THE LEVESON INQUIRY

INTO THE CULTURE PRACTICES AND ETHICS OF THE PRESS

Part I : Module I

WITNESS STATEMENT OF MAX RUFUS MOSLEY

I, MAX RUFUS MOSLEY, c/o Collyer Bristow LLP, 4 Bedford Row, London, WC1R 4DF WILL SAY AS FOLLOWS:

Personal Background

1. I was born in 1940, the son of Diana Mitford and Oswald Mosley. I attended school in France and Germany (where I learnt fluent French and German) and later the UK, following which I went to Christ Church, Oxford to read Physics.

2. I met my wife Jean in 1957 before going up to Oxford and we were married in 1960. After Oxford, I studied law and I was called to the Bar in 1964. During this time I also served in the Territorial Army Parachute Regiment (44 Para).

3. In the late 1960's I became an amateur racing driver and raced at Formula Two level. The motor racing world held a number of attractions for me; I found the sport exciting, I was interested in the technical side and, perhaps most importantly, it was a world in which my surname meant nothing.

4. As a result, in 1969 I decided to leave the Bar and join forces with an Oxford contemporary and two other motor racing acquaintances to co-found the racing car manufacturing business March Engineering (which I shall call "March"). By virtue of my involvement with March I attended meetings of the Formula One Constructors Association. It was at these meetings that I met Bernie Ecclestone and he and I then began to represent the interests of the racing teams to the governing body the FIA, whose sporting division was known at that time as the CSI (Commission Sportive Internationale) and then from 1978 as the FISA (Federation Internationale du Sport Automobile).

5. In 1986 I became President of the FISA Manufacturers' Commission and in 1991 I was elected President of FISA itself, replacing Jean-Marie Balestre. Monsieur Balestre remained President of the FIA until 1993 when I was elected President. The organisation was then restructured into two divisions, one sporting, and the other mobility (general motoring). I was re-elected President of the FIA on 3 separate occasions, 1997, 2001 and 2005 before retiring from the role in 2009.

6. The FIA is an international body based in Paris to which the major motoring organisations in each of more than 130 countries belong. It is also the world governing body of motor sport, including Formula One. During my 16 years as president of the FIA, I did a great deal of work to improve safety in all forms of motor sport (other than two-wheeled which was the responsibility of a different international body). This work has been relatively widely publicised. Less well know is my work in other areas:

   a. I set up (1994) the FIA Brussels office, giving 40 million EU motorists belonging to the FIA's motoring organisations in the (then) 15 EU countries an effective voice in Brussels for the first time and led successful campaigns to strengthen crash test standards (1996) and vehicle emission standards (1998);
   b. was elected (1994) Honorary President of the European Parliament Automobile Users' Intergroup. The Intergroup was instrumental in persuading the European Parliament to adopt the new EU crash test laws which came into force in 1998;
   c. initiated (1995) a carbon sequestration forestry project in Mexico run by Edinburgh University which removed from the atmosphere all CO_2 produced by the Formula One and World Rally Championships each year, making them environmentally neutral;
   d. was the Initiator in 1996 and Chairman until 2004 of the award-winning European New Car Assessment Programme (Euro NCAP), the independent crash-test organisation credited by the European Commission with advancing road safety in the EU by five years and described by the Commission as the most cost-effective road safety initiative of the last 20 years. The Commission's *Communication on Road Safety* (published on 17/3/2000 Com2000 125 final) ranked Euro NCAP as Brussels' top priority in casualty reduction potential;
   e. held (2001) the first EU conference on the governance of sport ("The Rules of the Game") in Brussels, together with Mario Monti, then EU Commissioner for Competition, and Jacques Rogge, then president of the European Olympic Committee, now president of the International Olympic Committee;

f. set up (2002) the FIA Foundation with €360 million which I negotiated from the sale of the FIA's Formula One commercial rights. The Foundation is a UK charity which spends its annual income of some €10 million on road safety and motor sport safety world-wide. It recently gave $1.5 million to the World Health Organisation for a joint road safety project in developing countries;

g. co-founded (2003) with Erkki Liikanen, then EU Commissioner for Enterprise, the eSafety Forum to promote the use of modern electronic technology for road safety, leading to the European Commission adopting a Communication on intelligent transport systems and road safety;

h. was president and spokesperson 2004-2007 (chairman 2001-2004) of ERTICO Intelligent Transport Systems Europe, which brings the car, electronics and telecommunications industries together with local authorities, police, infrastructure operators and 14 EU governments to encourage the introduction of electronic systems for better road safety and traffic mobility;

i. was a founder member (2005) of the Institut du Cerveau et de la Moelle Epinière in Paris;

j. was a member (2005) of the European Commission's CARS 21 High Level Group for global competitiveness of the European automobile industry;

k. was patron (2006) (jointly with EU Commissioner Viviane Reding) of the eSafety Aware Communications Platform, a public-private initiative to promote accident-avoidance technologies;

l. have been a trustee (since 2002) of the FIA Foundation and chairman of its Programmes Committee, which allocates some €10 million annually to road safety, road traffic environmental issues and motor sport safety. The Foundation helped to establish the Commission for Global Road Safety and launched the international Make Roads Safe campaign. These initiatives led to the first ever global Ministerial Conference on Road Safety, hosted by the President of the Russian Federation, Dmitry Medvedev, in Moscow in November 2009 and to the United Nations General Assembly proclaiming a Decade of Action for Global Road Safety from 2011-2020; and

m. in 2011 was elected chairman of Global NCAP, a body established to coordinate the activities of the national and regional crash-testing organisations world-wide, which have sprung up following the success of Euro NCAP.

7. I apologise for setting out the above at such length but I believe it is relevant to the question of whether it is in the public interest for a newspaper to reveal details of a person's private life when this has nothing whatever to do with his work or his public activities, particularly when, as in my case, the newspaper in question does its utmost

to have its victim removed from his job. When considering the public interest, a newspaper should, in my view, look at the bigger picture.

8. Despite all the above I was not particularly well known in the UK other than in connection with motor sport. I had certainly not courted publicity in respect of my private or personal life in any way. My wife Jean only ever attended one public function with me and that was when I received my Legion d'Honneur in Paris. Neither she nor my two sons had any interest in being associated with the glamour of motor sport.

9. However, I am now probably best known by most people for a front page article in the (now defunct) British Sunday tabloid newspaper the *News of the World* concerning my sex life. As is also now well known, the publication of this article has been held unlawful.

My Claim against the News of the World

10. On 30 March 2008 the *News of the World* ("*NotW*") published a sensational article under the heading "*F1 BOSS HAS SICK NAZI ORGY WITH FIVE HOOKERS*" ("the Article"). The Article was written by Neville Thurlbeck, the paper's Chief Reporter. A copy of the article is attached at pages 1 to 3 of **Exhibit MM1**. The Article was splashed on the front page and on pages 4 and 5 within the newspaper and contained a number of pictures from a covert video recording taken with a hidden camera that had been installed by *NotW* on one of the women present. The Article referred its readers to the *NotW* website where they could watch clips from the video. The Article was not published in the first edition of the *NotW* (which I understand became accessible on Saturday evenings) because the editor, Colin Myler, was worried that I would seek an injunction and thereby prevent further publication, a fact which he admitted in his evidence at the subsequent trial. Instead they published a different story on the first edition and made efforts within the newsroom to make sure that the story did not leak by keeping it secret from all but a few individuals within the paper.

11. The Article contained a number of inaccuracies and factual errors, the most serious and sensational of which was the allegation that the event had a 'Nazi' theme. I had no notice of the *NotW*'s intention to publish the article and, as I did not buy the *NotW*, I was not aware the Article had been published until later in the morning of 30 March 2008 when I was called by the FIA communications director, Richard Woods. It was obviously a huge shock to me and an even greater shock to my wife and sons. Having seen the Article, I spoke to my lawyers and they wrote that day to *NotW* to tell them to remove the material from their website. There was obviously nothing that could be done about the printed edition that was now being read by well over 2.5 million people.

Application for Injunction

12. The video footage was initially removed by the *NotW* at my lawyer's request the day after publication. *NotW* representatives said they would provide my lawyers with [48 hours] notice if it intended to repost the video on its website. This notice was given later that week at which point I instructed my lawyers to apply for an injunction to prevent it being reposted.

13. In the period between the Article being published on 30 March and the injunction hearing on 4 April numerous articles were written in the UK and all over the world concerning the events in question. Given my role as President of the FIA I was used to being in the spotlight in relation to motor sport issues, however this was an entirely different experience for me. Having the most intimate elements of my sex life exposed to people who knew little or nothing about me, still less about my family, was indescribably distressing.

14. I made a press statement categorically denying the 'Nazi' accusation within the Article but this was not given anywhere near the prominence of the *NotW* accusations, no doubt because my voice could not be heard against the millions of newspaper sales and internet articles.

15. The injunction application was made late on a Friday afternoon and judgment was reserved over the weekend. Despite the fact that they were awaiting judgment, and in the face of my flat denials, the *NotW* splashed another front page article concerning the events in question on Sunday 6 April 2008 under the heading "*MY NAZI ORGY WITH F1 BOSS*". This follow-up article, which continued inside on pages 4 – 7, sought to rebut the statement I had given denying any Nazi theme. On the bottom right hand corner of page 7 was a further box which stated "*WE SEND F1 CHIEFS TAPE*" which referred readers to pages 68 – 69 of the newspaper. I will refer to this further below.

16. I took this follow up article to be intended as a threat to me. In essence the *NotW* was showing me that they had the power and resources to write what they wanted to an audience of millions. Having published their original article and seen that I was prepared to sue them, they were now seeking to use every means to put me under the utmost pressure. I believe they intended to crush me and make an example of me to others who might contemplate suing or criticising them.

17. Mr Justice Eady gave judgment in respect of my application for an injunction on 9 April 2008. In his judgment he stated that he could see no legitimate public interest in the story but that "*with some reluctance*" he must refuse my application on the basis that

the "*damn had effectively burst*" as a result of the massive internet dissemination of the video throughout the World. However, Eady J did give directions for an expedited trial. A copy of the initial judgment of Mr Justice Eady dated 9 April is attached at pages 4 to 12 of **Exhibit MM2**.

18. This left the *NotW* free to repost the Article, images and video on their website. Despite Eady J giving the clearest possible warning as to his view on the matter, saying: "*There [was] no legitimate element of public interest which would be served by the additional disclosure of the edited footage, at this stage, on the Respondent's website*", the *NotW* had no hesitation in reposting the Article, images and video.

19. At this stage I had two choices. I could either retreat in disgrace, as the *NotW* clearly intended, or prepare myself for several months of sustained and uncompromising litigation against the largest newspaper group in the country. I decided to carry on with my claim which was issued on 4 April 2008. Despite being aware of what I was letting myself in for I was nevertheless shocked at the underhand tactics of the *NotW* and its lawyers Farrer & Co which were revealed during the course of the claim and trial in the High Court.

20. The period leading up to the trial was difficult. Not only was I having to deal with false, hurtful and intensely private accusations regarding my private life, including numerous articles in the *NotW* and other papers all over the world, I was also having to deal with the repercussions the unlawful publication had on my position in the FIA and most importantly, my own family.

21. Throughout this period and in the face of undeniable evidence to the contrary, the *NotW* and Farrer & Co unwaveringly stood by their assertion that there was a Nazi theme to the events in question. They also sought to add increasingly desperate accusations against me in attempting to defend the publication.

FIA Vote of Confidence

22. As I said, I was also under intense scrutiny by the FIA and its members who were inevitably concerned about the allegations made in the Article. The Inquiry may not need to be told that my case quickly became an enormous story around the world; perhaps a reflection not just of the sensationalist way in which it was published but also because I was prepared to fight it. 790 separate articles were written in various UK newspapers and online between 30 March 2008 and 3 June 2008 concerning the events in question. There were also innumerable articles published abroad. By way of

illustration, in Germany alone my lawyers were taking action in relation to numerous articles as well as pictures and stories on 193 websites.

23. The allegations in the Article led the FIA to commission an independent investigation by Anthony Scrivener QC following which there would be a vote of confidence in me by the FIA members. The vote of confidence was regarding my suitability to continue as President of the FIA. Given the work that I had done at the FIA and the initiatives I had overseen, I was resolute in my desire not to let this wrongful act and campaign by *NotW* force me out of my position.

24. I do not intend to go into the politics of the FIA, however suffice it to say there were some members who for various reasons (entirely unconnected with anything said in the Article) would have been happy to see me removed from my role as President. However, the Article and follow up gave them a platform from which to launch their attacks although I suspect that a number of those calling for my resignation held similar views to my own on the subject of privacy.

25. Soon after the litigation was underway my solicitors received a letter from Farrer & Co informing them that they had been instructed to send a copy of the unedited video footage that they had obtained from the covert recording to Michel Boeri, the President of the FIA senate. This video was several hours long and contained intensely private material concerning myself and the women involved. I was amazed that the *NotW*, and even more so Farrer & Co, felt it appropriate to send this material to the FIA. I believe this was a calculated attempt to have me removed from the FIA or to weaken my claim (by trying to create a belated public interest justification) and so deter me from pursuing it. In the event, the FIA instructed Mr Scrivener to view the footage on the FIA's behalf as part of his report.

26. Mr Scrivener's report was conclusive in its finding that there was no Nazi theme whatsoever as to the events in question. Whilst the report itself is subject to confidentiality undertakings given to *NotW*, Mr Scrivener's cover letter, in which he confirmed he could find no Nazi theme or style is attached at page 13 of **Exhibit MM2**. A copy of this report was disclosed to the *NotW* during the litigation.

27. I won the FIA vote of confidence on 3 June 2008.

Evidence from the NotW

28. During the course of the litigation my solicitors received a number of documents and videos from the *NotW* and its lawyers. The first documents that caused concern were the unedited video footage received from the *NotW*.

29. The footage taken by Woman E on the day was of no surprise given she was in attendance throughout. What was of surprise was the footage disclosed of Woman E and her meetings with Mr Thurlbeck prior to this. In the footage Mr Thurlbeck instructs Woman E how to use the pin-head camera which is subsequently to be hidden in her jacket. Other than the lengths and expense in which the *NotW* was prepared to go to get a story none of this was particularly remarkable.

30. What was truly astonishing however was a clip which showed Mr Thurlbeck instructing Woman E to try and get me to do a 'Sieg Heil' Nazi-style salute. During the course of this meeting he says to Woman E " *... when you want to get him doing the Sieg Heil it's about 2.5 to 3 metres away from him [a reference to the hidden camera] and then you'll get him in – no problem*". This, to me, was clear evidence that it was Mr Thurlbeck's premeditated intention to try and introduce a Nazi theme to achieve the article he wanted as without it there would be no even arguable public interest in its publication.

31. Despite the fact that it was well aware that no 'Sieg Heil' took place, which was unsurprising as there was no Nazi theme, the *NotW* still decided to publish the story and worry about the facts later. Of course, if Woman E, had given a Nazi salute during our encounter or sought to get me to, everyone there would have been horrified, particularly the German woman who was present. Woman E clearly knew herself it would have been entirely inappropriate as she did not even attempt it.

32. When witness statements were exchanged it transpired that Woman E was paid considerably less for the story than she was originally promised, £12,000 instead of £25,000.

33. In the week following the Article, Mr Thurlbeck met Woman E in an hotel in Milton Keynes and presented her with a follow-up article he had already written which he invited her to sign in return for a further £8,000. This was the above-mentioned article which appeared on 6 April. Mr Thurlbeck later rewrote parts of this article before publishing it, claiming during the trial that he had not simply invented what he wrote but had had numerous telephone conversations with Woman E. He was unable to produce any note of such conversations. It was this article which formed the second front page splash referred to at paragraph 15 above.

34. The witness statements also explained how the story developed and revealed those involved in its publication. It was clear that Mr Thurlbeck had kept the existence of the story secret apart from telling the News Editor, Ian Edmondson, his deputy James Mellor and Neil McLeod. Ten days later, on the day the filming took place, they told the editor, Colin Myler, about the story.

35. Mr Myler's statement confirmed that he told Mr Mellor not to mention the story at the editorial meeting in case it was leaked. He also said that he did not give me advance warning in case either I leaked the story to another newspaper, which was absurd given my anxiety to keep the information private (and which did not survive cross-examination), or in case I applied for an injunction. I believe this was the real reason no prior notification was given. Further, as I have already stated, Mr Myler was so concerned about the possibility of me seeking and obtaining an injunction he ran a 'spoof' edition of the *NotW* that day. My belief was later confirmed by Paul Dacre, the editor of the *Daily Mail*, in evidence to the House of Commons Culture Media and Sport (CMS) Committee. He was asked by the Chairman if I should have been told about the story and replied "*Well, this is the age-old problem. Almost certainly if they had told him he would have injuncted them*" (CMS Committee 23 April 2009 at Q595)[1].

Blackmail

36. In the week following the first story, Mr Thurlbeck contacted two of the other women involved, Woman A and Woman B. This was in addition to his meeting with Woman E. He contacted them in order to try and get them to tell their story to the *NotW* and presumably to confirm the *NotW*'s version of events. On 2 April 2008 he sent each of them an email which said:

> "*I hope you are well. I am Neville Thurlbeck, the chief reporter at the News of the World, the journalist who wrote the story about Max Mosley's party with you and your girls on Friday.*
> *Please take a breath before you get angry with me! I did ensure that all your faces were blocked out to spare you any grief.*
> *And soon, the story will become history as life and the news agenda move on very quickly.*
> *There is a substantial sum of money available to you or any of the girls in return for an exclusive interview with us. The interview can be done anonymously and you[r] face can be blacked out too. So it's pretty straight forward.*
> *Shall we meet/talk?*"

37. I was amazed at the audacity of Mr Thurlbeck's email. Despite having perpetrated a serious invasion of the women's privacy he was attempting to make light of the situation and take some credit for having pixellated their faces. I assume that in fact even the

[1] Culture, Media and Sport Committee, *Press standards, privacy and libel*, Second Report of Session 2009-10, Volume 10, Ev 156, Q595

NotW's lawyers couldn't justify revealing their identities. He became more insistent the following day sending an email which said:

"I'm just about to send you a series of pictures which will form the basis of our article this week. We want to reveal the identities of the girls involved in the orgy with Max as this is the only follow up we have to our story.
Our preferred story however, would be you speaking to us directly about your dealings with Max. And for that we would be extremely grateful. In return for this, we would grant you full anonimity [sic], pixilate your faces on all photographs and secure a substantial sum of money for you.
This puts you firmly in the driving seat and allows you much greater control as well as preserving your anonimities [sic] (your names won't be used or your pictures).
Please don't hesitate to call me ... or email me with any thoughts.
Regards and hope to do business.

Neville Thurlbeck, chief reporter, News of the World"

38. He did indeed send both women the pictures he was threatening to publish so that they would be under no illusion about his intentions. His final email later that day stated:

"Ok girls, here's the offer. It's 8,000 pounds for an interview with one of you, with no name, no id and pixilated face. And we pixilate all the pics I send through to you this morning.
BUT time is running out for us and if you want to come on board, you need to start the ball rolling now. Call me ... if you want to.
Best, Neville"

39. I know from speaking with the women that they were extremely concerned by the threats made by Mr Thurlbeck. They believed, as do I, that Mr Thurlbeck was blackmailing them to cooperate with the *NotW* or face being 'outed' in the following edition. I know this was an extremely distressing time for them as they feared the serious repercussions on their families and friends and their own jobs if it became known they were involved in a story with such large media interest. To their great credit, and despite the large amounts of money on offer, they refused to co-operate.

40. It is worth noting that these women and I were friends. The "scene" of which we were all a part was an environment in which discretion and trust are fundamental. Other than Woman E (who was a close friend of Woman A but I had only met once before), I had met the other women on a number of occasions over the course of about 18 months and we all got on well. In addition to the intimate aspects of our relationship, these women were all intelligent and three were (or had been) very successful in their chosen careers.

Trial

41. After the FIA vote of confidence on 3 June 2008 until the trial that began on 7 July 2008 nearly all my time was spent on the High Court litigation. I was fortunate to have some legal training and experience of litigation, both from my days as a Barrister and in my role at the FIA. Without it, the experience would have been very difficult indeed.

42. Throughout the trial the *NotW*, through its Counsel, repeated time and time again that the events in question had a Nazi theme despite all those in attendance on the day giving the strongest possible evidence to say that there was no Nazi theme. Woman E, who was quoted in the 6 April article saying that there was a Nazi theme and that I had asked for it, did not turn up to give evidence. She subsequently confirmed on television (Sky News) that the Nazi allegation was completely untrue and apologised for her role in making the video.

43. In hindsight I believe many of the *NotW*'s submissions were intended for the press in attendance who were able to file huge amounts of copy knowing it could be published with absolute privilege. I think, although I cannot be sure, that on each of the 5 days on which the trial was heard it was front page news in the Evening Standard that evening and well covered in all of the major newspapers the following morning. For example articles in *The Times*, also owned by the same parent company as the *NotW*, were published under the headlines "*Max Mosley 'begged for more' after being hit 88 times*" and "*News of the World insists Max Mosley orgy had clear Nazi theme*". This was further intrusion into my private life which I had no choice but to accept in order for my case to be heard.

44. Despite having provided witness statements from 15 witnesses (7 of which were agreed to be submitted as hearsay evidence) the *NotW* only produced two witnesses to give evidence, these were Mr Myler and Mr Thurlbeck. As I have said, Woman E, their key witness, eventually refused to give evidence on the day she was due to attend.

45. Judgment was given by Eady J on 27 July 2008; a copy of the judgment is attached at pages 14 to 67 of **Exhibit MM2**. In the judgment, Eady J set out in the clearest possible terms why the Article had been an invasion of my privacy and why he had decided to award me record damages of £60,000.

46. The Judge was severely critical of the *NotW* and in particular Mr Thurlbeck. At paragraph 97 he says of the inconsistencies in Thurlbeck's evidence:

"... I think their primary relevance is as to the credibility of Mr Thurlbeck and, to a degree, of Mr Myler. It is necessary to have regard to these responses when

considering to what extent the answers given to the court and to Mr Price can be regarded as frank. The real problem, so far as Mr Thurlbeck is concerned, is that these inconsistencies demonstrate that his "best recollection" is so erratic and changeable that it would not be safe to place unqualified reliance on his evidence as to what took place as between him, Woman E and her husband."

47. In particular when considering the blackmail of the women by Mr Thurlbeck Mr Justice Eady made the following observation at paragraph 86:

"Before moving on, I wished to establish more clearly what Mr Myler's attitude really was to these threats made by his chief reporter. I therefore asked two questions:

"Q Just before you leave that, can I ask you whether you ever raised this with Mr Thurlbeck?

A No, my Lord, because I was away that week so I wasn't aware of these emails at that particular time.

Q When you did become aware of them did you raise it with him then?

A I did not because I didn't become aware of them until considerably after the event, literally only at the disclosure stage."

That is effectively a non-answer, from which it would appear that Mr Myler did not consider there was anything at all objectionable about Mr Thurlbeck's approach to the two women, as he did not query it at any stage. This discloses a remarkable state of affairs."

48. I have exhibited to this statement a number of witness statements of the main individuals involved in my claim against News Group Newspapers ("NGN"), publishers of *NotW*, including my own, those of the women involved (A to D) and the senior executives at the *NotW*, Colin Myler, Neville Thurlbeck and Ian Edmondson. These are attached at pages 68 to 218 of **Exhibit MM2** in order to give further background.

Reaction

49. On a personal note, I thought the damages were too low to have any deterrent effect on *NotW* and I was disappointed at the Judge's refusal to award exemplary damages. However, I thought it was a very careful, considered and impressive judgment. As I said at the time it 'nailed' the Nazi lie perpetuated by the *NotW* and in that regard vindicated my decision to pursue the claim despite the very disagreeable and embarrassing additional publicity which resulted from the trial.

50. Immediately after the judgment was handed down Mr Myler read a prepared statement on the steps of the Court attacking the judgment and accusing the Courts of introducing a privacy law via the back door.

51. In light of the press coverage during the trial it was inevitable that the judgment would attract significant interest. I was surprised however at how hostile a reaction it provoked in the mainstream media at the time. With the possible exception of the *Guardian* all the other newspapers were damning of the judgment claiming it would 'chill' investigative journalism, an argument that is completely unsustainable.

52. The reporting was often one sided and gave little or no regard to my right to privacy. For instance the next day *The Sun*, also owned by NGN, led with a front page article entitled "*THE DAY FREEDOM GOT SPANKED*"; a copy of the article is attached at pages 219 to 220 of **Exhibit MM2**.

53. What I found to be even more shocking was the personal attacks made on Mr Justice Eady. He was simply interpreting the law in accordance with Parliament's wish yet some felt it appropriate to attack him personally for trying to bring in a privacy law. I understand from a former senior employee of News International, the immediate parent company of NGN, that at the time of the trial, Rebekah Brooks, then editor of The Sun, met Paul Dacre, editor of the *Daily Mail* and they agreed to launch a campaign against Mr Justice Eady.

54. A good example of this is an article by Quentin Letts published in the *Daily Mail* the day after the judgment entitled "*As cold as a frozen haddock, Mr Justice Eady hands down his views shorn of moral balance...*". A copy of this article is attached at pages 221 to 226 of **Exhibit MM2**. This is an example of the self-serving nature of newspapers and their refusal to provide a fair and accurate report of something that is not in their interest.

55. This reporting contrasted with a BBC poll conducted around the same time in which found that the vast majority of individuals surveyed supported the judgment.

56. Given the accusations of 'Nazi' role play, the Article was subject to particular scrutiny in Germany. Indeed the *NotW* had formally syndicated the images and video to Axel Springer AG publishers of Germany's biggest selling newspaper *Bild*. I therefore instructed lawyers in Germany to bring proceedings against Axel Springer AG for breaching my privacy. I instructed lawyers in France to bring similar proceedings.

Alexander

57. In May 2009 my eldest son Alexander, who suffered from depression, died of a drug overdose. Although it is true to say that he had struggled with drug addiction prior to publication of the Article, I strongly believe its publication and the coverage that

followed played a significant part in exacerbating Alexander's depression and contributed to the circumstances which led to his death.

58. His death was obviously a horrific time for me, my wife and my other son Patrick. On top of the grief and distress, I was shocked by the intrusive behaviour of journalists at this time. I believe that a large reason for the interest in Alexander's death was the publicity that resulted from my claim against the *NotW*. I had to instruct my lawyers to write to all newspaper editors asking them to leave us alone to grieve. At one point, when I went to visit Alexander's house to try and start sorting out his personal effects, I found a journalist on the doorstep. Within minutes a mob of about 15 journalists appeared and camped outside Alexander's house apparently intending to photograph me and seek my comment. My lawyer had to attend personally and serve each of them with a letter demanding that they leave so that I could leave the house without being further harassed. They eventually did so.

59. Harassment of this kind by the tabloid press is apparently commonplace in such circumstances. I was fortunate enough to be able to call on immediate legal assistance. Most of their victims are not in a position to do so.

60. The warnings my lawyers sent to newspaper editors did not stop reporters and photographers trying to get access to Alexander's funeral at a small country church despite the security arrangements I was forced to take. The security guards afterwards described to me how one of the reporters tried to pass himself off as a rambler.

Satellite Litigation / Foreign Jurisdiction Claims

61. Another significant consequence of the publication of the Article was its widespread dissemination on the Internet and in particular of the images and video taken from the *NotW* website. It was the images and video that constituted the most significant breaches of my privacy and the material about which I was most concerned.

62. During my application for an injunction NGN's lawyers put forward evidence that the article had been viewed 435,000 times in the two days it was online and that the video footage available on the website had been viewed 1,424,959 times.

63. Despite Mr Justice Eady's above-mentioned judgement that there was "*no legitimate element of public interest which would be served by the additional disclosure of the edited footage, at this stage, on the [NotW's] website*" the *NotW* took the decision to repost the Article together with the images and video onto its website.

64. I believe the reposting of the Article, images and video was a commercial decision as well as a continuation of their attempt to make an example of me. Later that year the *NotW* would boast of the unprecedented 600% growth in traffic to its website "*driven by exclusives such as the Max Mosley video*". This boast can only have been made to attract greater numbers of sponsors and advertisers and thus revenue.

65. For reasons best known to itself the *NotW* had not applied copyright protection software to the images and video on the *NotW* article. This meant that anyone was able to copy the images and video footage to their own websites/articles with little problem. As a result, the images spread like wildfire all over the Internet as the *NotW* must have known they would.

66. Having obtained judgment in England and Wales I instructed my lawyers to take steps to remove the images and video from the Internet where possible. I understand that this was a labour intensive exercise and that my lawyers have removed links from over 250 websites in the UK alone. My lawyers have instructed several different firms of lawyers in over 20 different jurisdictions to remove the images and video originally published by *NotW* from several hundred more websites, including, as noted above, 193 in Germany. This exercise was made all the more difficult by the intransigent position taken by Google Inc. as to their ability to remove images and video from their search results.

67. To date I estimate that I have spent well over five hundred thousand pounds attempting to deal with the consequences of the publication of the Article on the Internet. Although the amount of material available on the Internet has been greatly reduced, it is still available. Despite this ongoing investment, I have to live with the knowledge that it will probably never be fully removed. In effect the information I wished to keep private and which the *NotW* was held to have published unlawfully will forever be known and accessible to the world at large. Anywhere in the world when I meet someone for the first time, I do so in the knowledge that they will almost certainly have put my name in a search engine and seen the material. Before the Internet, breach of privacy was usually a single publication. Today, the information is republished on a daily basis.

68. The effect of this is on the victim is very powerful. Every time I visit a restaurant or shop anywhere in the world, I have to prepare myself that the individuals working there or other customers know. I am openly mocked by newspaper editors such as Paul Dacre. I have to steel myself to this and, in some cases respond as best I can. Whilst I have developed my ability to deal with this, the effect of the intrusion and the damage to my reputation is devastating. I have continued to campaign for privacy, because I know what it is like to be a victim and I have the resources to do this, but the Inquiry should be in no doubt that the victim of an invasion of privacy suffers a terrible penalty.

It is comparable to the penalties the courts can impose on convicted criminals, if not worse.

The Argument for Prior Notification

69. Damages, no matter what the amount, cannot be an effective remedy for breach of privacy. The only effective remedy is to keep the information private. This can only be achieved if the article is never published in the first place. If the newspaper refuses to agree not to publish, the only recourse is to obtain an injunction. But one can only obtain an injunction if one has notice of a possible story prior to publication.

70. A law to compel newspapers to notify an individual before publishing his or her private information is therefore an urgent necessity. The press case against is unarguable. It relies on criticising the courts' power to prevent publication (which already exists) and ignoring the fact that, as explained below, the law can be broken with impunity if the victim has no prior warning.

71. There is currently no real remedy once a newspaper has illegally published private information. This is true no matter how blatant the wrong. The reason is simple. Even if the claimant is awarded record damages for breach of privacy (as I was in 2008), his solicitors' bill will exceed the total of damages and costs paid to him by the newspaper. He will be left with a large bill to pay.

72. It is impossible to pretend that paying a large bill is a remedy. And the problem is compounded by a trial in open court. Precisely that which should (in a successful claim) have been kept private, is published again, this time with the protection of absolute privilege. And, worse, once published, the information will never again be private no matter how blatantly illegal the original exposure may have been. As already explained, this is amply demonstrated in my own case.

73. As a result, lawyers routinely advise victims of a breach of privacy that legal action, even if successful, is pointless. It will merely result in a large bill and further publicity. They also point out that no judge can remove the private information from the public mind. In effect, they tell the victim, once the information has been published, the law cannot help; there is effectively no remedy.

74. Newspapers know this. They know that if only they can get the story and pictures out on the street before the victim finds out, they will not be sued. No matter how outrageous the invasion of privacy, the victim's lawyers will tell him there is nothing useful to be done.

75. It follows that if a newspaper intends to publish something which it knows is illegal, its only risk is that the victim will find out and ask a judge to stop publication. So the newspaper keeps its intentions secret from all but a minimal number of staff. Sometimes (as in my case) they even publish a "spoof" first edition, the better to hide their intentions. The more egregious the illegality, the greater the secrecy. The victim is then ambushed and left with no remedy.

76. This is what happened to me. Although I was awarded record damages of £60,000, and the newspaper paid £420,000 towards my costs (at 82%, an unusually high proportion), I was left £30,000 out of pocket. And as already explained, by suing I had to face massive additional publicity about an element of my life which the court eventually held should never have been made public in the first place.

77. It is easy to see where this leads. If a newspaper wants to publish something obviously illegal, such as medical records or pictures of private sexual activity, they can do so with impunity provided they can keep the story secret until it is published. They know they will then not be sued.

78. The remedy is to require newspapers to notify an individual before publishing intimate or sexual details of his private life. Then the victim can, if he so wishes, ask a judge to prohibit publication until a trial can determine whether or not publication is lawful. If a full trial shows that publication is lawful, everything can be published. But the current gap in the law, which allows a newspaper to publish with impunity information which is subsequently held to be strictly private, would cease.

79. In practice, bad invasions of privacy would mostly not proceed to trial. A judge will only grant an injunction if satisfied the claimant is likely to win at trial. The newspaper would then probably not want to risk the costs of a trial it was likely to lose. For the victim, the cost of seeking an injunction is a small fraction of the cost of a full post-publication trial. And, unlike a trial, it can provide an effective remedy. But a victim can only apply for an injunction if informed.

80. A requirement to notify is strongly opposed by newspapers, even if restricted to intimate private matters such as medical records, or sexual activity with no element of public interest. They do not accept that in marginal or difficult cases, an independent judge, not a tabloid editor such as a Paul Dacre or Kelvin MacKenzie, should weigh the public right to know against the individual right to privacy. They do not agree that the present loophole in the law which gives immunity to the tabloids, even when committing outrageous breaches of privacy, should cease.

81. Although the newspaper industry acknowledges that in the vast majority of cases the victim finds out and can seek an injunction if he wishes, they do not want to end the tabloids' ability to ambush a victim to prevent him seeking an injunction. This despite responsible journalism requiring that in all but the most exceptional cases, a comment from the subject must be sought before publication.

82. Recognising that until very recently, the power of the Murdoch press in the UK was such that no government would introduce legislation to make prior notification compulsory (not even in the worst cases), I brought a complaint against the UK in the European Court of Human Rights ("ECtHR"). Although the Court ordered an oral hearing, which only happens in a small number of complaints, I was ultimately unsuccessful because the Court thought this was a matter for the UK. Happily, Murdoch's power is no more. There is now no reason why a law which is so clearly needed should not be introduced. My submissions to the ECtHR are attached at pages 227 to 327 of **Exhibit MM2** and its judgment is attached at pages 376 to 415 of **Exhibit MM2**.

83. I have said that the case against prior notification is unarguable. This does not stop the press making an attempt. They claim it would have a "*chilling effect*" and lead to endless injunctions. This is nonsense. Paul Dacre, Editor of the *Daily Mail*, told the CMS Committee that "*ninety-nine times out of 100*" the subject has notice of the story (23 April 2009, Q594). So a requirement of prior notification would affect only 1% of victims. Nothing would change for the other 99% who would know already and not need notice. The newspapers normally contact the subject for a quote before publishing. They only ambush an individual if they know what they are going to write is illegal. Then they forgo the quote in order to get a story out which would otherwise be stopped by the court.

84. The only full privacy trial since mine was the very recent one involving Rio Ferdinand. Like me, he was given no prior notice and was ambushed for fear of an injunction. However, he lost his action. If the newspaper had notified him and had he applied for an injunction but failed to convince the judge that he was likely to win at trial (which seems probable as he lost his action), the entire matter would have been resolved inexpensively at an early stage. As it is, Mr Ferdinand will have an enormous bill and even the newspaper will be left with a bill far in excess of its costs in interlocutory proceedings.

85. The CMS Committee considered the question of prior notification in its report of 24 February 2010. At paragraph 93 it recognised the need for prior notification and

suggested that editors and journalists should be encouraged to pre-notify. It also recommended a change to the Civil Procedure Rules to make failure to notify an aggravating factor in assessing damages for breach of Article 8. But as to making prior notification compulsory, the Committee said "*We have concluded that a legal or unconditional requirement to pre-notify would be ineffective, due to what we accept is the need for a 'public interest' exception*".

86. With great respect to the CMS Committee, this appears to conflate two entirely separate public interest exceptions. First the public interest (if any) in not notifying; second the (possible) public interest in the material the newspaper wishes to publish. Of these, only the first is relevant. Once notice had been given, the judge could be relied upon to assess whether there was any public interest in publishing the material. Precisely that issue would be before the court should the subject of the story seek an injunction.

87. The number of cases where the public interest might require notice to be withheld would be extremely small. They would be confined to those where the act of notification itself was against the public interest. Such cases would not only be rare, they would be very clear - for example a risk of evidence disappearing, intimidation of witnesses or a criminal fleeing. Newspapers would easily recognise them if only because of the obvious need to notify the police before publication.

88. It is difficult to see how this relatively simple exercise would make a requirement to pre-notify "ineffective". On the other hand experience shows that no amount of encouragement is likely to make a tabloid editor abandon his current power to by-pass the law by ambushing his victim. And the possibility of aggravated damages, even if it were a reality, would be academic because the victim will not sue once the story is out for all the reasons explained above.

89. My application to the ECtHR for a requirement of prior notification resulted in a large amount of press commentary and coverage. These are too numerous to exhibit to this statement however I have attached at pages 328 to 351 of **Exhibit MM2** an article by Professor Gavin Phillipson of the University of Durham entitled "*Max Mosley goes to Strasbourg: Article 8, Claimant Notification and Interim Injunctions*" published in the Journal of Media Law which provides an interesting academic view on the question.

90. The mainstream press welcomed the judgment in Strasbourg as much as they disapproved of the judgment of Eady J in my original claim; *The Sun* headline proclaiming "*MOSLEY TAKES A PROPER SPANKING (He won't enjoy this one)*".

Investigative Journalism

91. Newspaper editors frequently claim that compulsory prior notification would "chill" investigative journalism. I do not believe this to be true.

92. Genuine investigative journalism requires detailed investigations to have taken place. In almost every case the allegations are then put to the individual(s) concerned for comment, not least because of the privilege which attaches to such journalism even if the allegations turn out to be incorrect, under the principle in *Reynolds v Times Newspapers*. As mentioned above, only in the most exceptional circumstances, for example if there is a risk of evidence being destroyed or a criminal fleeing, would it be acceptable to publish without contacting the subject.

93. If notice were given and an injunction sought, it would be refused if the matter was in the public interest. And genuine investigative journalism is by definition in the public interest. It has been suggested that investigations such as the MPs expenses scandal would not have been published if prior notification were required. This is nonsense. Privacy laws could not have been used because no judge would have accepted an argument that the revelations were not in the public interest. In this particular case many MPs had prior notice. The fact that none of them sought an injunction tends to prove the point. Indeed, the Telegraph has spoken of the robust advice they received at the time that the public interest argument would prevail.

94. What is not in the public interest are articles concerning individuals' private lives which serve no purpose other than the amusement or titillation of readers or to harm and damage the victim. As the European Court of Human Rights stated in my case "*The Court also reiterates that there is a distinction to be drawn between reporting facts – even if controversial – capable of contributing to a debate of general public interest in a democratic society, and making tawdry allegations about an individual's private life.*"

Privacy Injunctions

95. For several months at the beginning of 2011 newspapers ran a campaign to denounce the use of privacy law by various individuals to obtain injunctions in respect of private information. Of particular concern to the press was the fact that these injunctions were sometimes granted anonymously so that members of the public were not aware who had obtained them.

96. A number of detailed judgments were handed down by the Courts. Each judgment explained the reason why the Judge granted (or refused) the injunctions. Many were highly critical of the Defendant's conduct.

97. I was very surprised at the one-sided reporting of these injunctions. The newspapers published a number of misleading articles and commentaries despite themselves knowing in most circumstances all of the facts.

98. Within these articles was criticism that individuals seeking an injunction should dare do so without first notifying the press, as they are obliged to do as a result of s.12(2) of the Human Rights Act 1998. It has always struck me as odd that a claimant should have to notify a media defendant if applying for an injunction when there is no such requirement on a media defendant to notify a claimant prior to publication.

99. I am aware that the issue of injunctions is currently being considered by a Parliamentary Joint Committee. I have attached at pages 352 to 364 of **Exhibit MM2** my submissions to this committee.

Press Regulation/PCC

a. Negatives/Reasons for failure

100. The Press Complaints Commission ("PCC") is essentially a creature of the newspaper industry. Although the editors are (just) in a minority on its board, the remaining members face a powerful and relatively united group. The two most recent chairmen (Baroness Buscombe and Sir Christopher Myer) appear to have been incapable of holding a proper and fair balance between the interests of the newspapers and the general public.

101. The PCC has no power to sanction. Furthermore, media membership is entirely voluntary, for example Northern & Shell Media publisher of the Express, Star and OK! publications has opted out of any form of regulation. As a result, the PCC has neither the will nor the power to regulate the newspapers. This is one of the reasons no effective steps were taken after Operation Motorman (as to which see paragraphs 127 to 131 below). It is the reason tabloid journalists are able routinely to ignore the PCC code. It may also explain why the PCC repeatedly exonerated the *NotW*.

102. The PCC has been wholly ineffectual in preventing scandalous abuse of individuals such as the McCanns, Robert Murat and Chris Jeffries. Its inability to act of its own initiative contributes to its lack of influence.

103. Another weakness is its refusal to act if a complainant has started legal proceedings. Presumably it hopes thus to discourage litigation. Yet it is precisely in the early stages of litigation that the PCC's role as a potential mediator might be useful.

104. As to privacy specifically, the PCC claims to be an effective alternative to the Courts as it is able to deal with matters discreetly and privately. However an individual can only go to the PCC if he knows about the story. If an editor decides to go ahead and publish unlawful private information without giving notice then the PCC is as powerless as the Courts in providing an effective remedy.

b. Positives

105. The PCC has had some success in preventing the publication of stories which did not belong in the public domain. But as I have said, it can only do this if the complainant has notice of the story.

106. It has also intervened on behalf of bereaved persons who were subject to press harassment. I have had first hand experience of this as the PCC did provide some help to my lawyers when my son died and I experienced the issues I have set out in paragraphs 57 to 60 above.

c. No teeth

107. When dealing with people as feral as many tabloid reporters, an organisation with no teeth has no chance. The only sanction the PCC can force upon its members is to publish in full an adverse ruling. This is meant to be with "*due prominence*" however it is well known that any ruling will not be given anything approaching the same prominence as the original article and is likely to be tucked away in an obscure section of the newspaper.

108. Tabloid reporters have been secretly filmed laughing openly about the PCC. Its methods are like trying to enforce the Road Traffic Acts by sending polite letters to dangerous drivers asking them not to do it again.

d. Conflicts of Interest

109. The PCC is made up of senior figures in the newspaper industry including the editors of The Scotsman, Sunday Telegraph, Sunday Mirror and Mail on Sunday. The long-standing chairman of the PCC Editors' Code of Practice Committee is Paul Dacre. Mr

Dacre is also a former member of the PCC Complaint's Commission. As mentioned above, he is also editor of the *Daily Mail*. I will come back to Mr Dacre in paragraphs 133 – 138 below.

110. These are the individuals who rule upon their contemporaries and make the decisions affecting their industry. Having a regulatory body made up of the most senior members of that industry is akin to having the Mafia in charge of the local police station. As Sir David Calcutt QC said in his 1993 review, the PCC is a "*body set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.*" Nothing has changed.

e. A suggested alternative to the PCC

111. What is needed in my view is a statutory body which can, where possible, avoid disputes between members of the public and the press and, when this is not possible, resolve them quickly without ruinous expense.

112. There has been much discussion about reforming the law relating to privacy. However the law seems to me to have struck the balance correctly between an individual's right to privacy and the importance of freedom of speech. The truly pressing problem is not the law itself; it is the need for access to the law and for the law to be effectively enforced.

113. At present, only a very small proportion of the population can afford to sue for breach of privacy. And only a minority of newspapers can afford to fight an action. The media have lobbied for the removal of CFAs, apparently with success, but this does not solve the problem, it merely reduces the number of potential litigants and denies even more people access to the courts.

114. How can we claim to live under the rule of law if most people have no access to justice? The brutal fact is that the great majority of the population are denied access to the courts because they are not rich enough to sue. Except for a wealthy few, we are like a country with no functioning courts. It is as bad as if access were denied on grounds of religion or political belief.

115. What is needed is a means of resolving privacy disputes for members of the public who cannot afford to pay. This could be achieved by means of a statutory tribunal, entirely independent of both press and government, using greatly simplified procedures analogous to those of some existing bodies in other areas of the law. Given compulsory

prior notification, and the power, when necessary, to prevent publication, such a tribunal could resolve almost all privacy issues effectively and at minimal cost to both parties. This would not prevent a claimant going to the High Court but it would protect (where appropriate) the great majority of the population who cannot afford current procedures. It would not be a perfect system but it would be very much better than the one we have now. It would be available to the ninety or more percent of the population who are currently locked out of the courts because they cannot afford to litigate. And it would free the smaller newspapers from the financial threat of unaffordable court action.

116. Of course this would be a long way from the Rolls Royce procedures and the complexity we currently have. But what good is a Rolls Royce if no one can afford it? And let's be under no illusion: even if the costs of privacy actions were brought down to a few thousand pounds or moved to the County Courts, they would still beyond the means of most and would still drain the resources of small local newspapers.

117. There are many ways in which the costs of such a tribunal could be covered - for example by a subscription from all newspapers of a fraction of 1p for each copy sold or distributed. Overall, the tribunal would be a massive economy for the newspaper industry. A rational means of paying for it would not be difficult to find.

118. I do not believe this would in any way inhibit a free press. If it meant that the press needed to ensure their facts were correct this must be a good thing. If it significantly reduced, or even eliminated, the legal spend (for both parties) then this must also be a good thing. In some ways it might make for a less inhibited press as they could seek an early determination at little expense as opposed to not publishing an article for fear of potential legal repercussions.

119. Another advantage of such a tribunal would be that in the very rare cases where a newspaper has genuine reasons for not wishing to notify an individual before publication, the newspaper could apply to the tribunal for a ruling. Then an entirely independent adjudicator would take the decision rather than an editor who, however honest, will always have a conflict of interest when weighing the interests of an individual against those of his newspaper.

Journalistic Practices

120. In their attitude to the courts and to the law generally, tabloid editors and journalists appear to consider themselves above the law. They take elaborate steps to prevent members of the public bringing an issue before the courts – for example the secrecy

and spoof editions used to conceal a breach of privacy from the victim. They do this and campaign against any form of regulation because, at best, they think their own judgement superior to that of any High Court judge and, at worst, they are willing to break the law in the course of their work like any common criminal.

121. They frequently try to justify criminal acts such as phone hacking or bribing officials on the grounds they have to do this to expose wrongdoing. They know that if the police want to tap a telephone while investigating serious crime, permission has to be sought from high authority. However, being above the law, they expect to operate without such constraints. The fact that (as far as is known) no journalist or editor was sacked after the massive and systemic criminality uncovered by Operation Motorman (as to which see paragraphs 127 – 131 below) speaks volumes.

122. Among the methods in every day use are blackmail and blagging.

a. Blackmail

123. There have been numerous instances of threats and blackmail against politicians, actors and other public figures by tabloid journalists. NGN, publishers of *The Sun* and the *NotW* appear to have been particularly prolific offenders. It is no exaggeration to say that the practice was routine for certain tabloid journalists and may still be. My own action against the *NotW* in 2008 revealed a prime example as set out in paragraphs 36 to 40 above.

124. No company within the News International umbrella (nor indeed the PCC) took any disciplinary action against Mr Thurlbeck despite the judge's very clear remarks (see paragraphs 46 and 47 above). When I wrote to Mr Murdoch suggesting he should have the matter investigated (a copy of this letter is attached at pages 365 and 366 of **Exhibit MM2**), he did not deign to reply. One can imagine that if one wrote to the head of a Mafia family complaining about criminal acts by an employee one might get no response. But I was surprised to receive no acknowledgement from the CEO of a major international corporation quoted on Wall Street in response to serious allegations of criminal conduct within his organisation.

125. The reaction of NGN and, indeed its ultimate American parent company News Corporation ("Newscorp"), to evidence of serious criminal wrongdoing by the chief reporter on their largest newspaper, flagged up by a High Court Judge, leads inevitably to the conclusion that criminality was tolerated if not actively encouraged within Newscorp and its subsidiaries.

b. Blagging

126. Whilst the phone hacking scandal may be new, blagging as a known journalistic practice is not.

127. Operation Motorman was an investigation carried out in 2003 by the Information Commissioner's Office ("ICO") into possible breaches of Data Protection law by the British Press. The investigation focused in particular on the activity of Steve Whittamore a private investigator who obtained much of his information illegally from Government computers.

128. An enormous amount of evidence was obtained implicating almost every major newspaper in the country and hundreds of journalists. What was the outcome of this investigation? Four conditional discharges. What did the various newspapers do? Nothing. What did the PCC do? Nothing.

129. It is inconceivable that any respectable organisation would seek to brush under the carpet such widespread misbehaviour and in many instances criminality. This is exactly what the newspapers did, safe in the knowledge that they would not be held to account by the PCC or the Government.

130. It has recently been suggested by one of the lead investigators on Operation Motorman that he was specifically told by his superiors that he could not interview journalists about the Whittamore papers. If this is true it shows an alarming state of affairs.

131. The *Daily Mail* emerged from Operation Motorman as the most prolific user of the services of Mr. Whittamore with 952 transactions involving 58 journalists. Because of the nature of the information (driver and vehicle details from the DVLA, criminal records from the Police National Computer, medical records etc), it is inconceivable that the *Daily Mail* and other newspapers did not know they were procuring and encouraging criminal acts. These involved obvious offences under data protection legislation not to mention the old Prevention of Corruption Act 1906. As mentioned above, Paul Dacre was editor of the *Daily Mail* when these activities were taking place. He still is and remains chairman of the PCC Editors' Code Committee.

132. I attach at pages 367 to 375 of **Exhibit MM2** an article by Brian Cathcart entitled "*The Code Breakers*" which sets out a useful summary and opinion on the actions of *NotW* in relation to my case and others and those of journalists generally.

Miscellaneous Issues

a. *Paul Dacre*

133. As mentioned above, Mr Dacre is the editor of the *Daily Mail* and chairman of the PCC Editors' Code Committee. Following my action against the *NotW*, he launched a vicious attack on the judge, Mr Justice Eady. His starting point, in a speech to the Society of Editors in November 2008, appears to be that he and his fellow editors are the arbiters of what consenting adults may or may not do, even in the privacy of their bedrooms. He claims for the tabloids the right to expose and vilify anyone whose sexual activities are not to his particular taste. He believes no judge should be allowed to interfere if he wants to pillory someone. It seems that he thinks the law irrelevant and believes the opinions of editors alone should determine what is published.

134. When Mr Justice Eady, in a careful and reasoned judgement, suggested that "*Where the law is not breached ... the private conduct of adults is essentially no-one else's business*" Mr Dacre reacted with fury. Among other attacks on the judge, he said "*This law is not coming from parliament. No, that would smack of democracy, but from the arrogant and amoral judgments, words I use very deliberately, of one man. I am referring, of course, to Justice David Eady*". Needless to say Mr Dacre entirely ignored the absence of any appeal by the newspaper or any hint that the judgment was anything other than an accurate statement of the law as it stands.

135. Mr Dacre's attack on Mr Justice Eady was a deliberate and calculated attempt to intimidate the judiciary. Even a robust and controversial public figure, well used to attack and criticism in the media, would find such an onslaught very unpleasant. Judges are well known to lead private lives away from their courts. To such a person Mr Dacre's attack must have been devastating as it was certainly intended to be. It was also, no doubt, intended to send a clear message to any other judge who might contemplate reaching a decision likely to displease Mr Dacre and his fellow tabloid editors.

136. Mr Dacre also said :

> "*If Gordon Brown [the then Prime Minister] wanted to force a privacy law, he would have to set out a bill, arguing his case in both Houses of Parliament, withstand public scrutiny and win a series of votes. Now, thanks to the wretched Human Rights Act, one Judge with a subjective and highly relativist moral sense can do the same with a stroke of his pen.*
>
> *All this has huge implications for newspapers and, I would argue, for society. Since time immemorial public shaming has been a vital element in defending the parameters of what are considered acceptable standards of social behaviour, helping ensure that*

citizens – rich and poor – adhere to them for the good of the greater community. For hundreds of years, the press has played a role in that process. It has the freedom to identify those who have offended public standards of decency – the very standards its readers believe in – and hold the transgressors up to public condemnation. If their readers don't agree with the defence of such values, they would not buy those papers in such huge numbers.

Put another way, if mass-circulation newspapers, which, of course, also devote considerable space to reporting and analysis of public affairs, don't have the freedom to write about scandal, I doubt whether they will retain their mass circulations with the obvious worrying implications for the democratic process."

137. This appears to be a suggestion that newspapers need to be able to ignore individuals privacy rights, based on their own moral judgment, in order to sell papers and indeed stay in business.

138. Mr Dacre's contempt for the law and for the courts that enforce it is plain. He thinks it perfectly acceptable for a newspaper to resort to subterfuge to prevent a victim bringing a case in front of a judge (see his evidence to the CMS Committee, 23 April 2009 at Q595). He ignores the fact that a newspaper would only be in danger of an injunction if its proposed story were so illegal that a judge would find the complainant likely to win at trial. Yet as already mentioned, Mr Dacre, the editor responsible for all this, remains a pillar of the PCC and chairman of its Code Committee. This is a perfect example of the perils of self-regulation.

b. The Internet

139. It is sometimes assumed that the Internet is not subject to the law - that it operates as a sort of Wild West with its own rules which the courts cannot touch. This is a fallacy. The Internet and those that use it are clearly subject to the law like everyone else. It may sometimes be difficult to enforce the law because of the international nature of the Internet. But that is a separate question.

140. Laws are needed, ideally at EU level but certainly nationally, which enable the courts to enforce judgements against search engines and other service providers. The law always tends to lag slightly behind technology. Ultimately there are bound to be international conventions dealing with the Internet. But in the meantime much can be done using existing procedures and new national laws while waiting for international conventions. These will need to make clear the responsibility of those who put material on the Internet or provide access to it.

141. We make a shopkeeper or a publican responsible for what they sell and to whom. There is no reason not to do the same to Internet service providers.

c. Media Plurality

142. The degree of influence which, until recently, News International was able to secure over government and the police shows quite clearly how dangerous it is to allow concentrations of media power in a few hands. It is essential that (i) no one should be allowed to own both a newspaper and a television network, (ii) the percentage of the UK newspaper market owned by any one company should be severely limited and (iii) newspapers with a significant circulation should be compelled to demonstrate editorial independence backed by an independent board.

143. It is well known that Rupert Murdoch exercised a degree of influence over successive governments which was truly a threat to democracy. When an unelected foreign individual living in the United States becomes arguably the most powerful man in the UK, there is something seriously wrong.

Statement of Truth

I believe the facts stated in this witness statement are true.

Signed

Max Rufus Mosley

Dated: 31.X..2011...