasant for the reputation of 8 the person they'd been swinging the golf club with. You 9 know, propinquity, if that's the word, and corruption, 10 I think, don't always go side by side.</p> <p>11 LORD JUSTICE LEVESON: Of course, I'm thinking of rather 12 less than corruption.</p> <p>13 A. Mm.</p> <p>14 MS PATRY HOSKINS: The final area I'd like to touch on is 15 the influence of the media on political appointments. 16 Question 11, you were asked what influence the media had 17 on public and political appointments, including the 18 tenure and termination of those appointments, and you 19 were asked to give examples. You say this: 20 "As to political and public appointments, newspapers 21 certainly campaign against individuals, either 22 because -- as with the recent Metropolitan Police 23 battles -- they have taken one side against another in 24 a factional fight, or because they have taken against an 25 individual. A minister might have offended the editor,</p> <p style="text-align: center;">Page 96</p>

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<p>1 or ridiculed the paper, or rubbished a policy it 2 favours ... or simply look a little vulnerable. Much of 3 the campaigning against individuals is in the nature of 4 a speculative hunting trip, when it is not clear whether 5 someone is politically badly wounded or not, and papers 6 compete to see who can bring him or her down. Once the 7 pack groups and attacks day after day, the sheer 8 pressure can destroy careers which would otherwise 9 survive. This is perhaps unedifying and is certainly 10 cruel, but greatly entertains the public ... or 11 I suspect it does. Parliamentary performances no longer 12 destroy careers and the party machines are slickly 13 efficient so it might be argued that some aggressive 14 system of testing is needed." 15 Strong words. 16 A. Yes. 17 Q. First of all, in your view, is this negative coverage 18 that someone, an individual might face actually more 19 damaging or more important than, say, positive 20 coverage -- I mean, as a minister, imagine you're 21 a minister who is facing negative coverage, is that more 22 damaging than, say -- I'm phrasing this badly. I'll 23 start again. We've heard a lot of evidence at this 24 Inquiry of the impact of positive coverage. 25 A. Yes.</p> <p style="text-align: center;">Page 97</p>	<p>1 been cases of ministers who perhaps have been unfairly 2 hounded out of a particular job simply because the media 3 noise was too much and it just became -- they became 4 exhausted, the Prime Minister became exhausted. On the 5 other hand, there are some equally interesting cases 6 where a minister has clung on and fought on and it's 7 been a long campaign against them and it turns out that 8 the minister has done something wrong and should have 9 gone. 10 My point there is the testing, certainly at the time 11 I was writing -- I'm less well-informed now -- wasn't so 12 great in the House of Commons chamber as it might have 13 been and perhaps this was a way of compensating for 14 that. 15 MS PATRY HOSKINS: Mr Marr, those are my questions. I don't 16 know if the judge has some. 17 LORD JUSTICE LEVESON: I have a slightly different topic to 18 raise with you. It's one of the reasons that I was 19 particularly interested to hear your view. Most of your 20 professional life you've worked in print journalism, and 21 the last years for the BBC, which is regulated very 22 differently to the way in which print journalism is 23 regulated. You've offered your views about the PCC, and 24 all your views I recognise and underline are personal, 25 not BBC's views.</p> <p style="text-align: center;">Page 99</p>
<p>1 Q. Support by a particular newspaper. 2 A. Sure. 3 Q. And we've heard a bit about negative coverage which 4 particular individuals may have or a particular party 5 may have in a particular newspaper. What would a party 6 rather have? 7 A. That's -- that is hard for me to answer. I think 8 probably the absence of the negative coverage. It is 9 a brutal thing when a minister is being assailed by the 10 pack, and it goes on day after day and it's relentless. 11 I do think there is a case -- that is when ministers 12 are really tested. That's when their stamina is tested, 13 what they're made of is tested. You could argue that 14 part of the consequence of that is the obsessive 15 interest in headlines, media management, PR and all the 16 rest of it that has characterised politics over the last 17 20 years. In other words, the fire storms have been so 18 hot that ministers have been pushed away from thinking 19 long-term or more deeply about policy and too much into 20 thinking about what's going to happen on the front 21 page of X or Y newspaper tomorrow. 22 Q. So is it a healthy thing? Despite being unedifying and 23 cruel, is it something which -- 24 A. It's purging. It's purging. Well, it's difficult to 25 tell. Every case it different, isn't it? There have</p> <p style="text-align: center;">Page 98</p>	<p>1 A. Indeed. 2 LORD JUSTICE LEVESON: But Ofcom provides a very different 3 regime of regulation, and I appreciate that it requires 4 impartiality for historical reasons to do with broadband 5 width, I understand all that. 6 A. Yes. 7 LORD JUSTICE LEVESON: But you will have heard a number of 8 people during the course of this Inquiry speak about the 9 vista of regulation that is not entirely controlled by 10 the press with absolutely horror, as if it will lead to 11 some state intervention of a kind which is not 12 appropriate for our society or indeed any society. 13 A. Yes. 14 LORD JUSTICE LEVESON: I would like you to share with me 15 your experience of the two regimes in this sense. What 16 I want to know, and please expound to such extent as you 17 feel able to, is whether you have felt unable or less 18 able to hold the powerful to account because you are 19 working under an Ofcom or a BBC regime than you did feel 20 able when you were responsible to the PCC, either as 21 a journalist or later as an editor. I hope you don't 22 feel that's an unfair question. 23 A. I think it's a devastatingly good question, if I may say 24 so, and I'm going to struggle to answer it, but let me 25 try.</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 First of all, when it comes to my experience as 2 a BBC journalist, I have to say that it's the BBC code 3 of conduct and editorial code that weighs on me far more 4 than anything else. And I've barely been aware of 5 Ofcom, Ofcom is somewhere out there, because the BBC 6 code is, for someone from a newspaper background, so 7 stringent and so carefully monitored. If I do or say 8 something inappropriate or whatever, it's the BBC that 9 come down on me fast and heavily, not Ofcom. We don't 10 get to the Ofcom stage, by and large. 11 LORD JUSTICE LEVESON: Because it's not necessary, the BBC 12 have done it? 13 A. The BBC have done it. I actually suspect the same is 14 true of the other broadcasters as well, I don't know. 15 Coming from a newspaper background into this BBC 16 world felt very strange to start with, because, really, 17 every phrase that you use, every sentence, exactly how 18 long you talk to people for, all of that is being 19 watched -- 20 LORD JUSTICE LEVESON: That's the impartiality bit. 21 A. It is, yes, the impartiality bit. And of course, you 22 know, other requirements such as you must have more than 23 one absolutely key source before you break a story, 24 which I had difficulty with, because as a newspaper 25 journalist, if I had a really good source, if I had the Page 101</p>	<p>1 very short of money, they're losing large amounts of 2 money, and none of them yet has found a plausible answer 3 to the challenges, revenue brought by the Internet. 4 A new system of regulation placed on top of that, you 5 know, might be like taking away the feeding tube right 6 at the end, or the oxygen mask. 7 So those would be my worries. 8 LORD JUSTICE LEVESON: I wasn't thinking of putting a new 9 regime on top. I would simply be contemplating 10 a structure whereby independent regulation could 11 flourish and allow, for example, the sort of speedy, 12 easy, fair, cheap access to a remedy which is no 13 longer -- or is not available, as you yourself have 14 found. 15 A. Indeed, indeed. It seems to me that the question there 16 is twofold. The buy-in from the editors and the 17 journalists who are going to be part of it, and their 18 understanding of that, of the new regime. In other 19 words, I think every newspaper culture is different, and 20 these tend to be quite hierarchical organisations and 21 that's how they work, and you need them to be plugged 22 into any system, and enthusiastically and willingly so. 23 But the bigger problem, it seems to me, is what is 24 a newspaper or what is a media organisation? Because, 25 as I said earlier on, some of the blogging sites, Page 103</p>
<p>1 Home Secretary talking off the record, I would go with 2 that, and the sense of having to go around and find 3 another source wouldn't have -- so it was an odd 4 transition into the world of broadcasting. 5 In terms of holding the powerful to account, the 6 worlds are so different. The only way that I could 7 claim to do that either as political editor -- well, as 8 political editor the way of doing that was by breaking 9 stories, and I didn't feel that I was -- it was harder 10 for me to break stories on the BBC, maybe because I got 11 more access, actually, because you're slightly higher up 12 the food chain as a political editor, you meet more 13 people, you do get the chance to break stories. And now 14 holding power to account just means asking people 15 questions. 16 What I would say is I think that the two ecologies 17 are so different. If one took a Ofcom-style regulatory 18 system and put it on top of the press at this stage, you 19 would be introducing something that they'd never 20 experienced before and would feel, I suspect, more 21 oppressive and difficult than -- broadcasters have grown 22 up in a different world. 23 The other thing I'd say is that it seems to me that 24 newspapers are in a very, very parlous state in this 25 country now. Most of them are hollowed out, they are Page 102</p>	<p>1 Conservativehome is an obvious example, are now as 2 influential as any newspaper and that's going to become 3 more and more so. I would have thought that any system 4 of redress would have to include those alongside 5 newspapers or it simply -- you know, it would be out of 6 time. 7 LORD JUSTICE LEVESON: I think you are absolutely right. 8 Let me deal with your two points in turn and just 9 investigate them for another couple of moments with you 10 if you're happy to do so. 11 A. Of course. 12 LORD JUSTICE LEVESON: In relation to buy-in, of course, if 13 I'm going to recommend any system, it has to be a system 14 that everybody has to buy into. 15 A. Yes. 16 LORD JUSTICE LEVESON: It will only have a chance of working 17 if it works for the press, it works for the public as 18 well. 19 A. Mm. 20 LORD JUSTICE LEVESON: And it's very difficult to say, well, 21 the press can have a trump card: we don't like this, 22 that's the end. It requires the press to be prepared to 23 engage in the process. Now, of course they are, in the 24 course of the Inquiry, and indeed some editors have come 25 along and said, "We have to have things different", but Page 104</p>

<p>1 then of course what they're prepared to accept should be 2 different is itself debatable. But there can't be 3 a trump, otherwise -- 4 A. Sure. 5 LORD JUSTICE LEVESON: -- that just won't work. 6 Could you visualise, using your experience, 7 admittedly from years ago, but at the time of 8 Princess Diana and all the other calamities that befell 9 the press, and you lived through Calcutt -- 10 A. Indeed. 11 LORD JUSTICE LEVESON: -- and all those attempts that put in 12 a structure as not impacting adversely on the freedom of 13 the press, if it did no more than that? 14 A. If it did no more than that, I would say that, as I say, 15 I think newspapers are in a very, very weak state at the 16 moment, most of them, and the thing that most editors 17 fear above all is having to put a timely and 18 proportionate apology into a newspaper. I think for 19 many newspapers that is the form of sanction that is 20 most painful to contemplate, rather than money or 21 anything like that. 22 I mean I am, perhaps like the Inquiry, struggling to 23 understand exactly what such a system might actually 24 look like and how it might work, and I accept that there 25 is a gap between state control of the press on the one Page 105</p>	<p>1 members. They know their part of the system well. They 2 have particularly strong contacts with their side. And 3 therefore you can't treat them as old-fashioned 4 journalists under old-fashioned journalistic codes, nor 5 are they -- they're a new thing, and they're an 6 influential new thing. I mean, even a lot of the papers 7 are picking people up and using them as commentators 8 now. 9 I think the old distinction between a political 10 player and would-be professional journalist is breaking 11 down, and any system which is built upon the old system 12 will quickly look out of date as well. 13 Of course, the successful blogs survive by 14 advertising, by and large, just like many newspapers, so 15 there is -- they're not so far away as they might at 16 first appear, and they're becoming closer. 17 LORD JUSTICE LEVESON: That's why I talked about trade or 18 business. I can see an enormous spectrum. On the one 19 hand there is the text that you might send a friend, 20 making some comment. The next layer up might be 21 a social conversation or then you can move up to 22 Twitter, and you have Facebook and all the various 23 mechanisms for the dissemination of information, which 24 then lead into blogging. Initially those who are merely 25 commenting on affairs not for money, but they are part Page 107</p>
<p>1 hand and free-for-all or the current system on the 2 other, and -- 3 LORD JUSTICE LEVESON: I'm pleased you put those two phrases 4 together. 5 A. Yes. Indeed. Indeed. But there is a gap. It's 6 a difficult gap. 7 LORD JUSTICE LEVESON: Yes. 8 A. And it's a new place to build something. 9 LORD JUSTICE LEVESON: All right. The second point you make 10 about the Internet and blogging I entirely accept, and 11 I'd be grateful for your view as to whether a system 12 could work, if you have one to express, that engaged not 13 merely the mechanism through which the news was 14 disseminated, whether, as I think Mr Lebedev described 15 it, dead wood, or through the ether, but those who are 16 in the course of a trade or business of the 17 dissemination of news, which might, of course, 18 encapsulate some of the other blogs to which you refer. 19 A. I think just to complicate things further, if I may, 20 I think what the world of the influential political 21 blogger has done is introduced a new player into the 22 system who isn't the full-time professional journalist 23 with a press card working at Westminster under an editor 24 and isn't a politician, but is somewhere between the 25 two. A lot of these people are card carrying party Page 106</p>	<p>1 of the system and they're putting their views out. 2 A. Absolutely. 3 LORD JUSTICE LEVESON: And of course for politicians it's an 4 opportunity to put their views out in a way that is 5 available to all without substantial cost. 6 A. Yes. And any regulatory system is going to find it very 7 hard. 8 LORD JUSTICE LEVESON: Absolutely. 9 A. At what point does andrewmarr.com ranting on about this 10 or that become big enough to be brought into the 11 regulatory system, as it were? 12 LORD JUSTICE LEVESON: Absolutely. This is exactly what I'm 13 trying to explore with you. And big enough might not be 14 the test, because it can't be, well, he has 100,000 15 followers. It has to be something rather clearer, which 16 is why I asked you about those that are in the course of 17 a -- if you like, a trade or business. That's why 18 I talk about bloggers and you picked it up immediately 19 by saying, yes, they obtain money through advertising. 20 So if you're doing that, the analogy that I thought of 21 in my mind as I've thought this through is a rather 22 prosaic piece of legislation that takes me back to an 23 earlier life called the Trade Descriptions Act. People 24 used to sell cars through classified ads, but as you're 25 aware, if I sell my car through a classified ad, the Page 108</p>

<p>1 Trade Descriptions Act legislation doesn't impact on me.</p> <p>2 If I'm in the course of a business of selling motorcars,</p> <p>3 then it does. And Trading Standards in the days when</p> <p>4 I was a young barrister would find the same telephone</p> <p>5 numbers advertising three or four different cars every</p> <p>6 week, and so would conclude that that particular trader</p> <p>7 was in the course of a trade or business.</p> <p>8 Now, I'm using that analogy to try to find</p> <p>9 a mechanism to distinguish between those who are --</p> <p>10 A. Simply commenting.</p> <p>11 LORD JUSTICE LEVESON: -- simply commenting and those who</p> <p>12 are doing more and getting towards the business end of</p> <p>13 journalism. Now, does it work?</p> <p>14 A. It is a nightmarishly difficult problem, it seems to me,</p> <p>15 but there's no doubt that once there's money to be made,</p> <p>16 then people are going to be much more, if I can put it</p> <p>17 this way, vulnerable to a system of outside scrutiny or</p> <p>18 monitoring, though albeit many of these businesses are</p> <p>19 based offshore, of course.</p> <p>20 LORD JUSTICE LEVESON: I understand that too, which adds yet</p> <p>21 further complications.</p> <p>22 A. Yes.</p> <p>23 LORD JUSTICE LEVESON: Well, Mr Marr, thank you very much.</p> <p>24 All I can do is ask you to remember, when you're</p> <p>25 required to criticise whatever I produce, your word</p> <p style="text-align: center;">Page 109</p>	
<p>1 "nightmarish". That's all I ask you to remember.</p> <p>2 A. Thank you.</p> <p>3 LORD JUSTICE LEVESON: Thank you very much indeed.</p> <p>4 2 o'clock.</p> <p>5 (12.54 pm)</p> <p>6 (The luncheon adjournment)</p>	

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