NI Group Limited
M. Linklater
First Statement
Exhibits "ML1" and "ML2"
29 November 2011

IN THE MATTER OF THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

EXHIBIT ML1

This is the exhibit marked "ML1" referred to in the witness statement of Magnus Linklater dated the 29th day of November 2011.

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Treating the law with an open contempt

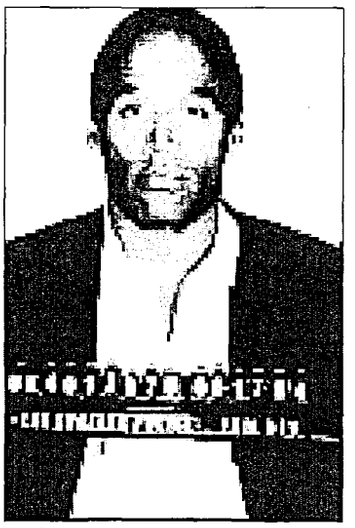
Magnus Linklater worries that our frenzied media have finally gone too far

The BBC *Today* programme is running a poll to find out which law the public would like to see abolished. I can nominate one that is abolishing itself in front of our eyes. As the hunt for the Ipswich killer intensifies, the Contempt of Court Act 1981 is being torn to shreds by rapacious media and sanctioned — through his acquiescence — by Lord Goldsmith, the Attorney-General.

I have no idea whether Tom Stephens, the 37-year-old local man being held, or Steve Wright, who was arrested yesterday, is the killer. But the details of the private life of Mr Stephens have been so gloatingly exposed, so carefully tailored to the known facts, that they are enough to give innuendo a bad name.

In an episode of *Cracker* any "loner" who frequents prostitutes, lives locally, knows the girls who have been killed and admits that he has no alibi, is not just a prime suspect, he would be so obvious a murderer that he would be eliminated before the break. All this we know, courtesy of the *Sunday Mirror*, which interviewed Mr Stephens at length before his arrest, and the BBC, which broadcast details after it.

Their coverage, together with pictures, remains freely available on the internet. Yet it is in clear breach of the Act, which states that, as soon as a case becomes active, no information that might "create a substantial risk that the course of justice will be seriously impeded or prejudiced" may be published; a case becomes "active" as soon as an arrest is made. This is what is known in the trade as a "strict liability" offence — that is, there are no ifs and buts about it. You cannot, as a newspaper or broadcaster, plead "public interest" — far less, as one lawyer appeared to be arguing on *Newsnight* on Monday evening, claim that a sensational case that makes the front pages day after day somehow renders the Act irrelevant.



O. J. was published and damned

So, does labelling Mr Stephens a prostitute-visiting misfit with no alibi prejudice his right to a fair trial? It would seem an open-and-shut case, but no one seems greatly exercised. The police have told *The Times* that, on a scale of ten, he is probably "about four or five". His picture can be published, they say, because the question of identity is not an issue "at the moment". As of today the images and the interviews remain on most media websites. Yet, if Mr Stephens were to be charged, his defence team would have, I imagine, a field day in court, arguing, with some justification, that their client's right to a fair trial had been grossly prejudiced.

Those of us brought up in fear and trembling of contempt laws remember the days when the simple statement "last night a man was detained" meant that the shutters came down on all reporting and not a word could be published until the trial began. A jury would file into court, its mind uncluttered by any recent reporting.

Now, we seem to be inching towards the American legal system, where freedom to publish takes precedence over all other considerations and the press can put a suspect on trial before a word of evidence is heard in court — the O. J. Simpson case is a classic example. There is even a dedicated TV channel, where viewers can become "the 13th juror" in a trial, and vote on its likely outcome.

At the same time, the instant availability of material on the web means that anyone — including prospective jurors — can gain access to pictures and articles that were, in

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a previous era, decently tucked away in newspaper libraries.

Why, then, is the Attorney-General not sending out warning signals to newspapers, and reminding them of the constraints of the law? It is, after all, barely four years since the *Sunday Mirror* was fined £130,000 and its editor resigned after publishing prejudicial comments about the footballers Lee Bowyer and Jonathan Woodgate before the jury in their trial had considered its verdict.

Kelvin MacKenzie, the Editor of the *Sun* came within an ace of being imprisoned for identifying a suspect who was due to attend an identity parade. The murder convictions of two sisters, Michelle and Lisa Taylor, were quashed on appeal in 1993

Once, when a man was detained, the press shutters came down

because of prejudicial reporting by newspapers. And, almost unnoticed, a recent law was passed that permits a judge to pass on the "wasted costs" of an abandoned trial to any newspaper whose "serious misconduct" is held to blame.

So clearly the Act remains in force. And yet Lord Goldsmith seems reluctant to intervene. It may be that, in the age of the internet and the blogger, he feels incapable of stemming the flow of information, or singling out one newspaper, when all are to blame. Or perhaps he is content to reply on the good sense of the British jury, echoing the observation by Mr Justice Lawton at the Kray trial in 1969 that he had enough confidence in his fellow countrymen to think that they were capable of looking at matters fairly, disregarding anything they had read. Trusting juries has not been a hallmark of this Government, so it would require a change of heart to move the US system, which places far more weight than ours does on the ability of a jury to disregard media reports and listen only to the evidence presented in court.

A more likely reason for Lord Goldsmith's silence is that he is unwilling to challenge the power of the media at a delicate time. They are allies in a larger war — against international terrorism — and the last thing he wants is to clamp down on them just at the point where their voice is needed to keep the public on the alert.

In that case he should come clean, and concede that the law, as presently drafted, is no longer relevant to present needs. New legislation will have to be drawn up, reflecting changing times and a political climate which no longer place so high a premium on protecting the rights of a suspect. If that means challenging a basic tenet of the British legal system, so be it. There is, after all, no point in a contempt Act if it is held in contempt.

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