

<p>1 Wednesday, 16 November 2011</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: Right. Do I understand the order of</p> <p>4 the battle is first the National Union of Journalists</p> <p>5 and then the Guardian and then Mr Sherborne? Thank you.</p> <p>6 Right.</p> <p>7 Opening submissions by MS STANISTREET</p> <p>8 MS STANISTREET: Thank you, sir. Yours is an unprecedented</p> <p>9 inquiry into the press that could have far-reaching</p> <p>10 implications for our industry, so we at the National</p> <p>11 Union of Journalists felt it was essential for the union</p> <p>12 that's the voice for journalists and for journalism</p> <p>13 throughout the UK and Ireland to play a central role.</p> <p>14 We were therefore very grateful to you for recently</p> <p>15 granting us core participant status.</p> <p>16 LORD JUSTICE LEVESON: Can I encourage you to slow down</p> <p>17 a bit.</p> <p>18 MS STANISTREET: Yes.</p> <p>19 LORD JUSTICE LEVESON: Thanks.</p> <p>20 MS STANISTREET: The NUJ is an independent union and has</p> <p>21 been representing journalists throughout the media</p> <p>22 industry for over 104 years. We're a democratic, lay</p> <p>23 member-led grass-roots organisation. It is members in</p> <p>24 our workplace chapels and our branches who shape union</p> <p>25 policy and direct priorities.</p> <p style="text-align: center;">Page 1</p>	<p>1 union and had previously been the NUJ's lay</p> <p>2 vice-president and president after having served on the</p> <p>3 ruling National Executive Council for eight years,</p> <p>4 representing all members of the union working in</p> <p>5 newspapers and news agencies.</p> <p>6 During that time, I was working full-time as</p> <p>7 a journalist. I joined Express Newspapers in 1999,</p> <p>8 working on the Sunday Express. During my time there,</p> <p>9 I worked in the city department as an interviewer and</p> <p>10 feature writer, then for the news desk where I worked as</p> <p>11 a feature writer and then books editor until I was</p> <p>12 elected to the full-time role of Deputy General</p> <p>13 Secretary in the NUJ.</p> <p>14 It was my experience as an NUJ chapel rep at the</p> <p>15 Express, where we operated a joint chapel between the</p> <p>16 Daily Express and Express and Daily Star titles,</p> <p>17 representing members individually and collectively in</p> <p>18 a whole range of issues, that galvanised my activism</p> <p>19 within the NUJ and gave me a deep insight into the</p> <p>20 issues facing journalists working in the press today.</p> <p>21 My team of officials represent and engage with</p> <p>22 journalists working in national and regional newspapers,</p> <p>23 tabloid and broadsheets alike, on a daily basis.</p> <p>24 It's vital that in an Inquiry reflecting on the</p> <p>25 problems and issues within our industry, that the</p> <p style="text-align: center;">Page 3</p>
<p>1 We speak on behalf of our 38,000 members who work</p> <p>2 throughout the industry as freelancers and in staff</p> <p>3 roles in newspapers, news agencies, magazines, online,</p> <p>4 book publishing, in public relations and as</p> <p>5 photographers.</p> <p>6 Our headquarters are here in London and we also have</p> <p>7 offices in Glasgow, Manchester and Dublin.</p> <p>8 We represent members collectively where we have</p> <p>9 collective bargaining rights and recognition, and</p> <p>10 individual representation also forms a large part of our</p> <p>11 work. As well as our bread and butter industrial work,</p> <p>12 we campaign on issues ranging from quality journalism</p> <p>13 and defending public service broadcasting to fighting</p> <p>14 for protection of sources and press freedom.</p> <p>15 I shall say something briefly of my own experiences</p> <p>16 as a journalist and as a trade unionist, and in case</p> <p>17 it's thought by including these few sentences in the</p> <p>18 NUJ's opening statement I'm avoiding the possibility of</p> <p>19 challenge by cross-examination, I will exhibit this</p> <p>20 opening statement to a witness statement and the Inquiry</p> <p>21 team can consider, if it wishes, to call me as a witness</p> <p>22 at an appropriate time.</p> <p>23 I was elected General Secretary of the NUJ in April</p> <p>24 and took over the role in July. For the three previous</p> <p>25 years I was the elected Deputy General Secretary of the</p> <p style="text-align: center;">Page 2</p>	<p>1 concerns, the experiences and insights of ordinary</p> <p>2 working journalists are heard and I know you're very</p> <p>3 much alive to this. They are the workers at the sharp</p> <p>4 end who deal with the reality of life in a pressured,</p> <p>5 busy newsroom every single day. Our members strive on</p> <p>6 a daily basis to serve the public, balancing the need to</p> <p>7 inform, educate and entertain with the need to serve the</p> <p>8 competing and sometimes conflicting demands of</p> <p>9 publishers and commercial interests. It's a daily</p> <p>10 challenge and it's quite frequently a battle.</p> <p>11 The NUJ is currently making a good deal of effort to</p> <p>12 identify journalists to give evidence and to share their</p> <p>13 experiences with the Inquiry, however the stark reality</p> <p>14 is that in many workplaces there's a genuine climate of</p> <p>15 fear about speaking out. In order that it's not simply</p> <p>16 those who have retired or who have been made redundant</p> <p>17 and left the industry who feel able to make</p> <p>18 a contribution, we're working with the Inquiry team to</p> <p>19 ensure that journalists who wish to contribute to the</p> <p>20 Inquiry can give their testimony in confidence to afford</p> <p>21 them protection from retribution.</p> <p>22 The fear is not necessarily just of immediate</p> <p>23 punishment but of finding that a few months after your</p> <p>24 Inquiry ends, a journalist who has spoken out may find</p> <p>25 herself on a list of redundancies. We support your</p> <p style="text-align: center;">Page 4</p>

<p>1 draft protocol on anonymity and will discuss specific 2 measures in relation to particular witnesses with the 3 Inquiry theme. 4 Of course, predictably some of the newspaper owners 5 are unhappy about this, but the reality is that putting 6 your head above the parapet and speaking out publicly is 7 simply not an option for many journalists who would fear 8 losing their job or making themselves unemployable in 9 the future. In our experience, that fear has been 10 a significant factor inhibiting journalists from 11 defending the principles of ethical journalism in the 12 workplace, and in media organisations hostile to the 13 concept of trade unions there's a particular problem. 14 There's already been discussion of the important 15 role journalism plays. Journalism is a force for good, 16 a vital part of any democratic society. People choosing 17 to enter the industry don't, believe me, do it for the 18 money or the career prospects. They become journalists 19 because they want to make a difference. They want to 20 play their part in holding power to account, to shining 21 a light in those dark recesses of society. They want to 22 do their job well, do it professionally and they want to 23 keep their communities informed and expose wrongdoing 24 and the reason why we're all here today is because of 25 excellent, dogged investigative journalism which has</p> <p style="text-align: center;">Page 5</p>	<p>1 journalism, you can't do it without cheating readers of 2 the newspapers they deserve and you can't do it without 3 sounding the death knell of an industry that plays such 4 a critical role in our society. 5 In this context, the more resource-intensive areas 6 of journalism such as specialist correspondence and 7 investigative journalism have become something of an 8 endangered species and a journalist's ability to get out 9 there and research and deliver work thoroughly has been 10 diminished. Agency copy is topped and tailed, press 11 releases are churned out as news. The pressure on 12 journalists to deliver -- 13 LORD JUSTICE LEVESON: I'm going to ask you to slow down 14 again and I'll tell you why, because there are parts of 15 what you're saying that aren't being picked up because 16 of the speed at which you're speaking. 17 MS STANISTREET: Apologies. 18 LORD JUSTICE LEVESON: That's all right. 19 MS STANISTREET: The pressure on journalists to deliver is 20 relentless, often to unpredictable and unreasonable 21 timescales and without the resources to do the job well. 22 Such pressures lead to shortcuts and can result in the 23 abandoning of fundamental principles. That's why it's 24 important for your Inquiry to understand the reality of 25 newsroom culture and the pressures that some journalists</p> <p style="text-align: center;">Page 7</p>
<p>1 brought this scandal to light. 2 Journalists do not, however, operate in a vacuum. 3 It's important to place the examination of the 4 industry's culture and practices in the broader context 5 of the current state of the industry. The newspaper 6 industry, particularly in the local and the regional 7 press, has been in crisis over recent years. The scale 8 of cutbacks, redundancies, casualisation of the 9 workforce and entire closure of titles has made it 10 a very challenging and insecure time for journalists. 11 This has been the inevitable result of the entire 12 economic model within the newspaper industry. Greedy 13 employers have stripped profitable and once proud 14 newspaper titles of their assets. When the days of 25, 15 30 per cent profits ended, rather than settle for more 16 modest profits that would do nicely for most of our 17 major blue-chips, the response of some of the major 18 newspaper groups was to slash costs further, cut the 19 bottom line, sacrificing quality and content in the 20 process. 21 This is not a sustainable business model and we're 22 seeing the results of this bad management on a daily 23 basis with ever more cutbacks and redundancies. These 24 owners are playing fast and loose with our industry. 25 You can't do that without sacrificing quality</p> <p style="text-align: center;">Page 6</p>	<p>1 in some workplaces have come under to deliver the goods, 2 to write stories that are inaccurate or misleading. 3 These practices are the product of the culture. You 4 cannot separate the practice of journalism and the 5 culture which underpins the industry. To paraphrase the 6 Irish poet WB Yeats, you cannot separate the dancer from 7 the dance. 8 It's not journalists who develop and foster the 9 culture in any one newspaper group. In any workplace, 10 where does the power reside? Not at the bottom, where 11 the majority work to get the job done. It's at the top. 12 In journalism, the reality is that there's often a stark 13 expectation from on high: deliver the goods, get the job 14 done, bring in the story whatever the means. If you 15 don't, well, the consequences are often simple and 16 clinically brutal. 17 At the heart of any newspaper culture is the editor. 18 What he or she says goes. For anyone who's worked in 19 a newsroom, the concept of an editor who didn't know 20 just what their troops were getting up to is laughable. 21 Editors rule the roost. They set the tone, not just in 22 the editorial line of their newspapers but in the way 23 that the entire newsroom operates. What's accepted, 24 what's not, the tone of an editorial conference, whether 25 bullying, which is sadly all too commonplace, goes</p> <p style="text-align: center;">Page 8</p>

<p>1 unchecked, the dispensing of praise or the nature of the 2 inevitable roasting when the goods aren't delivered. 3 To imagine editors as mere bystanders whose 4 underling reporters run rings around them would be 5 fanciful in the extreme. That's why, to anyone with any 6 journalistic nous, the peddling of the line that hacking 7 was the action of a single rogue reporter operating in 8 splendid isolation was as daft as it was unbelievable 9 and that's why it's vital when considering the culture 10 and the practices of the press to examine the broader 11 context of how that culture is forged and cultivated. 12 For NUJ members, a significant way in which they 13 input collectively into that workplace culture is 14 through their workplace NUJ group, the chapel, as we 15 call them, but that can only happen in places where 16 there is a functioning organised chapel. This mainly 17 happens in places where there's a legal recognition 18 agreement in place and a collective bargaining 19 agreement. Mere membership is not enough. There are 20 many newspapers where journalists feel very anxious 21 about their employer knowing that they're members of the 22 NUJ or that they're active in the union outside of work. 23 Nor is the limited right to representation in 24 disciplinary or grievance proceedings enough. The only 25 way a union is able to sufficiently and actively protect</p> <p style="text-align: center;">Page 9</p>	<p>1 News of the World, who have been dismissed or made 2 redundant in the wake of the hacking scandal, have 3 learnt in recent months to their cost the impact of not 4 having strong and independent workplace representation. 5 There cannot be a genuinely robust and confident 6 representation from any organisation that's not 7 independent whereby means of its funding and actual 8 existence is effectively in the pocket of the company's 9 owner and senior executives. 10 A well-organised union provides a counterbalance to 11 the power of the editors and the proprietors. It can 12 limit their excesses and give journalists the confidence 13 to raise their concerns. The collective can tackle 14 stress and bullying and defend principles of 15 journalistic ethics as well as dealing with pay and 16 terms and conditions. 17 One of the many members to come to the NUJ in the 18 wake of the closure of the News of the World was 19 Derek Webb. He, as you may have seen, told his story 20 to BBC's Newsnight in some depth last week. Mr Webb was 21 hired as a private detective by the News of the World 22 and carried out surveillance for the company for many 23 years. However, he alleges that in the wake of the 24 arrest of the paper's royal editor, Clive Goodman, he 25 was taken aside by a senior executive on the</p> <p style="text-align: center;">Page 11</p>
<p>1 the interests of its members is by the establishment of 2 genuine collective bargaining. 3 That process involves putting other issues central 4 to a journalist's work, whether that's staffing 5 resources, commercial pressures, bullying behaviour in 6 the work place or ethics, squarely at the negotiating 7 table. Believe me, senior executives in this industry 8 only sit down with our workplace reps and with NUJ 9 officials because they're obliged to, because we have 10 recognition and an agreement on collective bargaining. 11 Whilst I'm sure there are many employers who would 12 rather not have to bargain collectively, there are many 13 media employers who have a particularly intransigent 14 view in this regard and will go to great lengths to 15 block the NUJ from its titles. 16 Take Rupert Murdoch. He created and funded his own 17 proxy union, the News International Staff Association, 18 which was later refused a certificate of independence by 19 the certification officer because of its lack of 20 independence from the employer. This was established on 21 the eve of the legislative changes being introduced that 22 saw the restoration of trade union recognition rights, 23 all to keep the NUJ and our sister unions out of 24 Wapping. 25 Staff at News International, mostly on the</p> <p style="text-align: center;">Page 10</p>	<p>1 News of the World and told he had to "stop being 2 a private detective and become a journalist". The same 3 senior executive also apparently told him that he must 4 join the NUJ and acquire an NUJ press card. This he 5 duly did. For the NUJ this is a breathtakingly cynical 6 move on behalf of the News of the World but also an 7 interesting perspective on an organisation that's so 8 hostile to the NUJ. Clearly in the minds of senior 9 executives at News International, presumably a proper 10 journalist is one who is a fully fledged NUJ member with 11 a union press card rather than the ones 12 News International dispenses to its staff. 13 You suggested earlier this week that the essential 14 question in this Inquiry might well be: who guards the 15 guardians? The NUJ can help here. For one of the key 16 ways of ensuring "systems within an organisation which 17 promote or induce good behaviours and tend to expose bad 18 behaviours", to quote Mr Jay, is for journalists to have 19 the protection of a trade union. 20 The establishment of collective bargaining is one 21 vital means of preventing the unacceptable "culture, 22 practice and ethics" under investigation in this Inquiry 23 should not be seen as some form of special pleading on 24 behalf of a vested interest group, for the right to 25 collective bargaining is as fundamental as the right to</p> <p style="text-align: center;">Page 12</p>

<p>1 privacy under Article 8 of the Convention and the right 2 to freedom of expression under Article 10. 3 Article 11 protects everyone's freedom of 4 association and "the right to be a member of a trade 5 union for the protection of his interests". 6 In a unanimous Grand Chamber decision of Demir and 7 Baykara v Turkey, the European Court of Human Rights 8 concluded: 9 "The right to bargain collectively with the employer 10 has, in principle, become one of the essential elements 11 of the 'right to form and to join trade unions for the 12 protection of [one's] interests' set forth in Article 11 13 of the Convention ..." 14 The interrelation between Article 11 and the right 15 to collective bargaining had been earlier described in 16 Wilson and others v UK, a case of an NUJ member which 17 arose out of the considerable steps Associated 18 Newspapers took to derecognise and disempower the NUJ in 19 the 1980s. In that case, the court, which included 20 Lord Phillips, as he now is, held: 21 "The essence of a voluntary system of collective 22 bargaining is that it must be possible for a trade union 23 which is not recognised by an employer to take steps 24 including, if necessary, organising industrial action, 25 with a view to persuading the employer to enter into</p> <p style="text-align: center;">Page 13</p>	<p>1 the Piper Alpha Inquiry report, a role which finds 2 statutory form in the Offshore Installations Regulations 3 1989. 4 We at the NUJ believe that there's a clear link 5 between a strong trade union presence in a workplace and 6 a strong ethical awareness. Collective trade union 7 representation is a moral human right and journalists 8 should not be denied this right in our newspapers. 9 I can speak from personal experience when I say that 10 having the collective confidence of a robust union 11 presence can make an enormous difference when 12 individuals want to speak out on matters of journalistic 13 ethics. 14 In September 2001, when I was one of three NUJ 15 chapel reps at Express Newspapers, we took collectively 16 the unprecedented step of making a complaint to the 17 Press Complaints Commission directly about the reporting 18 of the Daily Express' coverage of asylum seekers. Some 19 journalists at the title, particularly those involved in 20 the coverage, felt so upset and so angry about the 21 racist tone of the Express's coverage and so powerless 22 to individually do anything about it that they were 23 considering leaving their jobs. The NUJ chapel met and 24 issued a public statement about the hate-stirring front 25 page headlines, one of which was "Asylum seekers run for</p> <p style="text-align: center;">Page 15</p>
<p>1 collective bargaining with it on those issues which the 2 union believes are important for its members' interests. 3 Furthermore, it is of the essence of the right to join 4 a trade union for the protection of their interests that 5 employees should be free to instruct or permit the union 6 to make representations to their employer or to take 7 action in support of their interests on their behalf. 8 If workers are prevented from so doing, their freedom to 9 belong to a trade union, for the protection of their 10 interests, becomes illusory." 11 The court held that the UK had a duty to protect 12 that right. We don't expect to persuade you to 13 recommend legislation to protect collective bargaining 14 for journalists. We will seek to persuade you to make 15 recommendations which recognise the vital role the NUJ 16 has in protecting journalists from, amongst other 17 things, pressure to engage in unethical practices. We 18 will produce a note on the legal matters referred to 19 here, which we hope you will find of value. 20 In case it might be thought that the empowerment of 21 trade unions to protect the interests of their members 22 at work is not the stuff of public inquiries such as 23 this, the NUJ would draw attention to the recognition 24 given to the role of trade union representatives in the 25 protection of the safety of employees by Lord Cullen in</p> <p style="text-align: center;">Page 14</p>	<p>1 your lives", and what we felt to be editorial 2 interference from the proprietor. 3 It wasn't the only public stance NUJ members felt 4 impelled to take. In 2004, the chapel once again 5 complained to the PCC over the inflammatory and 6 blatantly inaccurate coverage of so-called gypsies 7 coming to the UK during the enlargement of the EU. In 8 both cases we believed the paper was guilty of breaking 9 the PCC's code of conduct on discrimination, which 10 states: 11 "The press must avoid prejudicial or pejorative 12 reference to a person's race, colour, religion, sex or 13 sexual orientation or to any physical or mental illness 14 or disability." 15 Again in 2006, journalists on the Daily Star walked 16 off the editorial floor to hold an urgent chapel meeting 17 and demand that a spoof page called the Daily Fatwah, 18 whose only purpose was to mock Islam, was pulled. The 19 management backed down and the page was indeed pulled 20 that night, and their collective intervention on 21 a matter of journalistic ethics made a difference. 22 In each of these cases a common factor in the 23 offending coverage was editorial decisions on the 24 content were being made on the basis of the resulting 25 spike in sales. It would be impossible for a single</p> <p style="text-align: center;">Page 16</p>

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<p>1 journalist to tackle this.</p> <p>2 Another common factor is that the PCC did absolutely</p> <p>3 nothing to help. In fact, our complaints merely</p> <p>4 warranted a short written reply from the then chair,</p> <p>5 Sir Christopher Meyer, saying he was satisfied that no</p> <p>6 journalists were put under pressure to write inaccurate</p> <p>7 or unethical material. Perhaps he got that expression</p> <p>8 from the paper's then editor who sat with him on the</p> <p>9 PCC, but he certainly didn't get it from any</p> <p>10 journalist at the Daily Express as no one from the PCC</p> <p>11 even contacted us to investigate.</p> <p>12 The NUJ is a trade union which has its code of</p> <p>13 conduct at its heart. It was established in 1936 and is</p> <p>14 embedded in our rule book and by signing our membership</p> <p>15 form it's made clear to journalists that they're signing</p> <p>16 up to abide by the code. We have an ethics council</p> <p>17 which is a key part of our union structures. We run an</p> <p>18 ethics telephone hotline which journalists regularly</p> <p>19 access to gain advice and support.</p> <p>20 Of course as part of that code, we commit to</p> <p>21 robustly defending the public interest test and the</p> <p>22 ability of journalists to do their jobs freely and</p> <p>23 professionally and we'd vigorously defend members using</p> <p>24 other means, sometimes of course unpalatable and</p> <p>25 unpopular, if it's in the pursuit of a story that is</p> <p style="text-align: center;">Page 17</p>	<p>1 first place.</p> <p>2 The idea of a conscience clause was raised by the</p> <p>3 NUJ when giving evidence to the Commons Select Committee</p> <p>4 into privacy and media intrusion back in 2003. The</p> <p>5 committee recommended such a clause but it was rejected</p> <p>6 by both the PCC, which has no say in industrial matters,</p> <p>7 and the Society of Editors, which does.</p> <p>8 The text of our clause is:</p> <p>9 "A journalist has the right to refuse assignments or</p> <p>10 be identified as the creator of editorial which would</p> <p>11 break the letter of the spirit of the NUJ Code. No</p> <p>12 journalist should be disciplined or suffer detriment to</p> <p>13 their career for asserting his/her rights to act</p> <p>14 according to the Code."</p> <p>15 That's why the NUJ does put forward special pleading</p> <p>16 on the issue of a conscience clause. The introduction</p> <p>17 of such a contractually binding protection will be</p> <p>18 a great advance for journalists and for journalism in</p> <p>19 the UK.</p> <p>20 We'll come on to the detail of press regulation and</p> <p>21 any future model in the later part of your Inquiry, but</p> <p>22 it's the view of the NUJ and its members that the PCC</p> <p>23 has failed, abysmally so. We would absolutely resist</p> <p>24 any changes that would lead to anything akin to the</p> <p>25 licensing of journalists or anything that would in the</p> <p style="text-align: center;">Page 19</p>
<p>1 clearly in the overriding public interest. That's the</p> <p>2 duty of a journalist engaged in informing the public.</p> <p>3 But our code is also about public accountability.</p> <p>4 It commits journalists to do nothing that would intrude</p> <p>5 into anybody's private life, grief or distress, unless</p> <p>6 justified by overriding consideration of the public</p> <p>7 interest. It commits journalists to do their utmost to</p> <p>8 correct harmful inaccuracies, it commits them to</p> <p>9 obtaining material by honest, straightforward and open</p> <p>10 means with the exception of investigations that are</p> <p>11 overwhelmingly in the public interest and where that</p> <p>12 evidence can't be obtained by straightforward means.</p> <p>13 Clearly the industrial scale of the phone hacking at</p> <p>14 News International and the breadth of the scope of the</p> <p>15 stories generated as a result did not comply with the</p> <p>16 principles of the NUJ's code of conduct.</p> <p>17 It is in that context of the cut and thrust business</p> <p>18 of journalistic ethics and the commercial and the</p> <p>19 editorial pressures that our members can face that we've</p> <p>20 been campaigning for some years now for a conscience</p> <p>21 clause in contracts of employment, so when journalists</p> <p>22 stand up for a principle of journalistic ethics they</p> <p>23 have a contractual protection against being dismissed,</p> <p>24 and crucially so they have the confidence and the</p> <p>25 security to put their head above the parapet in the</p> <p style="text-align: center;">Page 18</p>	<p>1 slightest dilute press freedom. That would not be</p> <p>2 a solution to the problems the industry finds itself in.</p> <p>3 But for years we've had the media bosses' model of</p> <p>4 self-regulation. It's one that excludes both the</p> <p>5 producers and the consumers of the media output and</p> <p>6 represents only the owners. The general public and</p> <p>7 journalists themselves have had to contend with what's</p> <p>8 been little more than a self-serving gentlemen's club</p> <p>9 and not even a club that all newspapers are obliged to</p> <p>10 join, as illustrated so finely when Richard Desmond's</p> <p>11 Northern &amp; Shell company walked out of the PCC. It's</p> <p>12 a model that's failed. But there are models out there,</p> <p>13 models that have teeth and provide more than a thin</p> <p>14 veneer of accountability on the owners' part, models</p> <p>15 that hold newspapers to account and genuinely deliver</p> <p>16 when it comes to protecting the interests of the public</p> <p>17 and of journalism.</p> <p>18 An interesting and relevant example is the</p> <p>19 establishment of the Press Council of Ireland in 2007.</p> <p>20 The NUJ played a key role in the establishment of the</p> <p>21 PCI, which is based on a model that's more co-regulation</p> <p>22 than self-regulation. We're represented alongside</p> <p>23 editors and civic society nominees on the basis of full</p> <p>24 equality on the Press Council. Our own Irish Secretary</p> <p>25 Seamus Dooley sits on the council's code committee and</p> <p style="text-align: center;">Page 20</p>

<p>1 it's interesting to note that the very same newspaper 2 groups whose executives won't sit in the same room as 3 the NUJ in the UK manage to work quite happily and 4 collaboratively across the water in Ireland as part of 5 the Press Council of Ireland. Just yesterday our Irish 6 Secretary attended a meeting of the Finance and 7 Administrative Committee of the PCI alongside a senior 8 represent of News International.</p> <p>9 Irish journalism and Irish society has benefited 10 from such enlightened co-operation in the public 11 interest.</p> <p>12 The increasing consolidation of media ownership and 13 the disproportionate power and influence this provides 14 with it also needs to be considered by this Inquiry.</p> <p>15 When newspaper titles are bought and sold, there should 16 be a rigorous public interest test. The highest bidder 17 shouldn't be allowed to simply walk away with our 18 national titles in their pocket and the accompanying 19 power and influence that brings.</p> <p>20 Currently there's a dearth of genuine scrutiny and 21 most sales are usually completed on the basis of 22 a secretive sealed bid where it's only the money that 23 talks. It should not be possible for our titles, 24 whether that's a national newspaper title or a local 25 newspaper, to be bought and sold on the whim of one man</p> <p style="text-align: center;">Page 21</p>	<p>1 future of our industry and it's vital that the views of 2 working journalists and journalism are heard and 3 seriously considered. The NUJ will do all it can to 4 assist and to ensure our members can concentrate on what 5 they do best and what gets the vast majority of 6 journalists out of bed each day, which is serving up 7 quality journalism that informs and entertains.</p> <p>8 Thank you for giving us the time this morning.</p> <p>9 LORD JUSTICE LEVESON: I've deliberately not interrupted. 10 Barristers get used to being interrupted but I didn't 11 want to interrupt you, but I wonder if I could just ask 12 one question based upon what you've said.</p> <p>13 You present the picture of journalists, which I'm 14 sure is right, entering your industry to make 15 a difference and holding power to account. I equally 16 understand the other dynamic of people fearing for their 17 future employment. But one of the features which has 18 been already identified is that there was a great gap 19 between the Guardian's exposure of hacking and anybody 20 taking it up of some 18 months, and I wonder, if 21 everybody knew about it, why it wasn't that one of your 22 fearless journalists didn't do something about it.</p> <p>23 MS STANISTREET: Well, I think I've outlined how impossible 24 it is for many journalists individually to raise these 25 issues. Many of our national newspaper titles don't</p> <p style="text-align: center;">Page 23</p>
<p>1 or corporation or used as pawns to further an 2 individual's commercial or ideological interests.</p> <p>3 A media owner shouldn't have our police and our 4 politicians in a stranglehold for fear of their personal 5 peccadillos being splashed over the front pages of a 6 newspaper. No media group should be allowed to achieve 7 such dominance.</p> <p>8 I've given some examples today of how a robust, 9 well-organised NUJ presence can make a real difference 10 and a positive contribution to the culture within 11 a newspaper and to the broader industry. We're 12 currently engaged in efforts to encourage our members to 13 come forward and play their part and enable you and the 14 Inquiry team to have as good an insight as possible into 15 the reality of their working life and newsroom culture 16 for journalists working across the industry. This will 17 provide examples from across the newspaper sector, 18 including testimony from journalists who can shed real 19 light on the culture within the News of the World, on 20 cases of bullying at senior level, all key factors we 21 believe led to the scale of hacking within the 22 newspaper. I hope to be able to submit more detailed 23 written testimony arising from this work in the coming 24 weeks.</p> <p>25 For us, this is an Inquiry that will shape the</p> <p style="text-align: center;">Page 22</p>	<p>1 have NUJ collective representation or a workplace 2 culture where individuals feel that they can raise 3 things and not be fearful for their jobs.</p> <p>4 LORD JUSTICE LEVESON: Just because you recognise, I don't 5 know, in how many of the national titles are the NUJ 6 represented?</p> <p>7 MS STANISTREET: We're represented at the Express titles, at 8 the Guardian, where there's a very strong, robust NUJ 9 chapel, where the vast majority of staff at the Guardian 10 are members, I think it's 95 per cent of the workforce 11 there. We're represented at the Telegraph. We're not 12 represented at Associated Newspapers -- or recognised, 13 rather, at Associated Newspapers or News International 14 or the Mirror national titles. We are represented, have 15 recognition agreements with many of Trinity Mirror's 16 local newspaper groups.</p> <p>17 LORD JUSTICE LEVESON: Okay. So what percentage of the 18 industry do you --</p> <p>19 MS STANISTREET: In national newspapers? About half.</p> <p>20 LORD JUSTICE LEVESON: Yes. All right. I'm sure we'll get 21 a great deal more as the Inquiry proceeds. Thank you 22 very much.</p> <p>23 Right. I think we can probably proceed to hear 24 Mr Rusbridger. I'll offer you the same courtesy that 25 I don't offer to members of the bar, which is to keep</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 quiet. Alternatively, you may prefer that if I have a                  2 question which arises on anything you say, I ask it and                  3 interrupt, but I'm happy to take my lead from what you                  4 would prefer.                  5                  6 MR RUSBRIDGER: I'll take you up on your promise not to                  7 interrupt, if you ask questions at the end.                  8 LORD JUSTICE LEVESON: You prefer me to do that?                  9 MR RUSBRIDGER: Yes.                  10 LORD JUSTICE LEVESON: Right, very good. You ought to know                  11 that it is a courtesy which I won't extend to the bar.                  12 MR RUSBRIDGER: They're used to thinking on their feet. I'm                  13 not.                  14 Opening submissions by MR RUSBRIDGER                  15 Thank you for this opportunity to address the                  16 Inquiry at such an early stage.                  17 I wanted to add to some of the context which we hope                  18 this Inquiry takes into account as well as setting out                  19 Guardian News and Media's main areas of concern.                  20 First, we hope that it's apparent to all that the                  21 events that led to this Inquiry were shocking and                  22 immensely damaging. Damaging because they impacted on                  23 the trust in all journalists. Shocking for what they                  24 revealed about one powerful and dominant company, about                  25 the responses of the police and the flawed nature of</p> <p style="text-align: center;">Page 25</p>	<p>1 a combination of video, audio and data, as well as text,                  2 so there's a convergence of media which will have                  3 implications for readers and which may well have                  4 implications for regulation.                  5 What was once a one-way publishing process is now                  6 more responsive. Most editors are live to the potential                  7 benefits of harnessing the ability of others to                  8 contribute. They're beginning to think: if we add what                  9 you know to what we know, we may end up with a fuller,                  10 better picture.                  11 We also live in a world in which every reader                  12 becomes a potential fact checker. Social media allows                  13 anyone to respond to, expose, highlight or contradict                  14 what we write and we have the choice whether to pretend                  15 that this world of response doesn't exist or to                  16 incorporate it into what we do.                  17 The more we incorporate it, the more journalism                  18 becomes, as it were, plastic. There will be less                  19 pretence that we are telling the whole truth and nothing                  20 but the truth about a story frozen at the moment that we                  21 published it, what Walter Lippman in 1922 called the                  22 confusion between news and truth. A journalist today                  23 lives with the knowledge that there will be an external                  24 reaction to much of what she or he writes within minutes                  25 of publication. Journalism today is often less</p> <p style="text-align: center;">Page 27</p>
<p>1 regulation, about the limitations of Parliament and the                  2 initial unwillingness of much of the press to write                  3 about what had been going on at the News of the World.                  4 There was, in short, a failure of the normal checks and                  5 balances in society to hold power to account.                  6 This Inquiry is being held, as you know and you've                  7 heard this morning from the General Secretary of the                  8 NUJ, at a time of existential threat to the idea and                  9 sustainability of journalism itself.                  10 Commercially, newspapers may struggle to survive in                  11 the form in which they currently exist. Digital media                  12 have sucked advertising out of the printed press,                  13 circulations are declining at a rate of up to                  14 10 per cent a year. While digital audiences are growing                  15 fast and the possibilities are great, no digital revenue                  16 model yet offers certain hope of maintaining editorial                  17 endeavours at anything like their current levels.                  18 Editorially, the notion of journalism itself is                  19 being transformed. Until recently, a newspaper was                  20 something produced by a relatively small number of                  21 people in the know for a large number of people who                  22 weren't in the know. Now virtually everyone has the                  23 capacity to publish and to inform themselves. The once                  24 a day deadline has been replaced by a 24-hour continuous                  25 news cycle, newspapers are moving from text to</p> <p style="text-align: center;">Page 26</p>	<p>1 a snapshot, more a moving picture.                  2 Three more brief pieces of context, especially given                  3 the title of your first module.                  4 First, readers are, as in the rest of their lives,                  5 consumers. They expect organisations, whether public or                  6 private, to be responsive and accountable. Newspapers                  7 have often been poor in responding to challenge.                  8 Secondly, privacy is not a fringe concern, it's                  9 mainstream. Virtually every citizen is becoming attuned                  10 to what a significant concern privacy is in the modern                  11 world. Anyone who has a Facebook account, who uses                  12 Google, who is treated by the NHS, who talks to the                  13 police, who has an Oyster card, who drives too fast, who                  14 shops at Tesco, who has insurance, who puts their bins                  15 out on a Thursday night, who banks online, who has                  16 a mobile phone, everyone is more conscious about privacy                  17 and how organisations, public or private, handle it.                  18 Thirdly, we as citizens are more conscious of the                  19 idea of a rights-based society with consequential                  20 responsibilities. I hope that adds to the context.                  21 Now a few suggestions, the first of which relates to                  22 the events before July 2011.                  23 Clearly a major focus of your attention in part 2                  24 will be the phone hacking itself. Equally important, in                  25 our view, in part 1, is to look at the failures of the</p> <p style="text-align: center;">Page 28</p>

<p>1 18-month period once the so-called "rotten apple" 2 defence had been exploded by the Guardian, ie from July 3 2009 to late January 2011.</p> <p>4 These months are, it seems to us, worth examining 5 because they show the dogs that didn't bark. Why didn't 6 they? What accounts for the reluctance of the police to 7 investigate phone hacking properly even in July 2009? 8 Why did it take four inquiries before they took it 9 seriously? Why did senior officers make untruthful 10 statements about what had happened? Were MPs 11 intimidated or put under surveillance or threatened? 12 Why did the PCC fail in its attempts to get at the 13 truth? Why initially was there such a widespread 14 reluctance amongst other journalists to touch the story? 15 Why did it take an American paper to see the 16 significance of an issue to which so many British 17 journalists appeared blind?</p> <p>18 To give one example not yet raised I believe in the 19 Inquiry: no British news editor apparently considered it 20 interesting that a former News of the World journalist 21 was in November 2009 awarded the stunning sum of 22 £800,000 for suffering what an employment tribunal 23 regarded as a culture of bullying at the newspaper by 24 its then editor, Andy Coulson. This record payout and 25 verdict against the man who was about to walk through</p> <p style="text-align: center;">Page 29</p>	<p>1 of what journalism is. In my statement to your Inquiry 2 on press freedom last month, I quoted David Broder, the 3 former Washington Post commentator, and his definition 4 of what a newspaper was. He called it: 5 "... a partial, hasty, incomplete, inevitably 6 somewhat flawed and inaccurate rendering of some of the 7 things we heard about in the past 24 hours ... distorted 8 despite our best efforts to eliminate gross bias by the 9 very process of compression that makes it possible for 10 you ... to read it in about an hour."</p> <p>11 That passage and exposure to the American tradition 12 of public editors or ombudsmen inspired me to appoint 13 Britain's first readers' editor in 1997 and we note with 14 encouragement that since the start of your Inquiry, two 15 other newspaper groups have decided to publish regular 16 corrections and clarifications on page 2.</p> <p>17 We would be very happy to share with you our 18 thinking and experience based on nearly 15 years of 19 running a truly independent column, and the value that 20 such columns bring to the newspaper and for readers.</p> <p>21 This very local, responsive form of regulation, what 22 counsel to this Inquiry termed, I believe, internal 23 regulation, seems to us the cornerstone of responsible 24 journalism and has a material impact on culture, 25 practice and ethics.</p> <p style="text-align: center;">Page 31</p>
<p>1 the front door of Number 10 were not judged to be 2 newsworthy. But, and we've just heard this from the 3 General Secretary of the NUJ, a culture of bullying in 4 any organisation is important and it may be highly 5 pertinent to ask whether journalists on the paper felt 6 intimidated and did things they knew to be wrong.</p> <p>7 I respectfully suggest the Inquiry might like to ask 8 whether this was the case within the News of the World 9 and, if so, what safeguards can be built into news 10 organisations in future so that journalists already 11 working under ever-increasing pressure and in the 12 context of financial insecurity can exercise some moral 13 choices about the things they can't square with their 14 consciences.</p> <p>15 The answers to these questions about the response to 16 the phone hacking revisions are vital ones for anyone 17 who cares about the health of a democracy.</p> <p>18 Did people both internally and externally feel 19 a fear of News International? Was its influence across 20 many aspects of British political and cultural life 21 simply too dominant? How did News Corp leverage its 22 commercial, political, journalistic and as we now know 23 outsourced criminal muscle?</p> <p>24 The second issue relates to internal practices, and 25 particularly those which relate to an honest recognition</p> <p style="text-align: center;">Page 30</p>	<p>1 Thirdly, we've already suggested that the industry 2 might profitably learn from the thinking of others who 3 face similar challenges in relation to ethical dilemmas. 4 You're aware of and counsel has noted the questions 5 which former GCHQ director Sir David Omand suggested any 6 intelligence operation should consider in relation to 7 intrusions into privacy: the harm test, the public good 8 test, the proportionality test, the need for due 9 authorisation and the bar against fishing expeditions.</p> <p>10 Should you find it helpful, we would like to explore 11 this further. In particular, ways of demonstrating that 12 proper questioning and authorisation had taken place 13 before publication. It seems to us that this is an 14 extension of the sort of pre-publication consideration 15 and precautions which many of our reporters already use 16 under the so-called Reynolds doctrine in defamation.</p> <p>17 A mention of defamation leads us respectfully to 18 suggest, fourthly, that you consider the extent to which 19 your own thinking in respect of regulation could be 20 dovetailed with the current consultation on the 21 defamation bill before Parliament. I recognise that 22 both you and counsel have stated that this Inquiry does 23 not intend to look at the defamation bill. However, our 24 defamation laws, widely considered to be slow, costly 25 and illiberal, are often used as a sledgehammer to crack</p> <p style="text-align: center;">Page 32</p>



<p>1 a nut which could equally well be solved by a properly 2 recognised system of mediation within a system of press 3 regulation. 4 So if you're minded to entertain thoughts of radical 5 reform of the latter, it might be useful to canvass 6 views on how you could draw on an awful lot of recent 7 and creative thinking about our libel laws. Indeed, 8 your reference yesterday to mechanisms for dispute 9 resolution fair and cheap I believe are at the heart of 10 this. 11 We could stick an M for mediation in PCC, maybe call 12 it the Press Standards and Mediation Commission. It 13 could then be a one-stop shop disputes resolution 14 service, so that people seldom had to go to law to 15 resolve their differences with newspapers. It would be 16 quick, responsive and cheap, and we could even make this 17 a carrot to tempt people into the fold of independent 18 regulation, ie newspapers that signed up to it would 19 have clear advantages over newspapers that didn't. 20 Fifthly, and on regulation more broadly, it will 21 come as no surprise to this Inquiry that we weren't 22 impressed by the way that the PCC handled phone hacking. 23 We said in November 2009 that it was misleading to call 24 the PCC a regulator and we note that the incoming 25 chairman, Lord Hunt, has gone further. It is absolutely Page 33</p>	<p>1 tiller. 2 A new regulator clearly has to have teeth, the power 3 to intervene and investigate meaningfully and to impose 4 significant sanctions. 5 I note that you have questioned the overly binary 6 debate of statutory versus self-regulation and we agree. 7 If statutory regulation implies some form of state 8 control or licensing of journalists, we would oppose it. 9 The crucial issues, it seems to us, are funding and 10 cost, the expertise/independence of those who run it and 11 serve on it, and that it regulates the whole market, 12 subject, of course, to the definitional difficulties of 13 describing what the market is or will be. 14 If statute can help make independent self-regulation 15 work well, then we would welcome suggested use of 16 statute to be scrutinised properly against concerns of 17 press freedom. For example, there may be carrots and 18 sticks that once recognised in the law or by the courts 19 solve several of the challenges you have already spoken 20 of in making non-statutory regulation work. 21 As discussed above, a PCC successor might offer 22 a mediation and arbitration service covering libel. It 23 could also deal with privacy. Central to both would be 24 a workable and agreed definition of the public interest 25 that not only do we as an industry agree with but should Page 35</p>
<p>1 not a regulator, in his view. 2 So it could be argued that before we abolish 3 self-regulation, we should first try it. 4 No one has any quarrel with the job the PCC does in 5 mediating complaints. Many people think its code is 6 a good one, if a little too preoccupied with exposing 7 iniquity, and that its adjudications form a coherent 8 body of caselaw. 9 Against that, its governance looks opaque even to 10 people within the industry. Its rules on so-called 11 third party interventions are difficult to follow. If 12 it were not merely a complaints-driven system but a more 13 proactive regime which monitored, investigated and 14 encouraged cultural change, it might make systemic abuse 15 less likely to occur. 16 Its attitude towards privacy, including informal 17 pre-publication advice, is not at all clear and it's 18 a mystery as to why it launched an inquiry into 19 something that it was completely ill-equipped to 20 investigate. It was clearly lied to by the industry's 21 main player, yet appears to lack the powers or the will 22 to do anything about it. 23 So while we think there are useful things to build 24 on, we don't agree with those who think that everything 25 is currently broadly okay subject to a touch on the Page 34</p>	<p>1 also be prepared to argue in any forum. 2 Privacy is more difficult than libel in two senses. 3 It challenges the industry with the degree to which they 4 would tolerate prior restraint, and however little we 5 like the developing jurisprudence of the courts, there 6 is a problem that the further a regulator diverges from 7 the remedies available in law, the less likely it is 8 that claimants will use the services of the regulator. 9 Finally, and this speaks to all the modules, it 10 seems to us that there's a pressing need to examine the 11 issue of plurality and competition framework. Only last 12 month the tiny family-owned Kent Messenger Group was 13 prevented from taking over seven Northcliffe titles 14 because of the distortion of the newspaper market in 15 East Kent. Yet, until the post-Milly Dowler 16 intervention of MPs in July 2011, there appeared to be 17 nothing anyone could do to prevent News Corp from 18 effectively doubling its already remarkable dominance of 19 British media by acquiring the 61 per cent of BSKyB it 20 didn't already own. 21 If you come to the view that there was a genuine 22 fear of News International in public life, partly, but 23 only partly, on account of what private investigators 24 and criminal figures were employed by them to dig up, 25 then it's important, we submit, to recommend Page 36</p>

<p>1 a regulatory and legal framework which prevents media 2 companies in this country from acquiring too much 3 dominance.</p> <p>4 All journalists worry about any form of interference 5 in freedom of expression and you will have picked up on 6 a widespread anxiety about whether new forms of 7 regulation might inhibit us. From one point of view, 8 no one currently gains very much from regulation. You 9 might think the Financial Times doesn't really need the 10 PCC to make sure that it stays on the ethical straight 11 and narrow. The Northern and Express titles showed just 12 what they thought of constant criticism by the PCC by 13 walking out of it. Some regional and magazine editors 14 see little gain and much expense.</p> <p>15 The PCC, for all its failings, was born from the 16 view that there was an overriding imperative to agree 17 a common professional and ethical code to which we would 18 not merely pay lip service but which would actually 19 inform everything we did. Only by acting together could 20 we repel the people who really were looking for any 21 excuse to tie our hands, and so we lashed ourselves 22 together in order to be stronger.</p> <p>23 I think the public has also gained from this, and in 24 the aftermath of an episode in which thousand of members 25 of the public were illegally targeted by journalists,</p> <p style="text-align: center;">Page 37</p>	<p>1 much in the public interest and has the public interest 2 very much at its heart. But I think you're right, as 3 indeed everybody else has realised, that there is 4 a distance now to go which we can't ignore, and which we 5 ignore at our peril.</p> <p>6 So let me just ask you a few questions about what 7 you've said, and if you can't answer them now, that's 8 fair enough, I just want them to be thought about.</p> <p>9 When Mr Jay opened the case, he spoke about these 10 two narratives, the positive and the negative, and I've 11 heard not surprising concern expressed by some of the 12 core participants about anonymous evidence and 13 I understand that, and from a background of the criminal 14 law where anonymity has caused enormous problems, 15 I recognise the issues that are thrown up, but how am 16 I going to get to the bottom of the culture which is 17 hinted at, which is spoken of this morning, unless 18 people are prepared to say it? And how am I going to 19 help those that are concerned about the potential impact 20 that that will have upon them, and their livelihood, 21 which is a not at all ignoble concern, to try and expose 22 what needs to be exposed so that we can get an idea of 23 the corners of the problem?</p> <p>24 So that's the first series of questions that I have. 25 The second is the slightly different picture that</p> <p style="text-align: center;">Page 39</p>
<p>1 it's important that we keep them in front of mind at all 2 times.</p> <p>3 The coming period of examination of the press will 4 doubtless be an uncomfortable one in some respects, but 5 we're sure that you will have in your mind the good 6 things that journalists do which more than ever need 7 protection, as well as the work of the 99 per cent of 8 British journalists who wouldn't have a clue how to hack 9 a phone, who don't go to work to snoop into the private 10 lives of others. And it's our hope that with creative 11 thinking you and your team can find ways of bolstering 12 all the good that flows from the best journalism while 13 cutting out the worst.</p> <p>14 LORD JUSTICE LEVESON: Mr Rusbridger, that sounds like 15 a target in itself.</p> <p>16 I'm conscious and have been conscious from the 17 various presentations that you've made, both the 18 seminars and the speeches you've given, that this is 19 a topic which has obviously exercised your mind for some 20 considerable time, and therefore I would very much 21 welcome not merely a restatement of the problems, which 22 I am starting to get to grip with, but also some help 23 with solutions that work for everybody. Nobody need 24 convince me that the vast majority, the overwhelming 25 majority of journalism practised in this country is very</p> <p style="text-align: center;">Page 38</p>	<p>1 some of the media representatives portray to the picture 2 presented by others. It's encapsulated in the concern 3 that was expressed at a very early stage about lack of 4 tabloid experience, and by tabloid I mean red top rather 5 than including in that description the size of the paper 6 upon which the newspaper is printed. That's not what 7 I'm talking about, as everybody understands.</p> <p>8 Nobody has suggested that the ethics of those that 9 are mass market newspapers should be different to those 10 which are rather more targeted, and that seems to me to 11 be right, but there is no doubt, it seems to me, that 12 concepts of privacy about which you spoke are 13 differently perceived by different titles, and I need to 14 know how to address that. I need to know how I should 15 be thinking about the concept of privacy, and to what 16 extent obviously those who have been affected by issues 17 of privacy will have extremely strong views, and where 18 the balance is. I think that's a struggle.</p> <p>19 You mention what safeguards can be built into news 20 organisations so that journalists can exercise moral 21 choices. That echoed something that Ms Stanistreet said 22 about the conscience clause, but is it appropriate for 23 me to be requiring that? Is that a way forward? I'm 24 very concerned about the extent to which the law ought 25 to be prescribing any of these things, not least because</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 that itself impacts on the freedom that I have no doubt 2 is critical to the exercise of journalistic 3 responsibilities.</p> <p>4 Then you talk about oversight and governance, which 5 I've already mentioned. If there is to be a public 6 benefit test as I believe there should be, then it 7 obviously has to be subjective if the journalist and the 8 editor has to believe it, but secondly, is there place 9 for some objective criteria and a demonstration of 10 oversight that establishes that it has been thought 11 about?</p> <p>12 It will come particularly to the fore where stories 13 don't actually prove themselves. You could take a story 14 such as the cricketing revelations recently and say, 15 well, that demonstrates, and indeed it does demonstrate, 16 the power of investigative journalism, where there was 17 a real public interest. But one has to be able to make 18 that decision before one knows the result of the test. 19 In other words, you have to have some mechanism to 20 decide this line which is going to involve blagging and 21 steps which might otherwise be a legitimate subject of 22 complaints, is overridden by public interest, even if in 23 the end you don't get the lollipop because nothing comes 24 of it, and yet it then comes out. That's another issue 25 and that's an issue which has to be tested at various</p> <p style="text-align: center;">Page 41</p>	<p>1 into the law and that runs parallel, because I'm not 2 going to be one that cuts anybody out from coming to 3 law, but I do feel that everybody could benefit from 4 some mechanism -- at least I think I feel; I'm only 5 beginning and none of these views are formed, they're 6 merely thoughts -- as to how one can set something up 7 that is for the benefit of everybody.</p> <p>8 You mention a carrot and a stick, but how am I going 9 to persuade those that don't even subscribe to the PCC 10 that it's a sensible approach? And how am I going to 11 involve that other great media outlet now, the Internet, 12 to buy in?</p> <p>13 You pick up the point about teeth, and my concern 14 about the binary issue, and I'm sure that the 15 approach -- no, I can't say I'm sure. I feel it's 16 likely that the approach is going to require something 17 rather more nuanced than one or the other, but how can 18 that work in a way that doesn't -- and if I say this 19 once a day, I hope people will believe me -- doesn't 20 impact on the freedom of the press and the freedom of 21 expression, both of which I believe are absolutely 22 fundamental to our society, and I will carry on saying 23 it because that is absolutely my view.</p> <p>24 Then you mentioned the competition. The word 25 plurality came into my terms of reference quite late in</p> <p style="text-align: center;">Page 43</p>
<p>1 stages.</p> <p>2 The problem about pre-publication authorisation, 3 just to raise a concept -- and I'm afraid you are now 4 getting a whole series of questions which is really, of 5 course, addressed to everybody and come out of 6 everything that everybody's said, but because you're the 7 last core participant, you're going to get it from me -- 8 is how one is going to test some sort of authority.</p> <p>9 I mean, I know there's been a very real concern, and 10 indeed Mr Mosley has pursued through to Europe issues of 11 notification, but on what basis would that decision be 12 made? Would it be made on the basis of the story that 13 the press wants to put in the public domain or would it 14 require some detailed examination of the facts to see 15 whether that story is justified?</p> <p>16 I'm not answering these questions, I'm merely asking 17 them.</p> <p>18 Let me just carry on to the next point.</p> <p>19 I think there is a great deal of scope in finding 20 some mechanism that allows for the resolution of 21 disputes between members of the public and the press 22 short of the courts, because it's become so expensive or 23 so dependent upon conditional fees that it isn't 24 available to many. I would like to investigate the idea 25 of having some sort of service that does that, that ties</p> <p style="text-align: center;">Page 42</p>	<p>1 the day and raised monumental problems, but how is one 2 to do that? And even if we are where we are, how is one 3 to take that forward in a way that respects independence 4 and takes the decision-making into an area that is 5 cognisant of those problems?</p> <p>6 So they're just a stream of consciousness, really, 7 based upon things that you've said but also that I've 8 heard this morning and heard over the last few days.</p> <p>9 I don't ask you to answer this examination paper 10 immediately, but if there's anything that you do want to 11 add, because some of those I might have asked as 12 questions while you were speaking, you're very welcome 13 to do so. Otherwise, everybody can take on board what 14 I have said and think about the ways in which we can 15 address them in the weeks that are to come.</p> <p>16 I want this Inquiry to mean something. I am, and 17 I repeat, very concerned that it should not simply form 18 a footnote in some professor of journalism's analysis of 19 the history of the 21st century while it gathers dust.</p> <p>20 This is an opportunity for your industry, your 21 profession, and I'm very keen that it's used as 22 profitably by everybody so that the vast expense that 23 all are incurring is not wasted.</p> <p>24 That was a speech I didn't expect to make and wasn't 25 planning, but I hope that it's of value.</p> <p style="text-align: center;">Page 44</p>

<p>1 If there's anything you want to add to what I've 2 said, I would be very grateful. 3 MR RUSBRIDGER: Thank you for responding so creatively to 4 what I said, and if I just give you some brief reactions 5 to what you've said to me and then we can consult and 6 respond more fully. 7 On the point of anonymous evidence, I think that is 8 clearly a difficult one. The reason that Nick Davies 9 and the New York Times and later Panorama and 10 Dispatches, ie journalists were able to get at this 11 story in a way that the police and the PCC weren't was 12 because they spoke to journalists off the record. So 13 when the New York Times turned up in town, we said to 14 them, "If you find and speak to enough people on the 15 News of the World, they will tell you the same thing 16 that they told Nick Davies", which was that this stuff 17 was going on, that it was known about, it was rife and 18 it was ingrained in the paper. 19 The New York Times managed to get two journalists to 20 speak on the record, and the third police inquiry 21 immediately announced they would interview these 22 witnesses as suspects under caution, and of course that 23 got nowhere. 24 So there was a contrast between the people who were 25 trying to get public evidence and didn't get to the</p> <p style="text-align: center;">Page 45</p>	<p>1 in libel, use that less and are more threatened by 2 privacy issues. 3 When asked by the House of Commons and the joint 4 committee looking into privacy, my answer has always 5 been that we haven't yet been -- we get the injunctions 6 that everyone else gets about privacy, but no one has 7 yet tried to stop the Guardian from writing about 8 anything on the basis of privacy, and when I gave 9 evidence with John Witherow, the editor of the 10 Sunday Times, before the joint committee the other day, 11 he said more or less the same. He said he thought the 12 balance at the moment was about right. 13 But there are different business models involved and 14 I think the only way it's going to work is for the 15 industry to come together around a public interest 16 defence that they agree to and are prepared to defend. 17 It's been quite striking to me that in the rash of 18 privacy injunction cases in the courts earlier this 19 year, if you do an analysis of them, and there's a handy 20 analysis sitting on the Guardian law site, in most cases 21 the newspapers don't argue that it was in the public 22 interest as defined by the code, so I think we have to 23 have a public interest defence that we believe in and 24 are prepared to argue and if we're not prepared to argue 25 then that tells you something --</p> <p style="text-align: center;">Page 47</p>
<p>1 truth, and the people who took off the record evidence 2 and did get to the truth. 3 LORD JUSTICE LEVESON: That makes an assumption, actually, 4 but I take the point. 5 MR RUSBRIDGER: Yes, well. 6 LORD JUSTICE LEVESON: No, I understand the point. 7 MR RUSBRIDGER: I think it's inevitable, and I hear what the 8 General Secretary of the NUJ said about the fear of 9 people -- I mean, there are two factors that are going 10 to be at the back of people's mind. One is the 11 retribution factor, which Michelle Stanistreet talked 12 about, which is you're going to be unemployable if you 13 say bad things about the industry in front of this 14 committee, and the other obviously is that if people 15 were frank the police are going to come along and arrest 16 them. 17 So those are two difficult factors which you're 18 going to have to think about and I know you've given 19 a lot of thought to already. And we can think further. 20 On the tabloids versus the broadsheets and privacy, 21 it's true that there is a divide between different types 22 of newspapers, and broadly and crudely, the so-called 23 broadsheets have been more interested in the law of 24 libel and the development of the so-called Reynolds 25 principles, and the tabloids are broadly less interested</p> <p style="text-align: center;">Page 46</p>	<p>1 LORD JUSTICE LEVESON: And it must recognise -- I'm sorry 2 I'm now interrupting, but it must recognise, mustn't it, 3 that different newspapers have different audiences who 4 are interested in different things? 5 MR RUSBRIDGER: That is true, and I take on board all the 6 things that my colleagues say about the fact that the 7 commercial model of some newspapers is built on an 8 entirely different kind of content, but it's a slippery 9 road if you go down that argument too much because it 10 ends up at the News of the World. Unless you have 11 universal principles around which we agree, and this is 12 the business of how we lash ourselves together in 13 industry, about things in which -- where we come from 14 different starting points, it has to be around a common 15 idea of what the public good and public interest is. 16 And we must mean that. Including arguing it in court. 17 On the conscience clause, again off the top of my 18 head, I would have thought there would be things that 19 would help this tribunal in the provisions of 20 whistle-blowing, so lots of companies do have 21 whistle-blowing clauses built into their governance, 22 and -- 23 LORD JUSTICE LEVESON: There's now legislation for it. 24 MR RUSBRIDGER: Quite. So there must be something there, 25 but I'm not a lawyer and that's something on which</p> <p style="text-align: center;">Page 48</p>

<p>1 I shall take further legal advice.</p> <p>2 On the public benefit test, I think it is similar to</p> <p>3 the Reynolds test, which, as broadsheets, we're quite</p> <p>4 used to dealing with now, so the best investigative</p> <p>5 reporters on the Guardian know that they have to</p> <p>6 answer -- they may be asked these questions if they want</p> <p>7 to avail themselves of the Reynolds defence. It's about</p> <p>8 who the source is, what's the motive of the source,</p> <p>9 what's the quality of the information, have you put the</p> <p>10 information to the people you're writing about in</p> <p>11 advance, have you given them time to respond, have you</p> <p>12 included their response?</p> <p>13 You're familiar with the Nicholls test. Although</p> <p>14 I think as an industry we would say that Reynolds didn't</p> <p>15 work particularly well when it was tested in the courts</p> <p>16 until the Jameel judgment in the House of Lords,</p> <p>17 nevertheless at the Guardian we have been able to</p> <p>18 publish a lot of stories that we wouldn't have been able</p> <p>19 to publish in the past because the lawyers on the other</p> <p>20 side kind of know the process that's been gone through</p> <p>21 and they recognise that they're not going to be able to</p> <p>22 get a case up and running.</p> <p>23 So I think that Reynolds is working quite well, and</p> <p>24 you can take some of that into this privacy thing and</p> <p>25 that's where the Omand rules are quite interesting,</p> <p style="text-align: center;">Page 49</p>	<p>1 questions for a regulator to ask.</p> <p>2 LORD JUSTICE LEVESON: I seem to be doing it all at the</p> <p>3 moment, but at least thinking about it.</p> <p>4 MR RUSBRIDGER: Yes.</p> <p>5 Notification I think is complex because it meshes in</p> <p>6 with lots of other different bits of media law which</p> <p>7 engage prior restraint. So if you have a confidential</p> <p>8 document which perhaps you shouldn't have, or you want</p> <p>9 to put it to the subject in advance for libel reasons,</p> <p>10 you run the risk that they will get an injunction under</p> <p>11 confidence and the story will never appear.</p> <p>12 LORD JUSTICE LEVESON: I understand the problem, and that's</p> <p>13 an issue that has to be addressed, and I have some very,</p> <p>14 very quarter-formed ideas, but I'm keen to get ideas</p> <p>15 from everybody, actually, to see ways in which this</p> <p>16 could work. I mean, we're only Day 3, and we're going</p> <p>17 to get to Day 100 and something, I would have thought,</p> <p>18 so there's plenty of time, but the purpose of the</p> <p>19 openings is just to put all these things out there.</p> <p>20 MR RUSBRIDGER: Yes. Is this helpful for me to just</p> <p>21 respond --</p> <p>22 LORD JUSTICE LEVESON: Carry on, yes.</p> <p>23 MR RUSBRIDGER: Disputes resolution and the carrots and</p> <p>24 sticks. I mean, what we've been thinking -- obviously</p> <p>25 under Article 6, anybody can go to law who wants to.</p> <p style="text-align: center;">Page 51</p>
<p>1 because if you can say yes, we did consider the harm,</p> <p>2 the good, the proportionality, it was authorised, and</p> <p>3 no, this wasn't a fishing expedition, which goes to your</p> <p>4 point about things that may have public interest at the</p> <p>5 end that didn't look at though they would at the</p> <p>6 beginning or vice versa --</p> <p>7 LORD JUSTICE LEVESON: Correct.</p> <p>8 MR RUSBRIDGER: -- if you can show your working -- now,</p> <p>9 I know some of my colleagues and the legal team would be</p> <p>10 anxious if that became the kind of official audit, but</p> <p>11 nevertheless I think it's inevitable that any form of</p> <p>12 regulation is going to say: who knew about this in</p> <p>13 advance? What questions were asked? Were any notes</p> <p>14 taken? And I think if newsrooms in the way that they</p> <p>15 handle Reynolds began to handle these issues in the same</p> <p>16 way --</p> <p>17 LORD JUSTICE LEVESON: I'm not suggesting something that</p> <p>18 PricewaterhouseCoopers could come and read. I'm</p> <p>19 actually suggesting something rather less sophisticated</p> <p>20 than that, to demonstrate that there is a system.</p> <p>21 MR RUSBRIDGER: Yes.</p> <p>22 LORD JUSTICE LEVESON: That actually these things were</p> <p>23 thought about and not just after the event, but in</p> <p>24 anticipation.</p> <p>25 MR RUSBRIDGER: Yes, and I think these are reasonable</p> <p style="text-align: center;">Page 50</p>	<p>1 I think that a mediator in a pretty cost-free way could,</p> <p>2 at an early stage, look at meaning, could explore the</p> <p>3 degree to which the facts contested could decide on the</p> <p>4 facts, could deal with the prominence of an apology and</p> <p>5 the wording of an apology. All these things that can</p> <p>6 take months at huge expense to do through the courts</p> <p>7 could be done by a mediator.</p> <p>8 If a mediator kept notes of all that, so there was</p> <p>9 a record of that discussion, so that if the mediation</p> <p>10 fell apart you could then show that to a judge, if it</p> <p>11 went on to trial, and the judge could then recognise</p> <p>12 whether the newspaper had made a genuine attempt to</p> <p>13 reach resolution, that could be reflected in the costs</p> <p>14 or the damages or it could be regarded as a complete</p> <p>15 defence. If a newspaper had early on put their hands</p> <p>16 up, confessed their error and said, "We will correct</p> <p>17 this prominently and pay the damages" and that had been</p> <p>18 rejected by the claimant, as has happened to us on</p> <p>19 occasion, I think the judge could then say, "Actually,</p> <p>20 I think that is a defence". So it's something like the</p> <p>21 offer of amends or a Part 36 offer.</p> <p>22 LORD JUSTICE LEVESON: You'd have to have the mediator to</p> <p>23 have the ability to assess damages up to perhaps</p> <p>24 a certain level.</p> <p>25 MR RUSBRIDGER: I don't see why not, yes. And I'm not</p> <p style="text-align: center;">Page 52</p>

<p>1 a lawyer, so the degree to which the primary legislation 2 would have to be involved in order to embed that -- 3 which sort of takes us onto the next issue because this 4 is the statutory versus non-statutory bit. The 5 statutory bit that says in setting up this independent 6 regulator we need to tweak bits of law in order to give 7 force to these things, in order to dovetail aspects of 8 law, we don't have a problem with, as long as the 9 regulation itself doesn't sniff of statutory regulation.</p> <p>10 LORD JUSTICE LEVESON: Yes, well, I think in the speech the 11 Lord Chief Justice made, he observed models whereby the 12 government isn't appointing anybody, but is setting out 13 regimes whereby independent people are appointed, who 14 then appoint, and one of the examples he gave was the 15 Judicial Appointments Commission.</p> <p>16 MR RUSBRIDGER: Yes.</p> <p>17 LORD JUSTICE LEVESON: Anyway, these are all things for the 18 future. Mr Rusbridger, thank you very much indeed. 19 That's probably a convenient moment to have a break so 20 that the fingers of the shorthand writer can cool down. 21 We'll come back at about 11.30. Thank you.</p> <p>22 (11.15 am 23 (A short break) 24 (11.30 am)</p> <p>25 LORD JUSTICE LEVESON: Before Mr Sherborne starts, two Page 53</p>	<p>1 and everyone else did yesterday, to the representatives 2 of the two largest press organisations in this country.</p> <p>3 We are here, as you said, not just because of the 4 shameful revelations which have come out of the hacking 5 scandal, but also because there has been a serious 6 breakdown of trust in the important relationship between 7 the press and the public, and it is the general public 8 whom my clients represent in one very real sense.</p> <p>9 It is really this breakdown of trust that we are 10 here to deal with. That is the terms, of course, of 11 module one of part 1 of this Inquiry. But before 12 I launch into my speech, can I say this? It hardly 13 fills my clients or the public, I suspect, with great 14 confidence that, having listened to the two largest 15 newspaper groups in this country in the face of the 16 well-documented problems, in the face of the experiences 17 which my clients' evidence highlights, and in terms of 18 what this says about the ethics, culture and practices 19 of the press, or at least a certain section of the 20 press, that rather than suggest some concrete solutions 21 to rectify them, or even recognise that there is 22 anything really wrong, other than the unfortunate 23 hacking incident, as they see it, they both urge you 24 that a freer press is the answer.</p> <p>25 We say that this is symptomatic of a level of Page 55</p>
<p>1 things.</p> <p>2 First of all, although I addressed a series of 3 questions to Mr Rusbridger, they should be treated as 4 questions to everybody. I'm sure they will be.</p> <p>5 Right, Mr Sherborne, I haven't had anything in 6 writing at all from you. I have from everybody else. 7 Should I have got?</p> <p>8 MR SHERBORNE: Sir, you will get.</p> <p>9 LORD JUSTICE LEVESON: Oh. Retrospectively?</p> <p>10 MR SHERBORNE: It will cover topics which, although touched 11 upon in the oral submissions I'm about to make to you, 12 are largely or fleshed out, I would say, in the written 13 submissions. Part of the purpose of the oral 14 submissions are of course to open the evidence that 15 you'll hear from my clients.</p> <p>16 LORD JUSTICE LEVESON: Yes.</p> <p>17 MR SHERBORNE: But I will provide the Inquiry with written 18 submissions before the evidence starts on Monday next 19 week. It concerns, as you'll appreciate, legal issues 20 as opposed to evidential ones.</p> <p>21 LORD JUSTICE LEVESON: Right.</p> <p>22 Opening submissions by MR SHERBORNE</p> <p>23 MR SHERBORNE: Sir, along with Mr Crossley and his team at 24 Collyer Bristow I represent the core participant 25 victims, all 51 of them. I sat and listened, as you did Page 54</p>	<p>1 complacency amongst the British press, or a part of it. 2 Such editors or newspapers, as was clear from the 3 seminars of the Inquiry last month, are firm members of 4 the "see no, speak no, hear no evil" brigade. It is 5 a theme to which I will return in due course.</p> <p>6 Before I continue, can I just explain one term, 7 which may well recur throughout my submissions. I've 8 already referred to a certain section of the press. Let 9 me not be Delphic. After all, it's not my strong point. 10 By that I am referring to the tabloid or popular end of 11 the press, and in that I do include the Associated 12 titles.</p> <p>13 Whilst I accept, indeed I would urge the Inquiry, 14 insofar as it seeks to set standards for journalistic 15 activity, that these are standards which must apply 16 across the board, the experience of my clients, the 17 victims -- and I am here to represent them, not to be 18 impartial -- is primarily and largely at the hands of 19 that certain section of the press, as I will call it, 20 a big section nevertheless, but it is still a particular 21 section.</p> <p>22 Whilst I'm also sure there are many people who have 23 complaints against the broadsheet newspapers, the main 24 elements of what the core participant victims complain 25 about here in terms of intrusion into their privacy, Page 56</p>

<p>1 principally, are features very much of the tabloid or 2 popular newspaper market, something which Mr Rusbridger 3 touched on only moments ago. 4 So far, so good. Let me begin then. 5 There are currently 13 or so journalists from the 6 News of the World as well as a journalist from its 7 sister newspaper, the Sun, who have been arrested and 8 are waiting further questioning. However, it is the 9 whole of the press, and in particular the tabloid 10 section of it, which we say stands in the dock, at least 11 metaphorically so, and certainly in the court of public 12 opinion, if not here. 13 The nature of the charge, at least against some of 14 the press, concerns their culture, practices and ethics, 15 but the indictment could as easily read as follows: 16 illegally accessing people's private voicemails, bribing 17 employees into divulging personal information, blagging 18 sensitive details through deception and trickery, 19 blackmailing vulnerable or opportunistic individuals 20 into breaking confidences about well-known people, the 21 blatant intrusion into the grief of victims of crime, 22 the vilification of ordinary members of the public 23 unwittingly caught up in such events, the hounding of 24 various well-known people, their families and friends, 25 purely because this sells newspapers, and finally, the</p> <p style="text-align: center;">Page 57</p>	<p>1 of this when a former tabloid editor, Mr MacKenzie, 2 spoke at one of the seminars. A man who boasted that in 3 his considerable experiences he only checked his sources 4 once. An editor whose view was: if it sounds right, it 5 probably is right, and so you lob it in anyway. Nothing 6 has changed. 7 Before one says, as another former editor and now PR 8 said at the seminar, that this type of journalism has 9 been firmly consigned to the history books of 10 Fleet Street, you should remember that Mr MacKenzie is 11 still deeply involved in this industry and is currently 12 a prize columnist employed by the Daily Mail. 13 Sir, as you said at the outset, it is not the 14 function of this Inquiry to offer applause or to make 15 specific criticisms of any one newspaper or another. My 16 role here is not to give applause to anyone. My role on 17 behalf of those who had suffered at the hands of the 18 press over a number of years means that I am here to 19 highlight the wrongs, systemic, flagrant and deeply 20 entrenched as I say they are. 21 As I've said, I represent the victims and this is 22 really their story. My submissions will be laced 23 throughout with the accounts that they give. 24 While there are 51 core participant victims, there 25 are in fact many, many more people with similar stories,</p> <p style="text-align: center;">Page 59</p>
<p>1 bullying of those who, in seeking to question these 2 practices, are therefore merely exercising the very same 3 freedom of speech behind which much of this behaviour is 4 sought to be shielded or excused by the press. 5 Quite an impressive charge sheet, you might think. 6 No wonder it may take this Inquiry some time to conduct 7 the investigation. It may take me a little time today, 8 as well, to outline the true, unvarnished extent of the 9 tawdry journalistic trade that we now have in this 10 country, particularly in the publication of personal 11 information about people's private lives, information 12 that in some cases has been rightly denied to the press, 13 or anyone else, as a matter of law. 14 The real code of practice, we say, seems to be for 15 such journalists, in publishing stories about the 16 private lives of people in the public eye, that what you 17 can get away with you buy, regardless of whether it is 18 illegal, unlawful or just plain wrong. What you can't 19 buy you procure, often through deception and lies. What 20 you can't procure you just plain steal. And what you 21 want to publish but you can neither verify nor 22 necessarily prove, you simply make up, because it sounds 23 right or it sells newspapers. 24 On that last point, don't just take my word for it, 25 as they say. We were all treated to a classic example</p> <p style="text-align: center;">Page 58</p>	<p>1 similar experiences, similar narratives of how their 2 lives have been ruined or adversely impacted by the kind 3 of culture, ethics and practices which you will hear 4 evidence about from a selection of individual core 5 participant victims. These victims can explain their 6 feelings and their experiences far more eloquently and 7 far more vividly than I can paraphrase. 8 One may be forgiven if one attended or heard the 9 seminars last month from thinking that it is the press 10 who are the victims here. Victims of draconian libel 11 laws, victims of greedy lawyers on no win no fee 12 agreements, victims of unaccountable judges who 13 arbitrarily impose gagging orders on them preventing 14 them telling us, the public, about what the rich and 15 famous get up to in private. 16 This is no accident. The press is a powerful body. 17 They have a common interest and a self-serving agenda. 18 Why wouldn't they, after all? This is about survival, 19 and they have lobbied hard to try and push their agenda 20 through the pages of their own highly influential 21 newspapers, to influence politicians with the sole 22 objective that there should be less rather than more 23 restriction or regulation, and that if this was so, 24 journalism would be even better. 25 If you need proof positive that it would not, then</p> <p style="text-align: center;">Page 60</p>

<p>1 the setting up of this Inquiry provides it.</p> <p>2 However, the press have a very powerful voice and</p> <p>3 should not, as Mr Jay said, be allowed to drown out the</p> <p>4 voices of the victims. As the embodiment of that voice,</p> <p>5 a lone voice, of course, amongst the serried ranks of</p> <p>6 newspapers and lawyers on either side of me, I can say</p> <p>7 that I don't intend to be drowned out, but I will show</p> <p>8 that unfortunately, sir, as you feared, a number of</p> <p>9 individuals have already been vilified for agreeing to</p> <p>10 share their experiences with this Inquiry, and I will</p> <p>11 return to this later.</p> <p>12 There is, of course, a real difference between</p> <p>13 freedom of speech and freedom of the press. The two</p> <p>14 should not necessarily be seen as the same. While the</p> <p>15 first is an understandable and fundamental principle, we</p> <p>16 can see where an entirely free press, as some would</p> <p>17 suggest, has got us, and before I leave the narrative</p> <p>18 which the press wish to espouse, it is worth remembering</p> <p>19 what another former editor, Ms Rebekah Brooks, told the</p> <p>20 House of Commons Select Committee in 2003:</p> <p>21 "Self-regulation under the guidance of the PCC", she</p> <p>22 claimed, "has changed the culture in Fleet Street and in</p> <p>23 every single newsroom in the land."</p> <p>24 I presume by that she meant it in a positive way.</p> <p>25 Well, eight years on, it is for you to decide, sir,</p> <p style="text-align: center;">Page 61</p>	<p>1 However, before I outline this bigger picture, it is</p> <p>2 important to remember at all times that however loud the</p> <p>3 voice of the press may be raised, whether in this room</p> <p>4 or, more likely, outside, through the filter of their</p> <p>5 very own newspapers, there is a reason why we are all</p> <p>6 here and it isn't because the press got it right and it</p> <p>7 isn't because there needs to be greater latitude and</p> <p>8 freedom given to them.</p> <p>9 So let's start with the breaking point which caused</p> <p>10 this Inquiry to be set up.</p> <p>11 In the beginning was the word, and the word was</p> <p>12 hacking. A term whose significance until relatively</p> <p>13 recently one could have been forgiven for not really</p> <p>14 appreciating. Forgiven if you were a member of the</p> <p>15 public, that is, since the arrest and conviction of</p> <p>16 Messrs Mulcaire and Goodman in 2006 was reported but</p> <p>17 hardly with the level of impact or weight that everyone</p> <p>18 now realises it truly deserved.</p> <p>19 Nevertheless, whilst its significance may not have</p> <p>20 heavily impacted upon the public consciousness at the</p> <p>21 time, it was something of which the press or certain</p> <p>22 sections of it were well aware.</p> <p>23 They chose to ignore it publicly. That was until</p> <p>24 Nick Davies wrote about it so famously in 2009. Yes, it</p> <p>25 took a journalist to do it, which is important to note.</p> <p style="text-align: center;">Page 63</p>
<p>1 what you think about that as a statement of fact.</p> <p>2 However, it's hard to resist the temptation to comment</p> <p>3 that if this is the press's own assessment of</p> <p>4 self-regulation, I could just as well sit down now.</p> <p>5 It is equally tempting to point out that it was</p> <p>6 during the same evidence that Ms Brooks, the editor then</p> <p>7 of the Sun, admitted paying money to police officers.</p> <p>8 Mr Coulson, then editor of the News of the World,</p> <p>9 sitting to her side, stepped in to reassure the</p> <p>10 committee not only that this only happened in cases of</p> <p>11 public interest, but to make the now spectacular</p> <p>12 ill-judged assertion that they at News International</p> <p>13 always operated within the law.</p> <p>14 What damage, I've heard it asked, admittedly by</p> <p>15 those whose self-interest requires them do so, what</p> <p>16 damage has really been suffered by these practices?</p> <p>17 We'll hear from a number of people who provide, as I</p> <p>18 say, a better answer than I can. It is, as I said,</p> <p>19 merely a selection. There are not enough details, not</p> <p>20 enough room in court for everyone. It is a sample, sir,</p> <p>21 as you call it of the bigger picture, a glimpse of the</p> <p>22 scale of the problem, and it comes mostly from those who</p> <p>23 have hit the headlines, quite literally, but for every</p> <p>24 one of them, it should be noted that there are many,</p> <p>25 many others.</p> <p style="text-align: center;">Page 62</p>	<p>1 An old-fashioned investigative journalist, if Mr Davies</p> <p>2 doesn't mind me calling him such, and no one here is</p> <p>3 saying that they should be rendered redundant.</p> <p>4 Of course, it was never going to be the tabloid</p> <p>5 press themselves who confessed or self-regulated on</p> <p>6 this. It wasn't the police or politicians who reported</p> <p>7 it either, both of whom were likely aware. Perhaps</p> <p>8 Harold Pinter was right when he said, "Most of the press</p> <p>9 is in league with the government or the status quo". No</p> <p>10 doubt the accuracy of that statement is something, sir,</p> <p>11 which you will consider in the later modules of part 1</p> <p>12 of this Inquiry.</p> <p>13 So now to begin with the narratives of those who</p> <p>14 will give evidence before you.</p> <p>15 On 21 March 2002, a 13-year-old girl was abducted</p> <p>16 and murdered on her way home from school. Her name was</p> <p>17 Milly. Between March and September 2002, she was still</p> <p>18 believed missing, not just by the public, but most</p> <p>19 importantly, by her family. Five days later, after her</p> <p>20 disappearance, a mystery caller left a voicemail message</p> <p>21 on Milly's phone, apparently inviting her to a job</p> <p>22 interview in the Midlands. The call was a hoax.</p> <p>23 A particularly cruel and insensitive hoax.</p> <p>24 It was such an awful story that it made the front</p> <p>25 pages. A certain now defunct newspaper put it in their</p> <p style="text-align: center;">Page 64</p>



<p>1 first edition: "Missing Milly hoax outrage". Whilst the 2 woman who made that call and thereby caused distress to 3 poor Milly's family was convicted and imprisoned for 4 five months, what we now know is that another outrage, 5 another act of cruelty and insensitivity, was the one 6 which was nowhere mentioned in the News of the World, 7 and that was the fact that Mr Mulcaire, acting in the 8 course of his work for the newspaper, had deliberately 9 accessed and listened to the missing 13-year-old's 10 voicemail, and worse still, he had even deleted some to 11 ensure there was room for waiting voicemails to come 12 through to her otherwise full mailbox.</p> <p>13 We don't know who within the News of the World 14 authorised this and at what level. We can speculate, 15 but that's not the purpose of part 1 of this Inquiry. 16 The individual names of those involved in such 17 activities are to be anonymised, in a twist of irony 18 that, whilst it is understandable to protect the 19 criminal prosecution, will not be lost on those whose 20 anonymity has been shattered in the past by tabloid 21 journalists.</p> <p>22 Of course, the hacking of Milly's phone did not come 23 out until July of this year, her parents having been 24 told just before the criminal trial started in April. 25 And it was this revelation which finally provoked the</p> <p style="text-align: center;">Page 65</p>	<p>1 disappearance. A way of coming to terms with their 2 grief in private. Or so they thought.</p> <p>3 But their moment of grief was obviously a photo 4 opportunity too good to resist. Somehow the press found 5 out that they were undertaking that last walk on that 6 particular day and at that particular time. Their 7 voicemails, they suspect, theirs of course, not Milly's 8 this time, were being listened to.</p> <p>9 The News of the World published an article on that 10 day under the headline "The longest walk", complete with 11 pictures of the distressed couple and a side bar which 12 read, without even a hint of introspection: 13 "Face etched with pain, missing Milly's mum softly 14 touches a poster of her girl as she and hubby retrace 15 her last footsteps."</p> <p>16 And alongside the picture was a caption which read 17 as follows: 18 "Mile of grief. The Dowlers follow Milly's 19 footsteps from Walton station and below mum Sally can't 20 help but touch the poster of her daughter." 21 First stolen voicemail messages. Why not then steal 22 these precious moments too? Ethically, what's the 23 difference?</p> <p>24 Both Sally and Bob Dowler will give evidence on 25 Monday. They will be the first of my clients to do so.</p> <p style="text-align: center;">Page 67</p>
<p>1 government into setting up this Inquiry. Mr and 2 Mrs Dowler will tell you in their own words what it felt 3 like in those moments when Sally, her mother, finally 4 got through to her daughter's voicemail after persistent 5 attempts had failed because the box was full, and the 6 euphoria which this belief created, false as it was, 7 unfortunately.</p> <p>8 Perhaps there are no words which can adequately 9 describe how despicable this act was, but the Dowler 10 story is just one of those you will hear. It comes 11 first, for obvious reasons, but it is not just a story 12 about hacking, in the same way as this Inquiry is an 13 investigation into the much broader and bigger picture.</p> <p>14 The Dowlers were subjected to terrible intrusion by 15 the press, intrusion at a time of immense grief, and as 16 I will describe, they are by no means alone in this 17 experience. For example, they will explain how in the 18 weeks following her disappearance, and when the 19 reporting frenzy had calmed down, the couple decided to 20 repeat the very walk which Milly had done the day she 21 was abducted. This was no formal reconstruction done 22 with the police. It was not for publicity. It was, 23 rather, a private act, a very private moment, something 24 the couple had decided to do between themselves to try 25 to come to terms with their teenage daughter's</p> <p style="text-align: center;">Page 66</p>	<p>1 It is fair to say on any view that with the drip 2 feed of revelation after revelation in the hacking 3 story, as each new fact has come out, each one more 4 outrageous perhaps than the last, it has got to the 5 point where it is difficult perhaps still to be shocked. 6 And whilst I suspect there are those who vehemently 7 deplore the hacking of Milly's phone, or the phone of 8 Shaun Russell, Josie Russell's father, or the victims of 9 the 7/7 bombing, there are some who seem to have less 10 sympathy for the high profile figures whose phones also 11 were illegally accessed.</p> <p>12 The basis for this I presume, certainly if the 13 tabloid press's view of the ordinary reasonable reader 14 is right, is that so-called whingeing celebrities 15 deserve to have their private messages listened to. 16 After all, they want the public to watch their films or 17 buy their records or to pay to see them play football. 18 However, I trust that the majority of the population 19 accept that high profile or not, there is no excuse for 20 this kind of what is called news-gathering.</p> <p>21 Lest it should be overlooked, while Mr Davies was 22 the man who was prepared to write about the dark arts, 23 it was individuals like Sienna Miller who were prepared 24 to take on News International, unlike some of those in 25 government or authority. And it is Sienna Miller and</p> <p style="text-align: center;">Page 68</p>

<p>1 others' actions which forced the hacking scandal to be                  2 taken seriously by the police. Without people like her                  3 and other so-called celebrities, who knows when or even                  4 if the Dowlers would ever have found out about the                  5 hacking of their daughter's voicemails? Who knows                  6 whether this Inquiry would have been launched? After                  7 all, the Surrey Police had known about the hacking of                  8 Milly's phone for nine years and the Metropolitan Police                  9 probably for several years as well.</p> <p>10 So before we condemn the wonderful stereotypical                  11 rich and famous, as they are termed, and suggest that                  12 the law is not just for them, in fact no one, not even                  13 the rich and famous, wants that, it is important to                  14 remember that it is in fact a sad but true reflection of                  15 our system of justice and in particular the lack of                  16 state funding in this area that it is only because of                  17 those with sufficient resources and the access to                  18 lawyers, those terribly grasping claimant lawyers we all                  19 hear about, or the bravery of these people to run the                  20 gauntlet of the press, that the law, particularly the                  21 law of privacy, has now been developed to protect                  22 everyone, wealthy and non-wealthy alike.</p> <p>23 Now, with the demise of conditional fee agreements,                  24 giving access to justice for those of limited means such                  25 as the Dowlers and others you will hear about, the</p> <p style="text-align: center;">Page 69</p>	<p>1 public eye, Elle Macpherson.</p> <p>2 Ms Field will give evidence to you, sir, about how                  3 she became the well-known model's business adviser and                  4 confidante, but how when damaging details about                  5 Ms Macpherson's private life started appearing in the                  6 press, she was blamed by her employer.</p> <p>7 This is no ordinary story though. The circumstances                  8 in which Ms Field was packed off to a clinic in America                  9 because her employer believed that her refusal to accept                  10 that she was responsible was plainly a denial borne out                  11 of the strain of caring for her disabled son and                  12 a problem with alcohol. She will explain how she                  13 reluctantly agreed, in order to save her job, to travel                  14 to this clinic in America, and then, when the clinic                  15 sent her back because there was no such problem with                  16 her, she was in any event sacked by her employer. These                  17 are matters which she will graphically describe.</p> <p>18 Of course, we all know now that those stories in the                  19 press were actually the product not of someone leaking                  20 to the newspapers but rather the unlawful interception                  21 of Ms Field's voicemails and her employer's voicemails,                  22 too. Indeed, the unlawful interception of                  23 Ms Macpherson's phone was one of the counts on                  24 Mr Mulcaire's indictment.</p> <p>25 So for those who question, as some outside this room</p> <p style="text-align: center;">Page 71</p>
<p>1 situation is only going to be more polarised, but of                  2 course that doesn't make for good print. It's an                  3 inconvenient truth for the press, a press largely, but                  4 not entirely, hellbent on self-interest and                  5 self-preservation, or to put it another way, continuing                  6 self-regulation.</p> <p>7 As I mentioned at the outset, one of the features of                  8 the phone hacking scandal is that victims were not                  9 always well-known people or those caught up in                  10 headline-dominating incidents. As often as not, it                  11 seems, they were people whose crime was simply working                  12 for well-known people, people who were involved with or                  13 were simply friends of those in the public eye, and                  14 therefore who might have access to material that could                  15 provide good, but let's face it, relatively cheap copy.                  16 Ordinary people, so to speak, who were caught in the                  17 cross-hairs, often with very tragic consequences. The                  18 collateral damage in a war where every means, fair or                  19 foul, has been employed. People who have only been able                  20 to bring proceedings against News Group Newspapers                  21 because they have the benefit of lawyers who will act on                  22 a no win, no fee agreement. People, for example, like                  23 Mary-Ellen Field, a distinguished professional, an                  24 accountant by training, who was employed because of how                  25 good she was at her job by someone very much in the</p> <p style="text-align: center;">Page 70</p>	<p>1 still do, why all the fuss about hacking, maybe                  2 Mary-Ellen Field provides an example.</p> <p>3 Ms Field is by no means the only such person who                  4 suffered such a fate. Others have different but equally                  5 disturbing stories. The Inquiry will hear from someone                  6 who is described by the letters HJK. There is a reason                  7 for that. The association of HJK with someone                  8 well-known is a matter of great sensitivity. HJK is not                  9 well-known, though. I say that before anyone outside                  10 this Inquiry attempts a jigsaw identification.</p> <p>11 HJK's phone was hacked by the News of the World, as                  12 the mobile phone company confirmed in a telephone call                  13 to HJK out of the blue in the late summer of 2006. This                  14 was several months after HJK had been doorstepped by                  15 a journalist claiming to be from another newspaper group                  16 wanting to publish an expose supposedly about HJK's                  17 embryonic relationship with this well-known individual.                  18 The connection between the News of the World and this                  19 other newspaper group is not clear, but it is hard to                  20 think of any other reason why HJK's phone was hacked or                  21 this nascent relationship came to light.</p> <p>22 The effect on HJK was profound. The story about the                  23 quintessentially private relationship almost hit the                  24 headlines, but was displaced by another story which,                  25 thankfully, blew up the same day. It was a terrible</p> <p style="text-align: center;">Page 72</p>

<p>1 experience all round, and in a disturbing postscript, 2 HJK will explain how shortly after having been diagnosed 3 with a serious illness, a photographer who had been 4 following HJK jumped out and took a photograph, leading 5 to concerns on HJK's part that sensitive medical 6 information had been accessed by journalists. HJK would 7 not be the first to have suffered such a fate.</p> <p>8 It is interesting that in what seems like on one 9 view a fairly brazen approach to their selection of 10 targets, the News of the World even targeted other 11 journalists, albeit broadsheet ones. You will hear from 12 Joan Smith, a journalist, broadcaster and novelist, but 13 interestingly also a campaigner for human rights. Her 14 claim to fame, as it were, and therefore the reason she 15 was targeted, was presumably the fact of her 16 relationship with the member of Parliament 17 Denis MacShane. Their relationship was entirely 18 legitimate and in the public domain, but perhaps it was 19 felt something might be gained from just listening in to 20 see what could be found.</p> <p>21 Distressing enough, you might think, to be the 22 subject of such prying into your private life, but made 23 all the worse, she will say, by the fact that the 24 hacking of her phone and the fishing around for messages 25 came in the wake of the tragic loss of Mr MacShane's</p> <p style="text-align: center;">Page 73</p>	<p>1 mother of Sarah Payne, the murdered little girl. 2 Ms Payne spearheaded the campaign, as we all know, 3 to bring in the eponymously named anti-paedophile 4 legislation Sarah's Law, a campaign championed by none 5 other than the News of the World. It is ironic, to say 6 the least, that the final edition of the newspaper 7 contains a letter from Ms Payne in which she thanks them 8 for their support.</p> <p>9 The revelation, which came only days later, that her 10 phone, the very phone she'd been given by the newspaper 11 as part of the campaign, was likely to have been hacked 12 by Mr Mulcaire, was a sickening postscript, perhaps 13 a new low amongst a wealth of lows, for a newspaper 14 whose former glory has been so fatally befouled by its 15 cultural dependency, it seems, on the dark arts, which 16 sadly give journalism and journalists a bad name.</p> <p>17 Mr Jay mentioned on Monday when he outlined the 18 scale and extent of the hacking scandal that I would 19 mention the civil claims which are currently due to be 20 heard at the end of January, since I represent many of 21 the individuals whose actions are being tried then. 22 However, I hope I've already given you a flavour of 23 quite how broad the cross-section is of individuals 24 whose private messages were listened to or details were 25 blagged, both those well-known and those who were</p> <p style="text-align: center;">Page 75</p>
<p>1 daughter.</p> <p>2 Tom Rowland will give evidence next week too, 3 a Telegraph journalist for ten years but then 4 a contributor after that to other newspapers. He was 5 one of those victims who was informed by the police 6 about a number of calls that had been made to his mobile 7 phone from a handset within the News of the World 8 newsroom referred to as "the hub". 60 calls in his 9 particular case. It makes sense, you might think, that 10 journalists as well as Mr Mulcaire, the private 11 investigator, might have made calls themselves to these 12 voicemails. After all, they would have a much better 13 idea of what they were looking for, or perhaps better 14 understand what they heard.</p> <p>15 The interest in Mr Rowland was apparently the 16 details he might have picked up from the contacts he had 17 made in the context of his own journalistic activities 18 with high profile or wealthy individuals relating to the 19 properties that they had purchased.</p> <p>20 So the News of the World's list of victims includes 21 journalists too. The press are even prepared to turn on 22 their own, you might feel. But perhaps one of the 23 cruellest twists of the whole story is the fact that one 24 of the newspaper's most prominent targets had also been 25 one of its most prominent supporters. Sara Payne, the</p> <p style="text-align: center;">Page 74</p>	<p>1 targeted because the newspaper believed them to be 2 associated with well-known people. There are currently 3 over 50 claims which are being tried, but that in itself 4 is just a handful in comparison to the potential number 5 of claims.</p> <p>6 We have heard that Mr Mulcaire's notebook contained 7 the names of almost 6,000 potential victims. If you 8 just stop to think about that for a moment, 6,000 9 people. If you need a comparison, that would fill the 10 entirety of the new velodrome stadium built for next 11 year's Olympics, and those are the details obtained by 12 just one private detective. Of those 6,000 people, the 13 police have only managed to speak to about 600 so far.</p> <p>14 Whilst their individual stories are all fairly 15 different and unique to them, they do have two important 16 similarities. Let's not forget.</p> <p>17 One, all of these people were targeted because of 18 the information, private, personal or sensitive 19 information, which it was hoped could be gained to be 20 used for the purposes of stories in the 21 News of the World, stories which made the newspaper 22 money. That's why it was done: to sell newspapers. Not 23 to detect crime or to expose wrongdoing, not to protect 24 society or for the public good.</p> <p>25 Which leads me to the second thing that they have in</p> <p style="text-align: center;">Page 76</p>

<p>1 common, that is the fact that none of these stories had                  2 any public interest whatsoever. There is and was no                  3 public interest defence open to those responsible for                  4 such criminal activity. No defence for this flagrant                  5 invasion of people's privacy.                  6 News International's other Queen's Counsel,                  7 Mr Silverleaf, basically admitted as much when he gave                  8 his fateful opinion in the Gordon Taylor case after                  9 seeing just the "for Neville" email back in 2008, and                  10 no one says differently now.                  11 As we know from the civil litigation, the other                  12 things which News International have admitted, through                  13 the very same Queen's Counsel, in the Sienna Miller                  14 action in which judgment was entered against the                  15 newspaper group, was that this was a scheme which was                  16 devised or introduced between Mr Mulcaire and a number                  17 of journalists. We say a very large number. The figure                  18 of 28 has been mentioned in this Inquiry, and I have not                  19 heard it corrected. But in any event, it was                  20 a systematic and, it appears, highly efficient                  21 arrangement which started at one end with Mr Mulcaire                  22 using various illegal or unlawful techniques to obtain                  23 private telephone numbers, PINs, passwords, unique                  24 direct dial numbers and other access information,                  25 information which was sometimes used to listen to</p> <p style="text-align: center;">Page 77</p>	<p>1 I am not going to repeat the facts and figures the                  2 Inquiry has already heard based on police material as to                  3 the sheer scale of this practice, the number of pages in                  4 Mr Mulcaire's notebook still being minutely analysed                  5 five years after it was seized, or the volume of calls                  6 made by him or made from within News International as                  7 part of the routine plundering of people's voicemails.                  8 What I would say, however, is that the evidence                  9 demonstrates not so much a cottage industry, as Mr Jay                  10 called it, but rather an industrial revolution,                  11 a culture change, we say, away from proper old-fashioned                  12 journalistic activity.                  13 The precise details of this I will deal with in                  14 part 2, not to mention at the civil trial at the end of                  15 January, but I will just leave you with one calculation.                  16 The police say in the 11,000 pages of Mr Mulcaire's                  17 notebook it looks as if there is evidence of well over                  18 2,000 tasks assigned to him in the four years to which                  19 the notebooks relate. That means potentially 500 plus                  20 stories each year from this single source. Which means,                  21 on such a calculation, that there were possibly ten                  22 stories in each edition of the News of the World which                  23 were the product of phone hacking alone, even leaving                  24 aside the other dark arts practised by the newspaper.                  25 That may be speculation, although there is other</p> <p style="text-align: center;">Page 79</p>
<p>1 targets, or, it seems, simply passed on to journalists                  2 for them to use themselves to access individual                  3 voicemails. That was one end of the scheme.                  4 At the other end, the ill-gotten gains, the fruits                  5 of these labours, were turned into articles, if                  6 possible. Either directly, sometimes as quotes, we                  7 think, from the so-called pals or sources that you read                  8 about, or just as stand-up stories for which they would                  9 otherwise have had no proof.                  10 It is important to remember that the admissions made                  11 in the Sienna Miller action were not simply as regards                  12 accessing her voicemails as well as her email account,                  13 using her generic password, but also related to the                  14 inclusion of that material in a series of articles and                  15 the persistent harassment of her over a number of years,                  16 both from the articles published and the continuing                  17 targeting and surveillance of her.                  18 As Mr Jay explained, whatever may be said now or in                  19 January at the civil trial, it has been admitted by the                  20 newspaper group not, as was originally claimed, that                  21 they were simply liable for those activities of                  22 Mr Mulcaire because he had been hired or commissioned to                  23 carry them out, but also because their very own                  24 journalists were mixed up in it, a large number, it now                  25 seems.</p> <p style="text-align: center;">Page 78</p>	<p>1 evidence which suggests higher figures, but even on                  2 that, it is hard not to conclude that the very                  3 foundations of this most popular newspaper throughout                  4 these years were built on manifestly unholy and                  5 indefensible ground.                  6 And, if the newspaper was receiving such an endless                  7 stream of stories, and a significant number of                  8 journalists were involved, then it must surely raise                  9 questions about who knew what and at what level. Again,                  10 that is something about which I will have much more to                  11 say in part 2.                  12 Can I leave you with this taster? Can it really be                  13 sensibly argued that this is a simple case where checks                  14 and balances were not properly observed and that                  15 a handful of rogue journalists were allowed to run amok                  16 with the company chequebook? Or, rather, was such                  17 activity, the systematic and deliberate employment of                  18 unlawful methods, encouraged or condoned at higher                  19 positions in the newspaper for the purposes of obtaining                  20 stories about the private lives of individuals, the very                  21 lifeblood on which this newspaper prided itself?                  22 Whatever may be the knowledge of those in senior                  23 positions at the time, there was on any view a concerted                  24 effort, we say, after the event, to conceal the ugly                  25 truth from ever surfacing.</p> <p style="text-align: center;">Page 80</p>

<p>1 There is little that can be said about this because                  2 of the criminal prosecutions, at least in terms of the                  3 individuals involved. However, some general comments                  4 can be made about the bigger picture.                  5 Whilst it is comparatively easy now to summarise the                  6 activities, the way it has unfolded has little, if                  7 anything, to do with News Group Newspapers coming clean                  8 of their own accord. Hardly a great advertisement for                  9 self-regulation.                  10 An examination of the state of mind of those who                  11 were involved, especially in successive hearings before                  12 the Parliamentary Select Committee, has led to                  13 inconsistency and corrections, a tangled web, one might                  14 say. But what can certainly be said is that it has                  15 revealed at the very least that someone somewhere is not                  16 telling the truth.                  17 In order to assess the culture, it is important to                  18 remember what was said by the News of the World in July                  19 2009. Let me pick out some highlights of the statement                  20 they put out on their website. A statement which                  21 News International, and that was the website it was put                  22 out on, said they had deliberately delayed making until                  23 all relevant facts had been analysed and checked, both                  24 internally and externally, and this is the statement:                  25 "News International has completed a thorough                  Page 81</p>	<p>1 News Group's staff hacked into mobile phones or accessed                  2 individuals' voicemails, and it is untrue that                  3 News Group reporters have hacked into telephone                  4 voicemail services of various footballers, politicians                  5 and celebrities named in reports this week."                  6 Pausing there, it is a telling feature of the                  7 scandal that the reporting of it was largely, if not                  8 exclusively, confined to the broadsheet newspapers and                  9 the broadcasting media.                  10 The other tabloids, or popular newspapers, ran                  11 a million miles from it in the opposite direction. No                  12 screaming headlines, for once. No finger pointing                  13 between competitors in a brutally competitive market.                  14 How interesting, you might think.                  15 Although the myth of one rogue journalist has                  16 thankfully been exploded, it is one which was                  17 perpetuated for some time by the News of the World.                  18 Even as recently as September 2010, the group issued                  19 a public statement in the face of mounting evidence                  20 which said simply this:                  21 "We reject absolutely any suggestion that there was                  22 a widespread culture of wrongdoing at the                  23 News of the World."                  24 Of course, it's important to bear in mind, sir, that                  25 as Mr Pike, one of its external solicitors, admitted                  Page 83</p>
<p>1 investigation into the various allegations made                  2 referring to Nick Davies' initial story. Apart from                  3 matters raised in the Mulcaire and Goodman proceedings,                  4 the only other evidence connecting News of the World                  5 reporters to information gained as a result of accessing                  6 a person's voicemail emerged in April 2008 during the                  7 course of the Gordon Taylor litigation. Neither this                  8 information nor any story arising from it was ever                  9 published. Once senior executives became aware of this,                  10 immediate steps were taken to resolve Mr Taylor's                  11 complaint.                  12 "We can state with confidence that apart from these                  13 matters there is not and never has been evidence to                  14 support allegations that News of the World journalists                  15 have accessed the voicemails of any individual or that                  16 News of the World or its journalists have instructed                  17 private investigators or other third parties to access                  18 the voicemails of any individuals.                  19 "Further [they stated categorically], in the context                  20 of allegations having appeared in not only the Guardian                  21 but the BBC and Sky, it is untrue that officers have                  22 found evidence of News Group staff, either themselves or                  23 using private investigators, hacking into thousands of                  24 mobile phones; it is untrue that apart from Goodman,                  25 officers found evidence that other members of                  Page 82</p>	<p>1 only a few weeks ago to the Select Committee in their                  2 unenviable task of trying to uncover the truth of who                  3 knew what and when, that News Group solicitors knew                  4 perfectly well from 2008, some two years earlier than                  5 this statement was put out, that the first defence of                  6 rogue reporter defence was blatantly untrue but the                  7 solicitors felt bound not to reveal this information                  8 because of client confidentiality. Solicitors are bound                  9 to keep the silence of their clients, but the clients,                  10 of course, are not restricted in this way.                  11 The Inquiry will hear from the solicitor Mark Lewis,                  12 who will explain in his own words the story of how his                  13 claims against News Group started, his dealings with                  14 News International and therefore how the                  15 News of the World eventually met its fate.                  16 Mr Lewis's account of what happened to him, how the                  17 Gordon Taylor case ended with an enormous settlement and                  18 later the Dowlers' too, how he has been the subject of                  19 attack by those in authority, the police and even the                  20 PCC in the course of his work and finally how he                  21 personally became the target himself of                  22 News International, would read a little like                  23 a John Grisham novel if only it was fictional, but the                  24 truth, as Mark Twain said, is stranger than fiction.                  25 Indeed, the revelation in the last few weeks that                  Page 84</p>

<p>1 not only was he under surveillance but private 2 investigators were also instructed to and did carry out 3 covert surveillance on his family, filming his ex-wife 4 and his teenage daughter, is, to use the words of 5 News International's own counsel yesterday, totally 6 unacceptable. And whilst an apology may be some comfort 7 for Mr Lewis, and no doubt he can be asked this, it is 8 important to remember that as with this fresh disgrace 9 and the previous drip drip of revelation after 10 revelation about the conduct of News of the World, that 11 it is all well and good apologising once you've been 12 caught out. How much better if the stables, however 13 Augean, had been cleared out voluntarily by this 14 organisation. Hardly, I would suggest, a task of 15 Herculean proportions.</p> <p>16 The timing is critical, too, for the newspaper was 17 caught out in this respect not in some nefarious 18 activities in the dim, dark days of 2005 and 2006, at 19 the height of Mr Mulcaire's activities. This was 20 commissioned and discussed with solicitors as recently 21 as the middle of last year, at the same time that 22 News International's offices were telling the Select 23 Committee that the organisation was trying to get to the 24 bottom of what had gone so horribly wrong. It is clear 25 that News Group's response to this was instead to</p> <p style="text-align: center;">Page 85</p>	<p>1 organisations setting themselves up so far above the law 2 that nothing seems to be beyond the pale? What 3 a culture. What an ethical vacuum, and from a newspaper 4 whose moral crusade is still being championed by 5 News International even yesterday and filled the pages 6 of its final edition.</p> <p>7 And yes, you might say, in this example it may be 8 the culture of just one of the players in the market, 9 but it is, or at least was, a highly influential one, 10 and we say fairly representative in a number of respects 11 of the rest of the tabloid market.</p> <p>12 Before I finally leave the issue of hacking, I need 13 briefly mention two things.</p> <p>14 Firstly, it is important to say that what we have so 15 far may only be just the tip of the iceberg. I don't 16 just mean the fact that the police may only have 17 notified about a tenth of the total number of victims of 18 this scandal. Two of the core participants giving 19 evidence next week will provide a glimpse of what 20 I mean: Mr Hurst, a former member of British Army 21 Intelligence, and Ms Jane Winter. Both will deal with 22 how their computers and emails passing between them were 23 illegally accessed by private investigators working, 24 they say, for the News of the World by the use of Trojan 25 horse software.</p> <p style="text-align: center;">Page 87</p>
<p>1 consult with their solicitors -- of course, not the 2 so-called greedy claimant lawyers, but their external 3 solicitors, Farrers, about commissioning surveillance of 4 those conducting litigation against them, surveillance 5 designed to unearth the true scale of what Mr Davies of 6 News International describes as the wrongful and 7 shameful behaviour.</p> <p>8 Mr Lewis was targeted for standing up to a powerful 9 newspaper organisation, but he isn't the first, as you 10 will hear from me later, and despite the best of hopes, 11 I suspect he may well not be the last. He wasn't, 12 certainly, alone in terms of those seeking to hold 13 News International to account. No, it appears that the 14 organisation commissioned private investigators to carry 15 out surveillance of other key lawyers whose clients were 16 bringing civil claims against News Group, such as 17 Charlotte Harris, who prepared, amongst others, 18 Mr Clifford, and Mark Thompson, who prepared 19 Sienna Miller and let us not forget that 20 News International also set investigators on members of 21 the Parliamentary Select Committee themselves. 22 Remarkable.</p> <p>23 These, you might think, are the tactics of fear and 24 desperation. But I ask you this: is this what 25 journalism or the protection of it comes to,</p> <p style="text-align: center;">Page 86</p>	<p>1 Mr Hurst's claim was the subject of a Panorama 2 programme and is probably familiar to some of you here. 3 He alleges that his emails were hacked into to obtain 4 information and documents about activities connected to 5 his investigations in Northern Ireland. Ms Winter, with 6 whom he communicated, worked for an independent 7 non-governmental organisation striving to ensure that 8 human rights are respected in Northern Ireland.</p> <p>9 The second thing I must mention, something Mr Jay 10 said in his opening on Monday, is that the use of 11 hacking into voicemails may well not have been 12 a practice hermetically sealed within the four walls of 13 the News of the World's offices. Indeed, as 14 Richard Peppiatt, the ex-Star journalist who walked out 15 in protest at tabloid culture, asked rhetorically 16 himself at the seminar: who seriously believes that 17 there was just one rogue newsroom, or one rogue 18 investigator, for that matter?</p> <p>19 Whilst Mr Davies was at great pains yesterday to 20 dispute the action brought against the same defendant, 21 News Group Newspapers, by my client Jude Law over his 22 claim of hacking by the Sun newspaper as well as the 23 News of the World, and to downplay the evidence against 24 the sister newspaper, it would be wrong to think, and 25 indeed as much has been said in the Chancery Division,</p> <p style="text-align: center;">Page 88</p>

<p>1 that the corner names which were mentioned by Mr Jay are 2 by any means the only basis upon which Mr Law's claim is 3 brought. Neither of us can say any more. It is 4 a matter which will be tried in the Chancery Division, 5 although not in January of next year, unfortunately. 6 Sir, I don't know if that's a convenient moment to 7 break shortly. 8 LORD JUSTICE LEVESON: Certainly. Shall we just have until 9 half past, and then we'll come back for another half an 10 hour and then you'll choose your time to break for the 11 short adjournment. 12 MR SHERBORNE: I'm very grateful, sir. 13 LORD JUSTICE LEVESON: Thank you very much. 14 (12.22 pm) 15 (A short break) 16 (12.30 am) 17 LORD JUSTICE LEVESON: Yes, Mr Sherborne. 18 MR SHERBORNE: Let us pause for a moment then to just take 19 stock. Outrageous and shocking as it is, the practise 20 of illegally accessing people's personal voicemails is, 21 I would suggest, just one symptom of a much greater 22 disease afflicting the tabloid press. 23 As you reminded Mr Caplan yesterday, hacking, as 24 I mentioned earlier, is not the only reason we are here. 25 Although, as I've said as well, having listened to the</p> <p style="text-align: center;">Page 89</p>	<p>1 "Journalists have a voracious demand for personal 2 information, especially at the popular end of the 3 market. The more information they reveal about 4 celebrities or anyone remotely in the public eye, the 5 more newspapers they can sell. The primary 6 documentation seized at the premises of the Hampshire 7 private detective consisted largely of correspondence, 8 reports, invoices, settlement of bills, et cetera, 9 between the detective and many of the better-known 10 national newspapers, tabloid and broadsheet, and 11 magazines. 12 "In almost every case, the individual journalist 13 seeking the information was named and invoices and 14 payment slips identified leading media groups. Some of 15 these even referred explicitly to confidential 16 information. The information which the detective 17 supplied for the newspapers included details of criminal 18 records, registered keepers of vehicles, driving licence 19 details, ex-directory telephone numbers, itemised 20 telephone billing and mobile phone records and details 21 of friends and family telephone numbers. 22 "The secondary documentation seized at the same 23 premises consisted of the detective's own handwritten 24 personal notes, and a record of work carried out, about 25 whom and for whom. This mass of evidence documented</p> <p style="text-align: center;">Page 91</p>
<p>1 core participants at the seminars last month, one might 2 be forgiven for thinking that other than hacking, 3 regarded as a historic and isolated lapse of judgment, 4 there was nothing to criticise, really. 5 It is no surprise, therefore, with such an attitude 6 as that from the popular press, that so little publicity 7 was given to the Information Commissioner's report when 8 it came out in 2006. 9 Given that even now there is a desperate attempt to 10 avoid its conclusions, I'm going to highlight some of 11 the things that were said in this initial report, "What 12 price privacy now?" a phrase to which I will return. 13 Mr Thomas concluded, the Information Commissioner, 14 that: 15 "investigations by my officers and by the police 16 have uncovered evidence of a pervasive and widespread 17 industry devoted to the illegal buying and selling of 18 personal information." 19 He went on to conclude that: 20 "The trade in such information represents so serious 21 a threat to individual privacy that this is the first 22 report I or any of my predecessors have presented to 23 Parliament." 24 In paragraph 5.6 of his report, he specifically 25 addressed the issue of the media. He said:</p> <p style="text-align: center;">Page 90</p>	<p>1 literally thousands of Section 55 offences and added 2 many more identifiable reporters supplied with 3 information, bringing the total to some 305 named 4 journalists." 5 Somewhat surprisingly, given the true public 6 interest in this of all stories, it barely received 7 a mention, at least not in certain sections of the 8 press. Let me write the headline for you; after all, no 9 newspaper actually did: 10 "What price privacy? Tabloid newspapers are chief 11 suspects in the routine illegal buying and selling of 12 personal information. It's official, confirms 13 Information Commissioner. See pages 4 and 5 inside for 14 the league table of shame." 15 And who heads this table? Well, I won't name the 16 main offender, but if I was indulging in the press' 17 favourite practice of jigsaw identification, I might say 18 it earns hundreds of millions a year, it lives in 19 a plush multimillion property off High Street Ken, and 20 its editor is also the chairman of the PCC's Editors' 21 Code of Practice Committee. 22 It was helpful to hear Mr Caplan say that steps were 23 taken by this editor, once the report came out, to stamp 24 out these practices. Perhaps, once he's heard from the 25 victims who come to give evidence here, he and other</p> <p style="text-align: center;">Page 92</p>

<p>1 editors of that section of the market will continue to                  2 put their houses in order, whatever it is that you                  3 recommend, sir. After all, that is why we are here, and                  4 it might just be a good start.                  5 But again, we mustn't forget that the roll call of                  6 dirty tricks or journalistic tools of the trade, as                  7 I suppose they might be called, does not involve just                  8 hacking or the illegal trade in personal information.                  9 There is also the obsession, in a particular area of                  10 this market, with the invasion into the private lives of                  11 well-known people, the hounding of people in the public                  12 eye, the intrusion into the grief of victims of crime                  13 and the unforgivable vilification of those caught up                  14 unwittingly in such events, as well as other ethical or                  15 cultural problems which my clients will give evidence                  16 about.                  17 Let's begin, then, with the invasion of privacy.                  18 Right at the outset in true media lawyer style,                  19 I know I meant to say in the clearest of terms that                  20 freedom of speech is an essential part of any democratic                  21 society, and I do. No one could or does say otherwise.                  22 But, more importantly, it is only one part of the                  23 equation. The other side, so frequently ignored or                  24 understated by the press, is the right to respect for                  25 private life, for home, for family life, for</p> <p style="text-align: center;">Page 93</p>	<p>1 Now, the ones that I don't show may be almost the                  2 same as the ones that I do. They may, for example, be                  3 a bad light or I may be pulling an embarrassing face or                  4 something, but the fact that they may contain similar                  5 information to the ones that I do show is not really the                  6 point. It is my choice which of those moments I show                  7 and why, and just because I only show some of them                  8 doesn't mean that Snappy Snaps or some other generic                  9 high street developers can show all of them in their                  10 window. It is this freedom of choice, or, to use                  11 another dirty word, control, about how I portray myself                  12 to the world or what of my private life I put in the                  13 public domain, and it's something which we should all be                  14 entitled to do; at least, that is, unless there is some                  15 countervailing public interest, a topic to which I will                  16 turn, albeit relatively briefly, in due course.                  17 The same applies to what I may do in private or in                  18 semi public or public places. It is about respect for                  19 other people's privacy, regardless of whether you are                  20 a celebrity or not.                  21 Now, if you expose your entire life to the press and                  22 trade off that, truly and actively trade off that, then                  23 it may be a different story, I accept. But examples of                  24 that, proper examples of that, are few and far between                  25 in reality, as some of the core participant victims</p> <p style="text-align: center;">Page 95</p>
<p>1 correspondence.                  2 Privacy, contrary to what the newspapers believe, is                  3 not a dirty word, and it does not necessarily mean the                  4 same as secret. Indeed, it is a much wider concept, and                  5 whilst I could give you a legal lecture about its                  6 importance, I may well commit, as I said earlier, some                  7 of this to written form.                  8 What it means quite often is nothing more than                  9 a type of freedom in itself, the freedom, that is, to                  10 make choices, choices about what we do, choices about                  11 what we do in private and also what we do in public or                  12 semi-public places sometimes, provided that the activity                  13 is one which there is a reasonable expectation would                  14 remain private. And by private, again, I do not mean                  15 secret.                  16 Let me give you an example of this freedom of choice                  17 in relation to photographs. When I come back from                  18 holiday, if I get one, I take my photos to be developed.                  19 Some, it turns out, are terrible; most, in fact. Whilst                  20 I might show all of the ones I get back, no matter how                  21 terrible, to my family, and maybe only the semi-decent                  22 ones to my friends or work colleagues because I want                  23 them to see a certain historical monument or something                  24 similar, there are some which should never see the light                  25 of day. That is my choice.</p> <p style="text-align: center;">Page 94</p>	<p>1 giving evidence will explain. Most importantly, it is                  2 that kind of person, who exposes their entire life to                  3 the press, who is not here complaining to you, sir.                  4 This freedom of choice is one which you or I, as                  5 ordinary members of the public, take for granted, but                  6 for people whose careers or talents place them in the                  7 public eye, they apparently cannot.                  8 It has often been said, even by Lord Hoffmann who                  9 has been quoted wrongly by at least one editor as making                  10 freedom of speech a trump card, that a right to privacy                  11 is a part of every human being's development, and if                  12 I may be permitted a moment of lofty prose, the respect                  13 which is given to an individual's privacy is as much                  14 a mark of a tolerant and mature society as we like to                  15 believe ours is, as a free and forceful press.                  16 There I go again, putting these two rights, or                  17 principles, which often clash, on an equal footing, at                  18 least to start with. That is, of course, until the                  19 facts of any particular case are scrutinised. Well,                  20 I make no apologies for doing so. Not only is it a                  21 right as a matter of common sense; it is the law, both                  22 here and in Europe.                  23 I know the press don't like this, and I will return                  24 to this in the context of Mr Mosley's story in a moment,                  25 but that is the position. Freedom is not an unqualified</p> <p style="text-align: center;">Page 96</p>



<p>1 concept.</p> <p>2 It is noteworthy that it was an American writer,</p> <p>3 Elbert Hubbard, born and bred on First Amendment</p> <p>4 principles, who famously described responsibility as the</p> <p>5 price of freedom. The fact that he's also famous for</p> <p>6 defining an editor as a person employed by a newspaper</p> <p>7 whose business is to separate the wheat from the chaff</p> <p>8 and to see that the chaff is printed is too tempting not</p> <p>9 to mention.</p> <p>10 Whilst I'm happy to debate these issues in front of</p> <p>11 this Inquiry, indeed with anyone, it is in truth an</p> <p>12 academic argument, and I say that for two reasons, the</p> <p>13 two different definitions of the word "academic".</p> <p>14 Firstly, because it is largely irrelevant, since the</p> <p>15 stories which are the subject of the injunctions about</p> <p>16 which so much heat is generated by the press, never do</p> <p>17 they contain any public interest at all. They don't</p> <p>18 involve politics or corruption or the misuse of public</p> <p>19 money. They are not what one might call the product of</p> <p>20 investigative journalism. Far from it. They involve</p> <p>21 celebrity gossip, sport and sex. These are the type of</p> <p>22 stories where the law is now being presented as a threat</p> <p>23 to freedom of speech.</p> <p>24 The second reason why it is an academic argument is</p> <p>25 that however clever the legal or intellectual arguments</p> <p style="text-align: center;">Page 97</p>	<p>1 has now become familiar in a certain section of the</p> <p>2 press.</p> <p>3 It is a startling feature that despite this obscene</p> <p>4 rush to trash the judgment and condemn it as wrong,</p> <p>5 there was never any appeal by the News of the World,</p> <p>6 a point I think you noted, sir, during Mr Jay's opening.</p> <p>7 Nor was there any suggestion by the government in its</p> <p>8 submissions to the European Court that the decision was</p> <p>9 wrong. And how, I ask, could it be?</p> <p>10 The story which the News of the World blasted across</p> <p>11 its front page with the screaming headline, "Formula 1</p> <p>12 boss has sick Nazi orgy with five hookers", revealing</p> <p>13 the details of Mr Mosley's sex life together with</p> <p>14 graphic images, has nothing whatever to do with public</p> <p>15 interest. Mr Mosley's work as president of the FIA may</p> <p>16 have involved a public dimension in terms of imposing</p> <p>17 sanctions, for example, on the Formula 1 industry, but</p> <p>18 as much, if not more, was about road safety, something</p> <p>19 which is really rather boring, I can tell you, but</p> <p>20 nevertheless incredibly important.</p> <p>21 Mr Mosley didn't court publicity. Neither he nor</p> <p>22 his wife nor his sons had any interest in being</p> <p>23 associated with the glamour of motorsport. However,</p> <p>24 whilst before the end of March 2008, he may not have</p> <p>25 been well known to the average member of the British</p> <p style="text-align: center;">Page 99</p>
<p>1 may be on each side, the imperative which really drives</p> <p>2 the newspaper is money. Stories like this sell</p> <p>3 newspapers. Maybe not literally on the news stands, but</p> <p>4 these exclusives capture or keep the readership, or so</p> <p>5 the newspapers believe, and with readership figures</p> <p>6 comes advertising, such as there is left. And if proof</p> <p>7 of that is needed, then why is it that you heard some of</p> <p>8 the media representatives at the seminars citing what</p> <p>9 was said by various commentators or even the odd judge</p> <p>10 or two is falling into the age-old trap that public</p> <p>11 interest is defined by what the public are interested in</p> <p>12 or curious about, when they said that there was a real</p> <p>13 public interest in these newspapers being allowed to</p> <p>14 continue publishing such stories.</p> <p>15 Indeed, the attitude of the tabloid press to privacy</p> <p>16 and the challenges which this represents is neatly</p> <p>17 encapsulated, I say, by the evidence given by Mr Mosley.</p> <p>18 I say the attitude of the tabloid press generally as</p> <p>19 opposed to the News of the World, which was the</p> <p>20 particular newspaper that so spectacularly destroyed his</p> <p>21 privacy once and for all, because of the haste, as</p> <p>22 I will describe later, of the other newspapers from the</p> <p>23 same market to rubbish Mr Mosley after the decision, to</p> <p>24 rubbish the judgment, and quite remarkably, to rubbish</p> <p>25 even the judge who made it in July 2008, a pattern which</p> <p style="text-align: center;">Page 98</p>	<p>1 public, and that was a deliberate choice, he is well</p> <p>2 known now, though. Let's be honest. Who can look at</p> <p>3 him without thinking about what he chooses to do with</p> <p>4 other consenting adults in private? And then stop, and</p> <p>5 ask yourself this: is this something you really feel</p> <p>6 you're entitled to know about? Whatever your answer,</p> <p>7 you do know it. And once you know it, it's too late.</p> <p>8 The fact that he won his case does nothing to remedy</p> <p>9 that. How does it feel for Mr Mosley, a man who has</p> <p>10 devoted much of his life to ensuring the safety of</p> <p>11 others, about which very little is written? He will</p> <p>12 tell you.</p> <p>13 Let me go back a little, though. I remember that</p> <p>14 telephone call on the Sunday morning at the end of March</p> <p>15 of 2008, and I confess I was reading the</p> <p>16 News of the World at the time, and there it was on the</p> <p>17 front page. That is how Mr Mosley first saw it too. He</p> <p>18 wasn't given any warning in advance, despite the obvious</p> <p>19 devastation it was likely to cause to his private life</p> <p>20 and to that of his family. Was this an accident? I can</p> <p>21 answer that. I say I can. Mr Myler, the editor of the</p> <p>22 News of the World, answered it himself in his evidence</p> <p>23 at the trial. He admitted that the failure to give any</p> <p>24 notice was a deliberate attempt to avoid Mr Mosley going</p> <p>25 for an injunction, as he suspected he would get it.</p> <p style="text-align: center;">Page 100</p>

<p>1 Extraordinary. And yet the newspaper did not bat an 2 eyelid at this deliberate decision to remove any 3 opportunity for Mr Mosley to protect his article 8 4 rights. 5 The balance between freedom of speech and respect 6 for a private life is an exercise which, if conducted at 7 all, happened entirely within the editor's office, made 8 by an individual -- and this is not personal to 9 Mr Myler -- who had a direct commercial interest in 10 publishing this story. Is this the right way for the 11 law to work? It certainly is how the press want it to 12 be. 13 Whilst the original story with the Nazi line was 14 bad, in the follow-up story, the newspapers sought to 15 rub salt into wounds because Mr Mosley had the temerity 16 to publicly state that his private activities had 17 nothing to do with the Nazis or anything Nazi at all. 18 It was absurd. 19 Indeed, he was called a liar for this in the 20 follow-up article, which was published on that second 21 weekend, a weekend whilst Mr Mosley was waiting for the 22 court to decide his emergency application to prevent the 23 very graphic images of him being published on the 24 Internet. The injunction was refused, as we all know, 25 even though the judge held that there was no public Page 101</p>	<p>1 will tell you that the Nazi theme was preconceived story 2 for which they needed the facts to fit. 3 We know that because of evidence the 4 News of the World had to reveal in the action. Woman E, 5 the witness, who never showed up at the trial, can be 6 seen on footage shot the day before as they tested the 7 secret camera they were fitting her with. As Mr Mosley 8 describes in his evidence to the Inquiry, you can see 9 woman E being instructed by Neville Thurlbeck, a man 10 whose name is familiar to all here, the journalist 11 responsible for the story, trying to get Mr Mosley, as 12 he wanted woman E to do, to perform a sieg heil salute, 13 telling woman E how far Mr Mosley should be away from 14 the camera if she could get him to do that salute. Of 15 course, there was no salute, and as woman E later 16 apologised, she knew there was nothing Nazi about this 17 at all. Perfect example, you might think, of the 18 example described so vividly by Mr Peppiatt: let's 19 publish the story and worry about the facts later. 20 Publish and be damned is consigned to the history books 21 of Fleet Street, said Mr Hall. I beg to differ. 22 Entrapment was bad enough, but it didn't stop there. 23 There was blackmail, too, we say: the attempt by 24 Mr Thurlbeck to persuade some of the woman involved 25 after the story came out to play nicely with the Page 103</p>
<p>1 interest in the story and the article was a gross 2 intrusion into his private life, and it was refused 3 because the damn had burst. Millions of people had 4 already seen these images, as the News of the World had 5 posted them on their website, and it had gone viral 6 across the Internet. 7 Mr Mosley was faced with a choice, as he will tell 8 you: whether to retreat and accept this humiliation, 9 something which the newspapers counted on that he was 10 likely to do, or instead to prepare himself for 11 a full-blown trial, with all the added embarrassment 12 that this would cause. Thankfully, he chose the latter. 13 Thankfully, not just for lawyers, but for ordinary 14 members of the public, because it is a case which has 15 strengthened the protection to the private life of all 16 of us. 17 What happened at trial is, of course, history, but 18 then so is his private life, history. As I said, it is 19 too late to put the genie back into the bottle. 20 And what about the News of the World? Well, they 21 obviously failed to make good the suggestion that there 22 was a Nazi theme, as they did other spurious public 23 interest arguments which the court rejected. But if you 24 want a little insight into some of the tricks of the 25 tawdry trade I have mentioned, listen to Mr Mosley as he Page 102</p>	<p>1 News of the World and to give them stories for the 2 follow-up edition under the threat of revealing their 3 identities. Mr Neville's email, what you might call the 4 "from" rather than the "for Neville" email, even sent 5 these terrified women unpixelated images of themselves 6 which had been obtained to show them what would be 7 published in the newspaper if they didn't play ball. 8 This kind of blackmail was so commonplace in the 9 tabloid psyche that the editor thought nothing of it at 10 trial. As the judge described it -- this supposedly 11 amoral judge, as one particular newspaper termed him -- 12 it disclosed a remarkable state of affairs. 13 As I say, Mr Mosley won his action, but at what 14 cost? And I mean cost in real terms as well, because 15 though he was awarded £60,000, the largest privacy award 16 to date, he was left out of pocket, particularly as he 17 had to spend considerable sums trying to clear up 18 literally thousands of articles on the Internet or 19 reposting of these voyeuristic images, and he will tell 20 you about that. 21 More importantly, what about the cost to his family? 22 What price privacy, one might say. 23 How did the tabloid press deal with this defeat? 24 Well, having lost in Court 13, the News of the World 25 editor looked for a different kind of appeal: in the Page 104</p>

<p>1 court of public opinion, that is. He ran straight to 2 the steps of the RCJ attacking the judgment and accusing 3 the judge of bringing in a law of privacy through the 4 back door, whatever that is meant to mean. He sought to 5 challenge the decision, defending the article, despite 6 the judge's clear rulings, as a legitimate and lawful 7 publication, and decrying this as, yes, you guessed it, 8 a chilling effect on free speech. Our press, he said, 9 is less free today. Our media are being strangled by 10 stealth.</p> <p>11 He was not a lone voice, however loud. The Sun 12 joined in too, with the headline, "The day that freedom 13 got spanked". Of course, the Sun, we hear now, is 14 trying to distance itself as fast as it can from its 15 former stable mate.</p> <p>16 The Daily Mail stepped in, too, to defend the 17 News of the World as its editor attacked the judgment 18 and, more importantly, the judge as well. In a speech 19 to the Society of Editors, Mr Dacre complained that the 20 law was coming not from Parliament but from amoral 21 judgments, words he said "I used very deliberately from 22 arrogant and amoral judgments of one man, a judge with 23 a subjective and highly relativist moral sense".</p> <p>24 His attack went much further and was far more 25 personal, and I won't repeat it, but it was on a judge</p> <p style="text-align: center;">Page 105</p>	<p>1 An isolated incident? No. The same is true of his 2 son's funeral. For example, one of the reporters tried 3 to pass himself off as a rambler in order to get in and 4 take pictures.</p> <p>5 All of this perhaps could have been avoided, 6 Mr Mosley would say, not just for his benefit but for 7 others who also find their lives ruined by unlawful 8 intrusions into their privacy. That is if prior 9 notification had to be given by newspapers before they 10 published stories about people's private lives. That 11 was the basis of his complaint to Strasbourg, that the 12 law should provide a proper remedy, one that is 13 practical and real, and what other proper remedy is 14 there for invasion of privacy? Because once something 15 is made public, nothing else will ever do. It's not 16 like libel, where an award of damages can prove to the 17 world that the allegation about which you complain is 18 untrue. The only effective remedy is one where the 19 stable door is shut, if it should be shut, before the 20 horse bolts.</p> <p>21 And who should decide whether the stable door should 22 be shut or not? Is it the courts? Trained independent 23 judges? Or would you rather it was the editors, whose 24 commercial interests lie in publication.</p> <p>25 If you even need to give it a second thought, then</p> <p style="text-align: center;">Page 107</p>
<p>1 who was simply applying the law as he was required to 2 do, and, most importantly, as Parliament has in fact 3 accepted by its adoption of the Human Rights Act and the 4 Convention rights under it, and as the House of Lords 5 has frequently endorsed.</p> <p>6 But once again, let's not let the facts get in the 7 way of a good story.</p> <p>8 It is an interesting insight into how this section 9 of the press regards itself above the law and it is 10 familiar from the way in which they treat injunctions 11 ordered by the court preserving privacy.</p> <p>12 This Inquiry may recognise the rubbishing by editors 13 of those who make the decisions as a way of undermining 14 the process itself. Sadly, in Mr Mosley's case, as 15 appears in several other of the accounts you will hear, 16 there is a terrible postscript.</p> <p>17 In the aftermath of the trial, Mr Mosley's son, who 18 was suffering from depression, died of an overdose, 19 something which he strongly believes was in some way 20 attributable to the very public humiliation that he 21 received. The press's reaction to this deeply sensitive 22 issue hardly covered them in more glory. As Mr Mosley 23 tried to sort out his son's personal effects, he was 24 mobbed by journalists at the house, even though he had 25 written to newspaper editors asking to be left alone.</p> <p style="text-align: center;">Page 106</p>	<p>1 you only need to think for a moment about what we 2 learned of the mind of a tabloid editor from 3 Mr MacKenzie's performance at the seminars. And we 4 heard what Mr Myler too said at the trial of Mr Mosley. 5 He published the story even though he knew Mr Mosley 6 would probably have succeeded in injunctioning it if 7 a court had been allowed the opportunity of hearing the 8 application. Again, this is a point which I am more 9 than happy to debate, but it is better perhaps if 10 I commit these legalistic arguments to writing.</p> <p>11 Before we look at the real area of journalism, as 12 I say, where these arguments are tested, namely kiss and 13 tell stories, let me say one or two words about the much 14 discussed topic of public interest.</p> <p>15 The difference between what is truly in the public 16 interest and what the public are interested in is much 17 simpler than newspapers like to make out. Indeed, it is 18 rather simpler when one realises something which 19 Professor Cathcart pointed out in one of the seminars, 20 namely there are two different senses in one which uses 21 the word.</p> <p>22 There is on the one hand interest in the sense that 23 I like something, like I have an interest in football or 24 holidays in the sun, or interest as in something which 25 is good or bad for me, like I have an interest in the</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 outcome of a particular decision made by chambers, for 2 example, to put up my rent.</p> <p>3 Of course, I can understand why the newspapers have 4 an interest, in the second sense of the word, in 5 confusing these two concepts. After all, what the 6 public are interested in, in the first sense, sells more 7 newspapers: celebrity gossip, generally tittle-tattle; 8 and what the public have a genuine interest in knowing 9 about: drug trials, what goes on in Europe with the 10 Central Bank and so on, mostly doesn't. As I always 11 tell my children, things that you enjoy are rarely good 12 for you, and I'm sure if they can understand it, I'm 13 sure journalists can too.</p> <p>14 I'm not advocating boring newspapers. Don't get me 15 wrong, I like to read about gossip too. Most people do. 16 But just because I like to doesn't mean that I should, 17 or that newspapers should be able to invoke that 18 curiosity, that prurient interest in such matters, to 19 defeat an individual's wish to maintain respect for the 20 boundaries of their private life.</p> <p>21 It is important to remember the distinction which 22 the Convention on Human Rights makes between these two 23 different and recognised roles of the press in society. 24 Namely, on the one hand, reporting facts, even if 25 controversial, which are capable of contributing to</p> <p style="text-align: center;">Page 109</p>	<p>1 injunctions. Not in court, since, as Mr Rusbridger 2 confirmed, they rarely do contest them in court, because 3 obviously they are hopeless, but rather through the 4 pages of their newspapers where they believe they can 5 influence the public more directly. As I say, I won't 6 take up time dealing with them now.</p> <p>7 Nor the associated problem of how, even when such 8 orders are granted by the courts to protect the privacy 9 of individuals, and often accompanied with anonymity 10 orders, that they are somehow undermined by the press.</p> <p>11 Indeed, there is nothing particularly remarkable 12 about anonymity. It is just the way of protecting the 13 whole purpose of an order, but it does seem to offend 14 against the sensibilities of a certain section of the 15 press who do their utmost to try and undermine this 16 anonymity, producing, as they do, just enough material 17 to speculate, and for that speculation to become rife 18 about the identity of the individual whom the court has 19 deemed worthy of protection.</p> <p>20 Returning then to kiss and tell stories and 21 chequebook journalism --</p> <p>22 LORD JUSTICE LEVESON: I think it's probably convenient now 23 and we'll resume again at 2.05 pm. 24 (1.05 pm) 25 (The luncheon adjournment)</p> <p style="text-align: center;">Page 111</p>
<p>1 a debate of general public interest in a democratic 2 society, what we like to call the press as a public 3 watchdog. And on the other hand, its role as reporting 4 on the details of the private lives of well-known 5 individuals.</p> <p>6 The former has a legitimate interest for the public. 7 The latter does not.</p> <p>8 The Strasbourg court has said as much. Even though 9 it refused Mr Mosley's complaint about the lack of 10 a requirement in this country for prior notification, it 11 repeated the importance of the press as a public 12 watchdog, and therefore recommended that any constraints 13 on this role should be narrowly constructed, given the 14 importance of this kind of expression. However, as to 15 the role in its provision of sensational and lurid news, 16 intended to titillate, it said, or entertain or satisfy 17 the curiosity, your voyeuristic curiosity, as it 18 described it, of a particular readership, it recognised 19 that that was a limited role as compared to the 20 importance to maintain the private lives of citizens, 21 even if they have a public profile.</p> <p>22 I would certainly not quibble with any of that.</p> <p>23 There are various myths which have grown up around 24 the term "public interest", ones which are often peddled 25 through the press when arguing against these</p> <p style="text-align: center;">Page 110</p>	

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