

<p>1 2 (2.00 pm) 3 LORD JUSTICE LEVESON: Yes, Mr Jay? 4 MR JAY: Sir, I wanted to raise a point about next week's 5 evidence, or at least part of it. 6 LORD JUSTICE LEVESON: Yes? 7 MR JAY: The evidence of Messrs Pike, Crone and Abramson, 8 who are all lawyers. 9 Thus far, their statements have been redacted to 10 cover possible legal professional privilege. I say 11 "possible" since that is in issue at the moment. 12 There's obviously a pressing need that their statements 13 are disclosed to the core participants without 14 privileged matters or possibly privileged matters being 15 covered. 16 However, there are issues, particularly in relation 17 to Mr Crone's evidence, less important with respect to 18 Mr Abramson's evidence, regarding the scope of 19 privilege, which I would be inviting you to resolve 20 either tomorrow morning at 9.30, if we are ready to 21 resolve them; in the alternative, Monday morning at 22 9.30. Plainly, I'll need to discuss the matter with 23 Mr Rhodri Davies, who is directly affected by this 24 debate, and we wouldn't wish the matter to come before 25 you on other than a properly argued basis.</p> <p style="text-align: center;">Page 1</p>	<p>1 hands, Mr Jay. I would prefer it not to be on Monday, 2 I think, but it can be tomorrow morning or at close of 3 business tomorrow afternoon, which gives people the day 4 as well as -- for those who aren't otherwise involved. 5 MR JAY: Yes, it's possibly quite a busy day for some of us, 6 but I can always multitask. 7 LORD JUSTICE LEVESON: I'm sure. Otherwise I'm available to 8 resolve that which I can resolve. 9 It strikes me that what you're telling me is that 10 there may be some hard-edged legal issues to think 11 about, and of course I'll deal with them appropriately. 12 Thank you. 13 Yes, Mr Rhodri Davies? 14 MR DAVIES: I'm sorry to add to the shopping list, sir, but 15 we have another point that we've raised in a letter to 16 the Tribunal yesterday, which really concerns the same 17 evidence as Mr Jay has just referred to, but it's not 18 just a privilege issue. There is also an issue as to 19 the division between part 1 and part 2 of the Inquiry. 20 LORD JUSTICE LEVESON: Yes. I think I understand what that 21 point is. Of course that isn't hard-edged because 22 there's a degree of discretion available to me. 23 MR DAVIES: Yes. 24 LORD JUSTICE LEVESON: The purpose for the division between 25 part 1 and part 2 was specifically to avoid potentially</p> <p style="text-align: center;">Page 3</p>
<p>1 I don't expect it would take too long to argue the 2 issue, but it's right that this important matter be 3 properly ventilated. 4 LORD JUSTICE LEVESON: Is it likely to impact on any of the 5 other core participants? I mean, in particular is it 6 a topic in which Mr Sherborne is likely to be 7 interested? 8 MR JAY: Yes. And possibly Mr Garnham. 9 LORD JUSTICE LEVESON: Well, yes. So when you multiply up 10 the lawyers that want to have their say, you multiply up 11 the time that it's going to take. That's my experience. 12 MR JAY: Yes. As long as one doesn't multiply it 13 exponentially, just add a little bit more in, but my 14 submissions would as it were reflect the views of others 15 in any event, but Mr Sherborne or Mr Garnham, if so 16 advised, could add to the issue. 17 There's also a possible privacy issue in relation to 18 part of Mr Crone's evidence. If there are to be 19 submissions about that, my view at the moment is those 20 submissions in the first instance would need to take 21 place in private. 22 LORD JUSTICE LEVESON: Right. Otherwise the point gets 23 lost. 24 MR JAY: Yes. 25 LORD JUSTICE LEVESON: I understand that. I'm in your</p> <p style="text-align: center;">Page 2</p>	<p>1 prejudicing a criminal investigation or prosecution that 2 might arise that was then being undertaken by the 3 Metropolitan Police. 4 MR DAVIES: Yes. 5 LORD JUSTICE LEVESON: What I would be unhappy about doing 6 without making any decision about the point you're 7 seeking to raise, even in part 1, is to restrict 8 unnecessarily lines of inquiry which may be relevant to 9 practice and which may impact upon solutions, but which 10 don't impact on the criminal investigation. I'm sure 11 you take the point. 12 MR DAVIES: Yes. Obviously we understand all that, but that 13 still leaves quite a difficult line to draw. 14 LORD JUSTICE LEVESON: I understand that. Drawing lines is 15 what I'm here for. If you require me to draw a line, 16 then I will draw the line. Doubtless you'll continue 17 discussing with Mr Jay so that you can decide where the 18 line is without me, but if you need me, I'll have my 19 pencil ready. 20 MR DAVIES: All I wanted to do was get that on the agenda 21 along with the points which Mr Jay has raised, but it's 22 probably sensible to do them all at once. 23 LORD JUSTICE LEVESON: It might be better to do them at the 24 end of the day rather than the beginning, because 25 I don't really want to interrupt the evidence which is</p> <p style="text-align: center;">Page 4</p>

<p>1 quite lengthy that is tomorrow. 2 MR JAY: Yes. 3 LORD JUSTICE LEVESON: And if we have to go into Monday, 4 then we have to go into Monday. If I can't do what I 5 otherwise would be doing at 9 o'clock on Monday then 6 I won't. 7 MR JAY: Thank you. 8 LORD JUSTICE LEVESON: Right. 9 MR BARR: Sir, we're going to continue the academic theme 10 this afternoon. 11 LORD JUSTICE LEVESON: Very good. 12 MR BARR: The three eminent academics we have for the 13 afternoon session are Professor Hargreaves, 14 Professor Petley and Dr Mac Sithigh. Perhaps I can ask 15 that the witnesses are sworn first of all, please. 16 PROFESSOR JULIAN PETLEY (sworn) 17 PROFESSOR IAN HARGREAVES (sworn) 18 DR DAITHI MAC SITHIGH (sworn) 19 LORD JUSTICE LEVESON: Thank you all very much for coming 20 and thank you for the work that you've put into 21 providing the material which you have to the Inquiry. 22 I think at least a couple of you have seen the approach 23 that we adopted this morning, and I hope that you find 24 that is conducive to the best elucidation of the issues. 25 I decided that to have each one of you separately would</p> <p style="text-align: center;">Page 5</p>	<p>1 of Journalism and Business. 2 You tell us that you joined Cardiff as Director of 3 the Centre for Journalism in 1999 and in reverse order, 4 you were editor of the New Statesman, editor of the 5 Independent, deputy editor of the Financial Times and 6 director of BBC News and Current Affairs. 7 PROFESSOR HARGREAVES: Correct. 8 MR BARR: Prior to that, you spent a 11 years as a reporter 9 and editor on the Financial Times preceded by three 10 years as a trainee journalist with Westminster Press? 11 PROFESSOR HARGREAVES: Correct. 12 MR BARR: If I can turn now to Professor Petley, you tell us 13 that you are Professor of Screen Media and Journalism at 14 Brunel University? 15 PROFESSOR PETLEY: That's right. 16 MR BARR: Chair of the Campaign for Press and Broadcasting 17 Freedom. 18 PROFESSOR PETLEY: Yes. 19 MR BARR: A member of the advisory board of Index on 20 Censorship? 21 PROFESSOR PETLEY: Yes. 22 MR BARR: And of the editorial board of the British 23 Journalism Review. 24 PROFESSOR PETLEY: Yes. 25 MR BARR: And you've written widely about the press.</p> <p style="text-align: center;">Page 7</p>
<p>1 not be the best use of your time, whereas what I really 2 wanted to do was to encourage a debate and a discussion 3 so that I could have the benefit of your collective and 4 individual views, as I hope I'll get. But thank you 5 very much for the considerable body of material which 6 obviously has taken a long time to amass, which you and 7 indeed your fellow academics have provided. Thank you. 8 Questions from MR BARR 9 MR BARR: Let's do the introductions first of all. 10 Professor Hargreaves first of all. You tell us that the 11 submission from Cardiff University comes not just from 12 you but also from Professor Justin Lewis, head of the 13 School of Journalism, Media and Cultural Studies, and 14 from Professor Richard Tait, Director of the Centre for 15 Journalism? 16 PROFESSOR HARGREAVES: That's correct. 17 MR BARR: And you were Professor Tait's predecessor and have 18 remained actively associated with the School of 19 Journalism at Cardiff since then. In 2003 you became 20 a founding board member of Ofcom and subsequently worked 21 as Director of Corporate Affairs at BAA plc and then 22 Director of Strategic Communications at the Foreign and 23 Commonwealth Office between 2008 and 2010. 24 In November 2010, you took up a new part-time chair 25 in digital economy, based jointly in Cardiff's Schools</p> <p style="text-align: center;">Page 6</p>	<p>1 PROFESSOR PETLEY: Yes. 2 MR BARR: Dr Mac Sithigh, you tell us that you are a 3 full-time lecturer at the UEA Law School, University of 4 East Anglia, that is. 5 DR MAC SITHIGH: Yes, I am. 6 MR BARR: You took up the appointment in August 2008. Your 7 duties include teaching and research. 8 DR MAC SITHIGH: They do. 9 MR BARR: You are the Director of the LLM Information 10 Technology and Intellectual Property, the convener for 11 media and technology law research in the Law School and 12 the school's liaison with the media at UEA into 13 disciplinary research initiative. 14 DR MAC SITHIGH: Yes, I am. 15 MR BARR: Also the convener for media and communications law 16 in the Society of Legal Scholars. 17 DR MAC SITHIGH: Yes. 18 MR BARR: You are the module organiser for three 19 undergraduate modules, media law, media entertainment, 20 sports law and Internet law. 21 DR MAC SITHIGH: Yes. 22 MR BARR: You set out also in your statement your other 23 teaching commitments and of particular interest to us, 24 you tell us that your doctoral thesis was on the 25 convergence and the right to communicate assessing the</p> <p style="text-align: center;">Page 8</p>

<p>1 application of media law to the Internet? 2 DR MAC SITHIGH: Yes, it was. 3 MR BARR: And you've taught media law and ethics as 4 a part-time lecturer at Dublin Business School? 5 DR MAC SITHIGH: Yes, in 2008. 6 MR BARR: If I can now ask each of you in turn about your 7 witness statements and starting with 8 Professor Hargreaves, are the contents of the witness 9 statement that's been provided true and correct to the 10 best of your knowledge and belief? 11 PROFESSOR HARGREAVES: They are. 12 MR BARR: Did Cardiff make any contribution at the seminars? 13 PROFESSOR HARGREAVES: I did, yes. 14 MR BARR: And are you content for that contribution to be 15 taken as evidence in the Inquiry? 16 PROFESSOR HARGREAVES: I am. 17 MR BARR: Professor Petley, if I can ask you the same 18 questions. Are the contents of your witness statement 19 true and correct to the best of your knowledge and 20 belief? 21 PROFESSOR PETLEY: Yes, they are. 22 MR BARR: And are you content for your contributions to the 23 seminars to be taken as evidence? 24 PROFESSOR PETLEY: Yes, I am. 25 MR BARR: Dr Mac Sithigh, are the contents of your witness Page 9</p>	<p>1 PROFESSOR PETLEY: Yes, I mean we run undergraduate and 2 postgraduate courses in journalism, and they are for the 3 most part NCTJ accredited, and we certainly have in 4 difficulty in attracting good students. 5 DR MAC SITHIGH: Our students at the University of East 6 Anglia tend to be on wider media studies rather than 7 targeted programmes in journalism. We have recently 8 started teaching an MA in broadcast journalism, but the 9 media courses across all the schools have continued to 10 be popular. We've also found within the Law School 11 increasing interest in studying the law of the media and 12 the law of the Internet, which are relatively adding to 13 our curriculum, but we have seen a lot of interest in 14 developing new courses, particularly those that take 15 a new media approach. We've seen that from students as 16 well as from research students, PhDs. 17 MR BARR: There was a mixed response, if I can put it that 18 way, to the accreditation systems on offer at present, 19 something of a "take it or leave it" approach according 20 to the courses. Is that also the experience in your 21 institutions? 22 PROFESSOR PETLEY: At Brunel, we take it. We are NCTJ 23 accredited. I want to echo really what my friend and 24 colleague Brian Cathcart said this morning. If you do 25 run a university course and it is NCTJ accredited, it is Page 11</p>
<p>1 statement true and correct to the best of your knowledge 2 and belief? 3 DR MAC SITHIGH: Yes, they are. 4 MR BARR: Are you content for the UEA contribution to the 5 seminars to be taken formally as evidence? 6 DR MAC SITHIGH: I attended the seminar. I don't believe 7 I was able to intervene on the day so there is no such 8 contribution. 9 MR BARR: I see. Thank you very much. 10 We can now turn to the evidence that you can help us 11 with. Perhaps I should indicate at the start that to an 12 extent we are going to be covering the same issues as 13 this morning, but we're hoping that you can take the 14 debate even further forward in the extra time that we 15 have this afternoon, and particularly in regard to your 16 individual specialisms. 17 Can I start with this, then. There was a consensus 18 this morning that there is no problem with the quality 19 and the quantity of journalism students coming to your 20 academic institutions. Is that a consensus which you 21 would extend to your own institutions? 22 PROFESSOR HARGREAVES: It's certainly true that there is no 23 shortage of young people wanting to get into journalism 24 by any means available, and that is what underwrites the 25 supply of students to courses like the ones that we run. Page 10</p>	<p>1 a terrific load for the students. They really do have 2 to work extremely hard. Because I think in a university 3 like Brunel, one wouldn't want to simply run the NCTJ 4 syllabus and nothing else. We very much regard our 5 courses as NCTJ plus. We are giving them something that 6 they wouldn't get from anywhere else other than from a 7 university environment, but the difficulty clearly is 8 that it does require a great deal of work from the 9 students, and when they perhaps compare what media 10 studies students are doing, or English students are 11 doing, they do realise that they are doing a great deal 12 more. So I would very much echo what Professor Cathcart 13 said. 14 PROFESSOR HARGREAVES: All of our courses are accredited by 15 one or other of the three accreditors. Some of the 16 challenges involved in those relationships were 17 described this morning. I would say that at Cardiff we 18 have not found it impossible to design and deliver the 19 courses that we feel we should design and deliver 20 through association with that accreditation process. We 21 think that as a matter of general principle, this point 22 of engagement with the industry, where the industry is 23 clearly able to express its views about what it expects 24 to see in education and training programmes, is of real 25 value, and whatever the frustrations, I think it would Page 12</p>

<p>1 be better to think about how that can be improved rather 2 than how it can be evaded.</p> <p>3 DR MAC SITHIGH: In the most part, as I alluded to earlier, 4 the issue is not whether the NCTJ approach is good or 5 bad, it's whether it's appropriate for a particular 6 course, so one that would take say a wider cultural 7 studies approach would not really seek NCTJ 8 accreditation. The university is considering it for the 9 more journalism-focused courses as they are launched and 10 offered, and certainly something that's not been given 11 active consideration, I found this morning's discussion 12 instructive in that regard.</p> <p>13 The only other thing I would say from my experience 14 of teaching media law to non-law students, certainly 15 when we designed -- and we design our own syllabus for 16 that -- we do look at what happens within the law 17 component of the NCTJ and other accrediting bodies. We 18 don't follow it directly. We take a slightly different 19 approach. We're working towards a position where we 20 would try and train lawyers and potential -- future 21 lawyers and future journalists in the same classroom. 22 It's something we've had a little bit of work on 23 recently. I'm not sure whether that's compatible with 24 the NCTJ's syllabus, I think there will be some 25 challenges there, but certainly if you compare, as</p> <p style="text-align: center;">Page 13</p>	<p>1 aspect of the teaching, as other colleagues have said 2 this morning and probably Julian will agree.</p> <p>3 PROFESSOR PETLEY: Yes, absolutely. We lay great stress on 4 the teaching of ethics. We don't have modules labelled 5 "ethics", or "this week we're going to do ethics". 6 I hope that a concern with ethics informs everything we 7 do.</p> <p>8 I suppose the question that I would want to raise 9 really is that if one stuck solely to the NCTJ syllabus, 10 would one then be giving the students an adequate 11 grounding in ethics? My own feeling is on the whole 12 not. I haven't taught a great deal of the NCTJ modules, 13 but I have taught one of the law modules for the NCTJ 14 and it does seem to be a bit tick-boxy as 15 Angela Phillips said this morning, you know, learn this 16 law, learn that law, learn the other law. It doesn't 17 really seem to me to address the ethical systems of 18 which laws are after all the expression.</p> <p>19 I've said before we regard our degrees, both 20 postgrad and undergrad, as NCTJ plus, and I would argue 21 that the ethical components of everything we teach are 22 part of the plus.</p> <p>23 LORD JUSTICE LEVESON: Do you think it's a fair summary to 24 say that the NCTJ course really reflects what happens 25 today and as it were from the editorial perspective,</p> <p style="text-align: center;">Page 15</p>
<p>1 I referred to within my statement, the materials, 2 textbooks and the nature as produced for NCTJ media law 3 and media law as taught in law schools, they are very 4 far apart. They are very different styles, very 5 different traditions, and there's probably a lot that 6 both sides could learn from each other.</p> <p>7 MR BARR: Thank you. There was a general agreement this 8 morning that there were no pressures bearing upon the 9 institutions that we heard from this morning preventing 10 them from delivering a good quality and sufficient 11 ethical training. Do you each wish to join that 12 agreement or do you have evidence of any pressures on 13 your institutions preventing the delivery of solid 14 ethical foundations to your students?</p> <p>15 PROFESSOR HARGREAVES: I'd inflect it only in the sense that 16 the establishment of this Inquiry indicates some of the 17 ethical challenges which the industry faces, which 18 journalism faces, and I think it would be a bit too 19 relaxed for those of us who were involved in educating 20 young journalists to think that we don't have things to 21 learn and change, not least from the proceedings of this 22 Inquiry.</p> <p>23 So I wouldn't like to give the sense that we think 24 everything is so fantastic we could never improve it, 25 but we pay a huge amount of attention to this in every</p> <p style="text-align: center;">Page 14</p>	<p>1 from the newspapers' perspective, this is what they want 2 today, without looking so much on what we should be 3 doing and how we should be doing it tomorrow?</p> <p>4 PROFESSOR HARGREAVES: I think that's one distinction. But 5 I think that the other really important point to 6 emphasise is that the NCTJ is a framework around which 7 people who are designing and delivering courses can 8 work, and that's what we all do. That's not in some 9 sort of opposition to the NCTJ. It's building the 10 teaching into the way that we deliver every aspect of 11 the course, which I think is what you need to do with 12 ethics. You don't want ethics to be Thursday afternoon 13 only. You want it to be part of the whole learning 14 experience.</p> <p>15 LORD JUSTICE LEVESON: And so that it becomes part of the 16 genetic make-up of whatever journalist you are turning 17 out?</p> <p>18 PROFESSOR HARGREAVES: Yes, it's about reflective 19 journalism, which is I think a good phrase, one which 20 was used this morning on a number of occasions.</p> <p>21 DR MAC SITHIGH: I think the difficulty with trying to 22 communicate a certain amount of law in a short time, you 23 have to take that into account. I know it was mentioned 24 at a number of the seminars, the growth in the length of 25 essential law for journalists, which, whether that's</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 a good thing or a bad thing, reflects the complexity of 2 the laws you're dealing with.</p> <p>3 I think having an ethical component alongside that 4 is important because if you take not just the code of 5 the PCC, and I know we'll get onto that, but if you look 6 at something like advertising, where standards and legal 7 requirements are woven together in quite a nice fashion, 8 it is important, I'd say, not to say that you have law 9 here and then a separate syllabus on ethics, but to look 10 at, for those who are making legally relevant decisions, 11 is it just about mere compliance, is it about 12 establishing what the line is, or are there other 13 considerations you would take on alongside that?</p> <p>14 I think there is some room within what I understand 15 of what the NCTJ does. They certainly ask about ethical 16 matters in questions, although the format may not lend 17 itself to that type of discursive process, but talking 18 to colleagues in other institutions too, who teach media 19 law, there is an awful lot of implied ethics in it when 20 you're talking about what the law should be, is there 21 a need for change, reform? Many people I know are 22 teaching the Leveson Inquiry now.</p> <p>23 LORD JUSTICE LEVESON: Yes, I'm rather disturbed to read 24 that.</p> <p>25 DR MAC SITHIGH: What's happening there of course is that</p> <p style="text-align: center;">Page 17</p>	<p>1 cultural difficulties? Is there anything that you can 2 help us with about preparing through training a student 3 for that experience?</p> <p>4 PROFESSOR PETLEY: Well, I think -- I mean, one of the 5 modules I teach to the postgraduates is called 6 "Journalism in context", and we look at the political 7 context and the economic context and the legal context, 8 and we look at the work context as well and we certainly 9 do warn students that if they do go and work on certain 10 types of national newspaper, by which I really mean the 11 red tops or the two mid-market tabloids, they may find 12 life extremely difficult.</p> <p>13 But one of the things that we also try to talk about 14 in context is that there's lots and lots of other 15 journalism other than the national press. You know, an 16 awful lot of discussion does tend to go on sometimes as 17 if the only journalism that takes place is in the 18 national press. As has been said already, we have an 19 excellent, if shrinking, local and regional press, we 20 have an excellent magazine sector, and when I was 21 a journalist, which was throughout the 1980s, I worked, 22 and very happily so, in the magazine sector. We have 23 the trade press, we have the Internet.</p> <p>24 So yes, I certainly warn students that they might be 25 faced with some very, very difficult situations if they</p> <p style="text-align: center;">Page 19</p>
<p>1 whether the audience be journalism students or law 2 students, they are speculating as to, particularly in 3 the context of new media, where the law should go and is 4 there a gap between the ethical standards or the ethical 5 approach on what the law currently is, which leads to a 6 further question: do you need to change the law or can 7 you rely on that?</p> <p>8 But I think combining legal and ethical is quite 9 important for my teaching and the teaching of others 10 here, and I'd be reluctant to say that you could teach 11 ethics as a separate module or line. That would be 12 my --</p> <p>13 LORD JUSTICE LEVESON: In case I don't ever say it, to any 14 of those who are conducting courses in this Inquiry, I'd 15 be very grateful for the answers in good time before 16 I have to produce them!</p> <p>17 DR MAC SITHIGH: Noted.</p> <p>18 MR BARR: On that note, moving to where, instead of 19 consensus, we were getting concern: there seemed to be 20 a concern this morning that however well prepared the 21 student is at the degree stage, when they are in work 22 facing very real pressures in the workplace, what 23 I described this morning as moral hazards, can you, 24 however hard you try, really prepare a student for 25 a difficult environment, perhaps one where there are</p> <p style="text-align: center;">Page 18</p>	<p>1 went and worked for the red tops or the mid-market 2 tabloids, and on the whole, the advice is: don't.</p> <p>3 PROFESSOR HARGREAVES: I think that the only way you can 4 prepare people for an assault course is to give them 5 practice at different stages of difficulty and take them 6 up the learning and fitness curve, and that's why so 7 much of the work that we do with our students is 8 practical, and where they encounter the issues and deal 9 with them.</p> <p>10 But tomorrow morning I will be taking a group of 11 about 90 postgraduate students through one of those quiz 12 pad type interrogations where you look for the -- you 13 know, where the points of moral agreement and moral 14 disagreement are in a room, and then you talk it 15 through. What I think you discover when you get stuck 16 into any issue of journalistic ethics is that there are 17 very few straightforward and simple black and white 18 answers because journalism is one of those activities 19 which makes large claims about its importance to 20 democracy and public and civic life; correctly in my 21 view, but therefore is obliged to be seriously and 22 carefully reflective in response. But it doesn't mean 23 to say that journalists will always obey the rules, and 24 whatever rules anybody sets for journalism, there will 25 be occasions when the best journalists will break them.</p> <p style="text-align: center;">Page 20</p>

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<p>1 DR MAC SITHIGH: I would just add something that 2 Professor Petley said, which is the importance of 3 introducing students to context. We require students on 4 all of the postgraduate programmes that are related to 5 media, whichever discipline that's in, to take a common 6 module called "Media and society", which is co-taught by 7 16 academics. We unfortunately didn't have the term 8 "hot-tub" at the time, but we would now use it because 9 it's the idea of putting together people from different 10 disciplines, including, for example, International 11 Development, which is one of the schools at the 12 university, who again have a different approach to 13 media, to questions of representation, balance between 14 different parts of the world. 15 So we would see that as well as the usual things you 16 would have for students, work placements, visiting 17 speakers from professions and so on. It's important 18 that students are introduced to what others would say 19 from different disciplines, from different parts of the 20 world and even different platforms. You know, if 21 someone has come in and their experience is around 22 broadcasting, they are very interested in that, having 23 that conversation between students is the best -- 24 I think is something that we do as teachers to prepare. 25 I mean, I can't verify exactly how that's going to work Page 21</p>	<p>1 journalists would like to be a member of the NUJ, but 2 may feel that there's no point if my employer won't 3 recognise me, or puts impossible conditions on 4 recognition, as happens at News International, because 5 after all the NUJ does have an excellent code of 6 practice, and if a journalist could say, "Well, both the 7 code of practice of my union and my conscience clause 8 forbids me from doing this", and if the trade union had 9 a reasonably strong presence in the workplace, that 10 would be effective. But it's very, very difficult, as 11 we all know, for individual journalists, however well 12 meaning they may be, to stand up to harassment and 13 bullying. 14 DR MAC SITHIGH: A conscience clause would certainly be 15 something I would personally welcome. However, I would 16 have doubts about its effectiveness in the absence of 17 other processes at, for example, a management level as 18 to whether it is honoured. I think relying on the 19 employment relationship alone to enforce that clause 20 would push things many years down the line, it would 21 make it -- it would limit its impact. 22 However, if we do at a later stage discuss the 23 responsibilities of editors and proprietors, perhaps 24 honouring that clause within contracts could be a part 25 of that process. We've seen that in corporate Page 23</p>
<p>1 for them when they go beyond, but what we're trying to 2 do is give them the tools to be leaders within their own 3 professions as they go on, but it's a difficult question 4 that you've put. 5 MR BARR: Perhaps we can then explore one idea that's been 6 put forward as a way of giving an effective voice to the 7 newly qualified and principled journalist in the face of 8 moral hazard, and that's to introduce a conscience 9 clause into the contract of employment. Perhaps I could 10 ask you to consider this question: do you think that 11 a conscience clause is likely to be an effective means 12 of improving the ethical situation or does it give rise 13 to more trouble than solution? 14 PROFESSOR HARGREAVES: I think it's a desirable thing to 15 have. It wouldn't be effective in a corporate or 16 newsroom culture where such things would be not counted 17 as being very important. The mere insertion or the 18 requirement to insert, if it could be required, such 19 a conscience clause wouldn't solve the problem if you 20 didn't address the culture problem. 21 PROFESSOR PETLEY: In my view, a conscience clause, which 22 I would support, really would only become operable if 23 you also had adequate trade union representation within 24 the news place. We all know that the NUJ has been 25 derecognised in many places. I'm sure that many Page 22</p>	<p>1 governance, where individuals are required to sign off, 2 to verify and so on, that has an impact on the 3 employment relationships within that organisation. So 4 I think, yes, it would be part of that package, but on 5 its own it would be welcome but probably not a major 6 change to what we've been talking about within this 7 Inquiry. 8 MR BARR: We've heard of the culture -- of the real problem 9 that emerges if there is a poisoned culture, and I was 10 exploring through a conscience clause possible means of 11 changing a culture from the bottom up through the -- 12 giving a voice to the newly qualified journalist. You 13 raised an interesting point there about culture, of 14 course, comes from the top probably more than from the 15 bottom, although that's an interesting debate. Is there 16 any role for the academic side of journalism in teaching 17 ethics to seasoned editors or is that simply 18 a non-starter? 19 PROFESSOR HARGREAVES: Wondering whether a question of that 20 kind might come up, I sort of went back through my 21 little book of pithy phrases and sayings. There's 22 a whole set of these going well back for why journalists 23 should really not pay any attention to any of this. 24 There's a posh version, which is Nicholas Tomalin in 25 1969: Page 24</p>

<p>1 "The only qualifications essential for success in 2 journalism are ratlike cunning, a plausible manner and 3 a little literary ability." 4 I don't think he had in mind a postgraduate training 5 course. 6 Or there's Kelvin MacKenzie's noted: 7 "Ethics is a place to the east of London where the 8 men wear white socks." 9 Or if you want to be a little international about 10 it, the journalist and satirist HL Mencken who described 11 journalism as a "craft to be mastered in four days and 12 abandoned at the first sign of a better job". 13 So the journalistic culture, especially print 14 journalistic culture, has a very long and deep history 15 of thinking that what people like us do isn't very 16 important. 17 PROFESSOR PETLEY: That's true of the UK, but you did quote 18 Mencken there, of course, who comes from the States, 19 where there's a very, very different culture, where 20 ethical issues are much more ingrained and bred into 21 journalists. It's perfectly true that in this country 22 the study of journalism is extraordinarily recent, 23 a very, very recent phenomenon indeed, whereas -- I mean 24 I think Cardiff was the first place to start it. 25 PROFESSOR HARGREAVES: Yes, 40 years ago.</p> <p style="text-align: center;">Page 25</p>	<p>1 a tabloid or mid-market newspaper unless you've worked 2 in one. And I raised the question whether there was an 3 ethical difference, or should there be an ethical 4 difference, and I've not yet had the answer "yes", at 5 least expressly, but whether in fact sub rosa there 6 is -- 7 PROFESSOR HARGREAVES: I certainly am not going to be the 8 first person to argue that there should be a different 9 ethical regime, but I do think it is important to 10 understand one of the reasons the tabloids have gone to 11 the part of the market that they now most intensively 12 occupy is that radio and television broadcasting has 13 become so potent that it does for a mass audience news, 14 if you like, with broadsheet values, to use terms that 15 are almost disappearing from the lexicon, leaving the 16 tabloids, as I think Paul Dacre said in a speech not too 17 long ago, relying, in his view, for their commercial 18 feasibility upon the pursuit of stories about 19 celebrities and all of the things that are being debated 20 around this Inquiry. 21 It's not a question of there being one set of rules 22 for one and one set of rules for another, but it does 23 involve spending some time thinking about whether the 24 same approach to interpreting those rules is obvious in 25 these different circumstances, and there is a risk,</p> <p style="text-align: center;">Page 27</p>
<p>1 PROFESSOR PETLEY: Whereas in America, the study of 2 journalism is almost as old as journalism itself. I'm 3 rather hoping that those two quotes that Ian gave us 4 from Kelvin MacKenzie and Tomalin now perhaps wouldn't 5 be quite so current thinking in the British journalism 6 workplace. 7 I think the whole problem really, and I think this 8 came up a little bit this morning as something 9 Angela Phillips said, is we do really have -- even just 10 talking about the national press, there do seem to be 11 two completely different journalistic cultures. You 12 have the cultures of papers like the Independent, the 13 Guardian, the Times and the Financial Times, and then 14 you have the journalistic cultures of the red top 15 tabloids and the mid-market tabloids, and they really 16 are two completely different things, and I think that 17 perhaps it's about time that the editors of the 18 ethically minded papers stopped making common cause with 19 the editors of the papers which have actually brought 20 this Inquiry into being. 21 LORD JUSTICE LEVESON: But should the ethics of the 22 editorial approach be different? One of the issues that 23 was debated when there was a challenge, as I mentioned 24 this morning, to the background and expertise of those 25 who are advising me, was: well, you can't understand</p> <p style="text-align: center;">Page 26</p>	<p>1 there's clearly a risk that this Inquiry is already 2 being seen in the tabloid press, and not only in the 3 tabloid press, as one that is, as it were, going off 4 into a sort of land of -- which those who criticise it 5 would see as elitist and irrelevant to their concerns. 6 Coming from a journalism school which was founded by 7 the man who created the Picture Post, the great tabloid 8 venture of its day, and a strong association with 9 Hugh Cudlipp and the Daily Mirror, I think it's very, 10 very important that this Inquiry does not in any way 11 lose touch with journalists who work on the kind of 12 areas that tabloid newspapers write about, because those 13 are the areas that tabloid readers want to read about, 14 very, very important -- 15 LORD JUSTICE LEVESON: I entirely accept that, and several 16 interventions of mine over the last few weeks have tried 17 to make it clear that the process whereby we're 18 undertaking this Inquiry inevitably has meant that I've 19 had six or seven days of those who are complaining about 20 the activities of certain sections of the press, 21 specifically to do with them, and I've had some 22 journalists, as you know, feeling that -- and so the 23 view has been expressed that I'm not getting any sort of 24 sense of what the response from tabloid or mid-market 25 newspapers might be, but that's merely</p> <p style="text-align: center;">Page 28</p>

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<p>1 a misunderstanding of the process. I will want to spend 2 just as much time understanding that as anything else. 3 But I wonder whether the process is different. It 4 might be the subject matter is very different, so 5 yesterday we heard about hacking into the phone of an 6 arms deal, that sort of thing. I'm interested to know 7 whether the considerations that would be given to that 8 are really very different from the considerations 9 whether it's appropriate to indulge in this sort of 10 sting or that sort of kiss-and-tell story or the other 11 sort of hack to get a story that might appeal to 12 a different audience. 13 So it's my rather long way of saying it, it's 14 a question of whether the process should be different 15 whether or not the material which is the subject of the 16 interest of the journalist is the same or not. 17 PROFESSOR PETLEY: But the point is the Press Complaints 18 Commission code applies to all newspapers, irrespective 19 of what part of the market they're in. The law is 20 applied to the newspapers, whichever part of the market 21 they're in. 22 I think the question to me that your question raises 23 is: is it possible to have good popular journalism? 24 Ian's already mentioned Cudlipp and people like that. 25 Once upon a time the term "tabloid" was not a dirty word</p> <p style="text-align: center;">Page 29</p>	<p>1 One would want, ethically, for the scale of 2 importance to be measured in public interest terms, but 3 that doesn't take you all the way home, I don't think, 4 because there is a set of questions that people on the 5 mass circulation papers are dealing with day in and day 6 out, which is the pursuit of competitive advantage, and 7 the existence of competition is a very, very important 8 driving force. I mean, look at any journalistic market 9 where you don't have it and you have pretty weedy 10 journalism. 11 LORD JUSTICE LEVESON: Mm. 12 PROFESSOR PETLEY: But has competition actually driven 13 standards downwards in the popular press, which is what 14 many people, I think, would argue it has. 15 PROFESSOR HARGREAVES: I don't believe it's competition that 16 is the first cause of that. I think if you look back 17 over the long period that you need to think about on 18 this matter -- but maybe we'll come to that later. 19 LORD JUSTICE LEVESON: Sorry, I'm always at risk of jumping 20 ahead of a perfectly orderly discussion. 21 PROFESSOR PETLEY: We're having a seminar now. 22 MR BARR: Perhaps I could, having explored differences 23 between tabloid and broadsheet, look at this 24 distinction. You're preparing young journalists for 25 work in old media and also in the new media. If we</p> <p style="text-align: center;">Page 31</p>
<p>1 and in my view it shouldn't be a dirty word. Some of 2 the best popular journalism in my view in this country 3 was to be found on ITV in the 1970s and 1980s in 4 programmes like World in Action and This Week, and the 5 Mirror certainly of the 1960s was a remarkably fine 6 popular newspaper. 7 LORD JUSTICE LEVESON: I'm certainly not treating the word 8 "tabloid" as a dirty word. 9 PROFESSOR PETLEY: I know you're not. 10 LORD JUSTICE LEVESON: If I don't pick up that sort of thing 11 immediately, somebody will interpret my silence as 12 meaning something different. Because, as I said this 13 morning, the art of putting across very complex concepts 14 in a way that is visual, attractive and readily 15 understandable by those who do not want to read dense 16 newsprint is, I think, very important. 17 PROFESSOR HARGREAVES: The issue of whether or not 18 a journalist might obtain or make use of a document in 19 a way which is potentially in breach of the law it seems 20 to me is -- the ethical issue is identical, whether that 21 occurrence a hunt for a story about a celebrity or 22 a hunt for a story about an arms dealer, but I think the 23 word proportionality was used this morning, I think it's 24 a good word. I think it is always right to reflect what 25 the scale of importance of the story is.</p> <p style="text-align: center;">Page 30</p>	<p>1 start with the principle, is there any difference in 2 principle, ethically, to that preparation or are the 3 ethical benchmarks the same in both old and new media? 4 PROFESSOR PETLEY: I would argue that the ethical benchmarks 5 really are the same. I mean, it's really important, for 6 example, to tell the truth. That seems to me an ethical 7 benchmark. When it comes to matters of privacy, it 8 seems to me that again the considerations are much the 9 same across the media. It might be more difficult to 10 enforce them in certain media than others, and obviously 11 the Internet is a very difficult place to enforce 12 anything at all very much, but I think that the 13 principles for the most part do remain the same. 14 Ethically. 15 DR MAC SITHIGH: I think certainly somebody who is going to 16 be working in an online environment, they do face 17 different challenges. The impact of what is published 18 may also vary. There are also great opportunities. For 19 example, material published online provides the 20 opportunity to provide direct links to source material. 21 You can say, "Here is my comment on this and here is 22 a link to the data on which it is based, you can go and 23 check it for yourself". There was mention this morning 24 of right of reply as well. 25 So there are certainly things you can do as well as</p> <p style="text-align: center;">Page 32</p>

<p>1 things to be aware of. The material published online, 2 once circulated, is difficult, as is common knowledge, 3 to remove. If there are attempts to remove material 4 published online, that can in some circumstances be 5 counter-productive because it leads to a principled 6 defence, again a principle that many would question, but 7 a principled defence of circulation of material online, 8 and therefore first publication becomes very important 9 online. We've seen this in contempt of court materials. 10 A photograph up just for a couple of hours can lead to 11 serious contempt proceedings.</p> <p>12 So there are differences there. Now, it is 13 important to try and identify a common core of 14 standards, take the point that many laws are of general 15 application, and I find this, and I've committed to this 16 in talks and publications on a number of other 17 occasions, I do find it disturbing that sometimes we 18 still talk about the law not mattering online. I think 19 even a number of esteemed witnesses, not today but on 20 other days of the Inquiry, have suggested there is 21 a large gap between old and new media.</p> <p>22 There may be enforcement challenges, as has been 23 rightly said, you may need to think about whether the 24 legal framework is adequate or indeed whether you are 25 going about it the right way, but we are well into an</p> <p style="text-align: center;">Page 33</p>	<p>1 There has been a lot of interest in relying on 2 Internet intermediaries as an alternative for some of 3 the forms of media regulation that we are familiar with 4 in the broadcast area and to a lesser extent in print, 5 relying on the web host or the ISP to play a role here. 6 I'm not sure whether that's something you want to get 7 into now or wait until later --</p> <p>8 LORD JUSTICE LEVESON: It is something I certainly at some 9 stage want to get into, because I'm very concerned, and 10 I've heard during the course of the Inquiry that one of 11 the difficulties in the print media is that they are 12 constrained in ways that online is not constrained, and 13 one doesn't need to go into the debate about 14 superinjunctions to be aware that we are at risk of 15 trying to deal with an issue which has the result merely 16 of the whole thing popping up somewhere to the right and 17 us having to start again, if that makes sense.</p> <p>18 DR MAC SITHIGH: Of course it makes sense, and it's 19 something to be very aware of. I'm less comfortable 20 with the idea that it should then dissuade you from 21 taking action. There are plenty of areas where the law 22 as understood in this room is not complete or is not 23 100 per cent effective, but we try our utmost for it if 24 we believe there's an important enough social value.</p> <p>25 LORD JUSTICE LEVESON: I didn't say I wasn't going to do</p> <p style="text-align: center;">Page 35</p>
<p>1 age where law does apply online. There are people in 2 prison for offences that have been committed with use of 3 a computer or publication of material online.</p> <p>4 So I think there's a fear sometimes that even 5 discussion on this gets the wrong end of the stick, to 6 say that because law can't apply online we must, for 7 example, change how we treat the old media --</p> <p>8 LORD JUSTICE LEVESON: The answer is we need to think about 9 how we treat the new media.</p> <p>10 DR MAC SITHIGH: It is --</p> <p>11 LORD JUSTICE LEVESON: And I'd like to know the answer to 12 that.</p> <p>13 DR MAC SITHIGH: We've seen I think a good discussion around 14 this in the area of broadcasting about looking at, say, 15 a television service that's streamed on the Internet or 16 an on-demand service. A very long debate at European 17 level to try and set out principles, the result being 18 really a two-tier system: a higher level of regulation 19 for any live service, whether it be on a television set, 20 on a computer, and then a less intensive but harmonised 21 system of standards for on-demand services, recognising 22 that the relationship between the viewer and the 23 producer or editor is different because you make 24 a choice -- it's probably closer to a newspaper model 25 where you choose what you consume and so on.</p> <p style="text-align: center;">Page 34</p>	<p>1 that.</p> <p>2 DR MAC SITHIGH: No, of course not. But I think there can 3 be advantages to falling within a regulatory system as 4 well and there can be ways in which the online media can 5 be encouraged to meet standards, to take advantage of 6 the certain, albeit limited privileges that are 7 accessible to -- I just mentioned in my statement 8 a whole collection of ways in which journalists are 9 mentioned, publications are mentioned, the media are 10 mentioned. They are at cross purposes and I believe 11 that's a problem, but I would see some scope in 12 encouraging the fulfilment of public interest standards 13 as part of that package, and if you want to benefit 14 from -- I think VAT was mentioned earlier today as well. 15 I think there are many more issues beyond that. You 16 can --</p> <p>17 LORD JUSTICE LEVESON: VAT wouldn't work on the Internet.</p> <p>18 DR MAC SITHIGH: No, but I think the point I'm making on 19 that is where there are privileges associated with the 20 press and where there is demand, and there can be demand 21 for this from citizen journalists, from individuals and 22 so on, to be entitled to privileges of the press, then 23 you can say yes, there is a framework for you to have 24 that entitlement, but you must demonstrate this or you 25 must have some form of demonstrating your commitment,</p> <p style="text-align: center;">Page 36</p>

<p>1 your responsibility, your compliance with the rule of 2 law and so on.</p> <p>3 I do think without saying, "Let's regulate the 4 Internet and let's apply existing regulatory models in 5 full", that you can create incentives for compliance, 6 that you can try and encourage good behaviour, and we've 7 seen that in many areas of online communication around 8 copyright, although there are criticisms around that, 9 around domain names, around search engines, so I don't 10 think it's a task that is beyond this Inquiry. I think 11 there are other issues happening around defamation and 12 so on in other rooms which feed into it, but I think 13 it's a road which you and your assessors should go down.</p> <p>14 PROFESSOR PETLEY: I certainly think we need to get away 15 from the old idea that the Internet isn't regulatable. 16 We've seen from countries like Saudi Arabia or Iran or 17 China that it is regulatable.</p> <p>18 LORD JUSTICE LEVESON: Turn it off.</p> <p>19 PROFESSOR PETLEY: Yes, but democracies don't want to be 20 seen to be acting as outright censors, but in this 21 country certain kinds of illegal content will be blocked 22 or filtered or reported to the police by the Internet 23 Watchdog Foundation and Daithi's already said that one 24 of the ways in which pressure is applied to take 25 material off the Internet which is deemed to be illegal</p> <p style="text-align: center;">Page 37</p>	<p>1 explore. Having dealt with the principle, I'd like to 2 ask you about the practice, and in particular whether 3 the ethical issues which in practice arise for 4 journalists working in new media are different to those 5 which arise in practice in the old media, and I should 6 flag up that I was put onto this question by the article 7 which you submitted, Dr Mac Sithigh, which suggests that 8 attribution of sources is very common amongst bloggers 9 and isn't really a problem on the Internet, whereas 10 there might be attribution issues that we've heard about 11 in the old media.</p> <p>12 Are the issues that crop up in practice different? 13 PROFESSOR HARGREAVES: I stick to my sentiment I just made, 14 which is that they're not fundamentally different but 15 they're very different in practice, in the way that 16 things operate. We thought that 24-hour rolling news 17 introduced a pace which challenged journalistic 18 reflectiveness. The Internet does that with bells on 19 and it creates the opportunity for instant tit for tat 20 exchange and in those exchanges, you know, unwise or 21 harmful or factually incorrect or libellous things can 22 take place.</p> <p>23 I don't believe that I've come across an issue in 24 Internet communications that has made me think: that is 25 by type some sort of new ethical issue.</p> <p style="text-align: center;">Page 39</p>
<p>1 is by pressuring ISPs, Internet service providers. 2 So it is possible to regulate the Internet. Whether 3 it's desirable is a slightly different matter, but 4 possible it certainly is.</p> <p>5 PROFESSOR HARGREAVES: I'd be a little more cautious, not 6 least because the Internet is changing so fast, the 7 amount that it will have changed between the start of 8 your Inquiry and its end will itself be substantial.</p> <p>9 I think the dimension that I would draw attention to 10 is the dimension of the changing definition of what 11 a journalist is and what journalism is that arises from 12 the Internet because of the open-access nature of the 13 technology.</p> <p>14 One of the things certainly that as a journalism 15 school we're thinking about is how do we play our part 16 in educating people who are going to be journalists for, 17 you know, perhaps one-tenth or one-fiftieth of their 18 time rather than being full-time journalists working for 19 a newspaper in London, and feeling our way into all of 20 that, I don't think that you at any point think well, 21 the ethical requirements or standards or debate is 22 fundamentally different, but you do have to recognise 23 that this is culturally a very, very different place to 24 be operating.</p> <p>25 MR BARR: That takes me to the next thing I wanted to</p> <p style="text-align: center;">Page 38</p>	<p>1 You take, for example, the Wikileaks issue of the 2 Diplomatic Service cables and so on. That, as far as 3 I could see, didn't involve any new ethical dimension, 4 but what it did involve was a difference of scale, that 5 because you can hold and transfer such huge volumes of 6 data, that's the difference. The issue of whether or 7 not it's right to obtain the material by whatever means 8 you obtain it and distribute it is not, I think, 9 ethically different in the new media versus the old.</p> <p>10 DR MAC SITHIGH: I think that makes -- 11 LORD JUSTICE LEVESON: It's size and pace, isn't it? 12 PROFESSOR HARGREAVES: Yes. 13 LORD JUSTICE LEVESON: The examples I've been given before 14 Peter Wright and the Spycatcher, that could be contained 15 here but then X months down the track could be printed 16 in Australia with all the problems that that generated. 17 But now this isn't months, this is minutes.</p> <p>18 DR MAC SITHIGH: I think there is an important aspect of 19 that in that the issues may not change but the number of 20 people who are presented with them does increase, and 21 this is a point I've argued academically regarding -- 22 you have an existing law, for example, regarding 23 conflicts between jurisdictions and it makes sense but 24 then over time you have more people coming up against 25 that law who may not be aware of it, may not understand.</p> <p style="text-align: center;">Page 40</p>

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<p>1 To me that creates need to ensure that the law is clear, 2 predictable, well-understood and not indeed confined to 3 those we teach with specific journalistic careers 4 because the ability of individuals to publish, to tweet, 5 to communicate, means that because they can do it, they 6 are very likely to, and the more they do it, the more 7 that these longstanding ethical and legal issues will 8 simply affect people who hadn't thought of themselves 9 acting in that fashion.</p> <p>10 It's funny that there is such criticism of the idea 11 of media studies at times, you know, belittled as 12 a Mickey Mouse subject and so on. I think now more than 13 ever there is a need to explain the power of media, the 14 degree to which there can be choke points and 15 gatekeepers and the types of laws that would affect 16 someone who decides to write a blog, to take 17 a photograph and post it online, because it's not just 18 those who have received formal legal training, whether 19 it be on the job or in a journalism school, that's going 20 to affect it. That to me is the difference, so I agree 21 exactly with what you're saying. It's not really about 22 no one has ever leaked documents before. It's the way 23 in which people have the opportunity to leak, comment, 24 republish, send to friends and so on, that's where it 25 becomes trickier.</p> <p style="text-align: center;">Page 41</p>	<p>1 proportion of your students who you understand go on, 2 whether immediately or eventually, to work for the 3 tabloid press?</p> <p>4 PROFESSOR HARGREAVES: I think that the correct number for 5 Cardiff over time is probably somewhere around 1 in 10. 6 Important in saying that to bear in mind that you're 7 talking now about six newspapers in a world of 8 proliferating media. So the universe of concern here is 9 in all sorts of ways very small, even though it's also, 10 in other aspects, very fearsome.</p> <p>11 PROFESSOR PETLEY: We haven't been going anywhere near as 12 long as Cardiff and we don't have anything like as many 13 students to draw upon for examples for you, but I'm not 14 aware of any of our students that have gone to work in 15 the tabloid press. Maybe I just put them off, I don't 16 know.</p> <p>17 LORD JUSTICE LEVESON: You rather said you did.</p> <p>18 PROFESSOR PETLEY: I did say it's implicit in what 19 I suggested. I don't really paint a particularly happy 20 picture, I think, of working in those kinds of 21 newspapers. Other of our students go and work in the 22 local and regional press, you know, where the NCTJ 23 qualification is very much welcomed and recognised. 24 A lot like me, I used to work in the magazine sector and 25 we've also had students working on good papers like the</p> <p style="text-align: center;">Page 43</p>
<p>1 LORD JUSTICE LEVESON: I understand.</p> <p>2 MR BARR: I'm going to ask you about the feedback you've 3 received from your alumni. I think the first point of 4 departure there is, Professor Hargreaves, your statement 5 and the vivid example you gave of a student who reported 6 leaving the employment of a tabloid newspaper because 7 she'd been asked to pose as a prostitute?</p> <p>8 PROFESSOR HARGREAVES: Yes. I think it's important 9 immediately to add to your question that our evidence 10 also says that we do not have a great cupboardful of 11 such stories, but that is a true story and is, I think, 12 a good example of a situation where perhaps a conscience 13 clause or an ability for a reporter to deal with the 14 problem in some way other than having to give up her job 15 clearly would have been desirable.</p> <p>16 Julian, I'm sure, would make the point about trade 17 union representation and the ability to add to your own 18 personal weight in a situation like that. You know, it 19 is important to say, though, that we've been in this 20 business a long time of training journalists and we 21 don't hear many stories of that kind, but we do hear 22 some and we've heard of others through other channels 23 this morning.</p> <p>24 MR BARR: If I could try and explore the background to that 25 a little bit, could you each give us some idea of the</p> <p style="text-align: center;">Page 42</p>	<p>1 Independent as well. We haven't had any horror stories 2 but we haven't had as many students as Ian has had.</p> <p>3 DR MAC SITHIGH: I would need to provide that information at 4 a later stage after consulting others.</p> <p>5 MR BARR: Sure.</p> <p>6 If I can come back to the isolated example, 7 Professor Hargreaves, you gave us, I'm assuming it's not 8 the sole example or is it the sole horror story?</p> <p>9 PROFESSOR HARGREAVES: I don't think we know of other 10 stories that are quite as unpleasant as that, but 11 reference has been made a couple of times today to 12 Richard Peppiatt's evidence to the Inquiry, and one of 13 the things that you get asked a lot in you work in 14 a journalism school is, "What am I going to do if/when X 15 happens?" and what advice did you give in those 16 circumstances?</p> <p>17 I think that we probably all handle it slightly 18 differently. I don't know. The way I handle it is that 19 I say to students that if you are working in a place 20 where they're asking you to do things that you regard as 21 being personally or morally unacceptable, you are 22 working in the wrong place for you. But try and get out 23 on your terms rather than some other way.</p> <p>24 I think that a huge amount of personal reflection 25 goes on among young journalists about where they will be</p> <p style="text-align: center;">Page 44</p>

<p>1 able happily to work. Actually, most journalists are 2 really happy, really like their job. It's a great job. 3 LORD JUSTICE LEVESON: I think that's tremendously important 4 that people say that. Again it goes back to how the 5 whole Inquiry is being portrayed. I am not on a great 6 witch hunt, I really am not. I am anxious to identify 7 what has gone wrong in a business, an industry, 8 a profession in which there is an enormous amount that 9 goes absolutely right. I can't emphasise that enough. 10 I recognise that, whatever people may think 11 I recognise. 12 PROFESSOR HARGREAVES: I have a son who is a journalist and 13 a daughter who would like to be one. This is not 14 something that one is, you know, counselling the young 15 against such terrible hazards. It's a fantastic thing 16 to do. And, you know, we had a 40th anniversary 17 celebration a little while ago in Cardiff and some of 18 our alumni came back and talked to us, and the people 19 who thrilled us most were the ones who graduated most 20 recently who are working as one-person bands in local 21 television or things like that, or working for the 22 television arm of a fashion magazine or something. 23 You know, there is a lot that's going right, and 24 it's very important that the activities that have gone 25 wrong, and those only aspects of, at half a dozen</p> <p style="text-align: center;">Page 45</p>	<p>1 concern is: will I get a job? And will I get paid 2 halfway decently? 3 But again, one of the things that we do, as I'm sure 4 my two colleagues do, is we try to explain to our 5 students why the industry is in the rather dire straits 6 that it's in and we try to also suggest means by which 7 that might be improved, or we try to suggest areas of 8 media that they might go into which are not in quite 9 such desperate straits, like broadcasting, for example, 10 although even there there are cutbacks. 11 I think top of our students' concerns are: will 12 I get a decent job with decent pay? 13 DR MAC SITHIGH: As a newer lecturer, I have much less 14 experience, but that seems to be a sensible summary of 15 what I've heard. 16 MR BARR: Thank you. I'll pass you over now to my learned 17 friend. 18 Questions from MS PATRY HOSKINS 19 MS PATRY HOSKINS: Good afternoon. I think I'm going to 20 have to turn then to the issue of solutions and 21 obviously you're very familiar with the way that the 22 press is regulated now. What I'm going to do is you'll 23 have heard me this morning ask a number of questions 24 about the PCC and about different possible solutions. 25 I'm going to turn the questions round this time. I'm</p> <p style="text-align: center;">Page 47</p>
<p>1 newspapers in London, it used to be seven but one of 2 them has gone, should contaminate the debate or, worse 3 still, lead to propositions about its future which are 4 unwise. 5 LORD JUSTICE LEVESON: That's why it's critical to ensure 6 that whatever one devises not only works for the press 7 but doesn't prevent the press from working. If you 8 follow what I'm saying. 9 PROFESSOR HARGREAVES: Yes. Perhaps we'll come to solutions 10 design -- 11 LORD JUSTICE LEVESON: Yes. I'm failing again. Carry on, 12 Mr Barr. 13 MR BARR: Not at all, sir. I'm about to put my last 14 question on this subject and then my learned friend is 15 going to pick up the baton. 16 In order to get the context, in terms of the 17 feedback you get from your students, where in the league 18 table of concerns does ethical dilemmas feature? Is it 19 at the top, the bottom, somewhere in the middle? 20 PROFESSOR HARGREAVES: Pretty high but not as high as: is 21 everything going bust and will there be no jobs? That's 22 number one. 23 I would say that these kind of concerns sit at 24 a significant point in the second tier. 25 PROFESSOR PETLEY: Yes, I'd agree. Our students' main</p> <p style="text-align: center;">Page 46</p>	<p>1 going to give you a short time each to tell us how you 2 think press regulation should look in the future and how 3 it might achieve a different system of regulation. 4 I should say before I do that, I live in hope that 5 one of you is going to argue for the current system or 6 for less regulation. That would just be interesting. 7 No, I can see from your nodding and your shaking that 8 that's not going to happen. If I could just take you 9 perhaps each in turn and give us a little view perhaps 10 of what you think is wrong with the current system and 11 what we could do, what Lord Justice Leveson could 12 recommend to improve it. 13 PROFESSOR PETLEY: Right. I definitely would not maintain 14 the Press Complaints Commission, but you asked for 15 something positive and I think what was discussed this 16 morning was what I would also argue for, which is, you 17 know, coregulation or backstop regulation. I think it's 18 very important that the regulatory process should be as 19 independent as possible, by which I mean independent of 20 government. And it should, I think for the most part, 21 be in the hands of the press itself. Not by the way of 22 present editors, which is one of the problems, I think, 23 with the PCC. It must be a regulatory system. It 24 mustn't be what we have now, which used to pretend it 25 was a regulatory system but has finally woken up to the</p> <p style="text-align: center;">Page 48</p>

<p>1 fact that it is actually no such thing, it is simply a 2 complaints mediation body. So it must be a proper 3 regulatory system; independent. 4 It must be, in my view, like the Press Council, 5 which had an interest in maintaining press freedom, that 6 is the freedom for the press to operate in the public 7 interest, whilst at the same time concerning itself with 8 the wrongdoings of the press and also receiving 9 complaints, but somewhere along the line there must be 10 a statutory backstop, because the whole problem, as 11 you've been told endlessly no doubt, with the present 12 system is that if the editors and owners of the national 13 newspapers -- again this is a national newspaper 14 problem. The owners and editors of the regional press 15 do tend to take more notice of judgments by the Press 16 Complaints Commission, but the owners and editors of the 17 national press don't. There must be some kind of 18 adequate sanctioning if people break the code, the terms 19 of the code. 20 Again to repeat what I'm sure you've heard many 21 times before, there's nothing wrong with the code. The 22 problem is the code isn't obeyed when the code is broken 23 and when the PCC does bestir itself to move to an 24 adjudication, nothing really very much happens. 25 So that's my thoughts.</p> <p style="text-align: center;">Page 49</p>	<p>1 to that. I'm in a sense parti pris, but also have some 2 experience of Ofcom, I was on the board of Ofcom from 3 its creation, and I would make Ofcom the statutory -- 4 the holder of the backdrop statutory powers, which in my 5 view in the first instance should be relatively light in 6 character. I don't think that we should have the press 7 regulated by Ofcom in the way that Ofcom's content 8 committee regulates content in broadcasting. 9 I do think the de minimis version of it would be to 10 have Ofcom responsible for invigilating the adherence to 11 the code and mandate of the new Press Council, and being 12 the body which is at arm's length from government, which 13 has both the necessary level of independence and 14 experience to do that and also a lot of the necessary 15 knowledge. Some people in Ofcom spend their lives 16 worrying about telecommunications economics, but there 17 are others who spend their time worrying about content 18 issues, so there is expertise there, which also would be 19 a relatively efficient way of doing it in terms of 20 costs. 21 So that's roughly the design that I would recommend. 22 LORD JUSTICE LEVESON: How different is that from the 23 present relationship that Ofcom has with the Advertising 24 Authority? 25 PROFESSOR HARGREAVES: It could be very similar, or it could</p> <p style="text-align: center;">Page 51</p>
<p>1 PROFESSOR HARGREAVES: I start in a slightly different 2 place. I'd start with politics, which I know is leg 3 three of the Inquiry. 4 MS PATRY HOSKINS: Module three. 5 PROFESSOR HARGREAVES: Module three of this Inquiry. 6 I began in journalism, I'm astonished to discover, 7 pretty much 40 years ago, and in that period, the 8 process by which a kind of independent governance was 9 agreed between the government and the new owners of the 10 Times and the Sunday Times, which was then simply 11 disregarded with no consequence right through a long 12 history up until last week when Alastair Campbell was 13 here and told us all about how he had wanted Tony Blair 14 to do something about this, but it was regarded as in 15 the "too difficult" box, that history tells us two 16 things. One, that the politicians must not be let 17 anywhere near this. And two, that we need something 18 which is then robust. 19 Robust doesn't, I think, come with the thickness of 20 the armour plating. It comes in the cunningness of the 21 design. And cunningness of the design in my view needs 22 to be just an intelligently constructed version of the 23 Press Council. It's really not that difficult to work 24 out what that is. That then has to be funded and 25 governed and I favour a very limited statutory backdrop</p> <p style="text-align: center;">Page 50</p>	<p>1 be a little different. That's -- you know, you hear 2 much praise for the advertising arrangements, and they 3 have, I think, worked pretty well. Ofcom also -- Ofcom 4 is not alone as a regulator either in having operated 5 co-regulatory relationships with a number of other 6 subsectors in the communications zone, and perhaps one 7 of the things that the Inquiry might think about, if it 8 has not yet planned to think about it, is the lessons 9 that are available not only from elsewhere in the media, 10 the journalism regulatory world, but also the regulatory 11 world in general, where there are all kinds of pieces of 12 machinery which have relevant lessons. 13 So there is a real palette for you to take from to 14 produce the cunning design and that I think is what 15 I think you should done. 16 MS PATRY HOSKINS: Is there anything else you would like to 17 tell us about cunning design? I always like people who 18 come up with cunning designs. 19 PROFESSOR HARGREAVES: It's probably better to write it down 20 if you want more detail. That's the outline concept. 21 LORD JUSTICE LEVESON: That sounds like a wonderful idea. 22 PROFESSOR PETLEY: When we talk about backstops, the 23 relationship between the ASA and Ofcom often comes up 24 but I've heard quite a few people, particularly people 25 from the legal profession, talk about the Bar Standards</p> <p style="text-align: center;">Page 52</p>

<p>1 Council again as something which has a kind of statutory 2 backstop somewhere deep along the line. 3 LORD JUSTICE LEVESON: You have to be a bit careful about 4 that because of course the law permits the state in 5 whatever emanation it is to say, "You can't do that, so 6 you can't be a barrister or you can't be a doctor", and 7 I think it is rather important that one doesn't go down, 8 any question, anywhere near a route that says you can't 9 be a journalist. That's the freedom of expression that 10 is the right in every single one of us. 11 PROFESSOR PETLEY: Of course you're right. What we do not 12 want is the licensing of the press. That is obviously 13 not -- but some kind of backstop. 14 LORD JUSTICE LEVESON: I know some people have suggested 15 that and I rather said, somewhat possibly too early, 16 I didn't feel that was a sensible way to go. 17 PROFESSOR HARGREAVES: I agree that it's not. I mean, the 18 issue that came up this morning I thought was well put 19 this morning, the question of balancing incentives for 20 involvement, because just as I would be very, very 21 unhappy about a licensing regime, it's quite difficult 22 to think of a "you must be in it" form of regulation 23 which doesn't involve some kind of in effect licensing. 24 So I would want to stop the cunning design short of 25 that. I'd want this to be a place that it's so</p> <p style="text-align: center;">Page 53</p>	<p>1 statute, and the body becomes designated. 2 The other side of that is that the use of what is 3 effectively the statutory version in Ireland of the 4 Reynolds defence refers specifically to membership of 5 the Press Council. It's not required, you can 6 demonstrate its equivalence, so it's not to say that you 7 are barred from this defence if you do not join the 8 council, but there's a strong incentive to do so. 9 The other two points about the Irish Council that 10 are significant and may not have been -- I think one of 11 them certainly has been mentioned here. The first one 12 is that there is provision for representation of the 13 interests of journalists within the make-up. So you 14 have independent members, you have members nominated 15 from the press and you have a member nominated in this 16 case by the NUJ, so you have do have a collection of 17 interests there with an independent majority, so that's 18 important. 19 The other thing about the Irish Council is that it 20 does allow, as the PCC I understand now does, membership 21 from online-only organisations, and that I think is an 22 important part of it. I mean perhaps the title "press" 23 is difficult there, but in all aspects to try and open 24 it up to others. 25 LORD JUSTICE LEVESON: And do they join?</p> <p style="text-align: center;">Page 55</p>
<p>1 advantageous to be, that the major players would be in 2 it. 3 PROFESSOR PETLEY: Yes. You have to want to be in it. 4 I think that's very important. 5 LORD JUSTICE LEVESON: Carrots and sticks. 6 MS PATRY HOSKINS: Yes, please, I was coming to you. 7 DR MAC SITHIGH: I know it's already been mentioned today as 8 well as in other parts of the Inquiry, but I think it's 9 important to look at the model adopted for the new Press 10 Council in Ireland. 11 LORD JUSTICE LEVESON: I was hoping you were going to talk 12 about that. I thought you probably had some experience 13 of it. 14 DR MAC SITHIGH: I'd suggest there are a couple of -- the 15 codes between them are very, very similar. I think 16 there are some design features I'd like to mention and 17 then if I can, I'd say something as well about the 18 difference between press and non-press. 19 There are a couple of things built into the Irish 20 Press Council that make it work. One is that it's 21 recognised by statute but not set up by statute, so 22 there's a list of statutory criteria not dissimilar to 23 what Ofcom often does within the Communications Act for 24 setting out a body must be sufficiently independent, 25 must have processes and so on. So they're set out by</p> <p style="text-align: center;">Page 54</p>	<p>1 DR MAC SITHIGH: There's only been one that I know of so 2 far. The Irish Press Council -- the Press Council of 3 Ireland has national newspapers, lots of regional 4 newspapers and magazines, I think just one sports news 5 website so far. Of course, the UK publications that 6 publish in Ireland have joined that council, even though 7 it is recognised by statute, even though it is 8 a different design. So, say, the Irish Sun, the Irish 9 Daily Mail, are all members of that council. I think 10 that's an important point, that when the opportunity was 11 presented to those publications, and this was part of 12 a decade-long debate about the reform of libel law in 13 Ireland, it didn't come out of nowhere, and the press 14 was generally comfortable with this co-regulatory 15 solution as an alternative to statutory regulation. 16 The only other point I'd make there is that when we 17 look at the PCC, we run the risk of neglecting how many 18 types of regulation are happening within media. 19 Although the system has improved a lot, it is still 20 unusual that, say, if I were to take a camera and shoot 21 something and try and sell it on the street on a DVD, to 22 do so without classification would be a criminal 23 offence. 24 I think, to take the point of earlier on, that is 25 potentially an example of overregulation and the</p> <p style="text-align: center;">Page 56</p>

<p>1 question that has to be asked is: is there a principled 2 reason for DVDs to be treated with one very, very strong 3 legal mechanism, broadcasting and other newspapers and 4 other online perhaps a mix of them? I'm not suggesting 5 that one size would fit all, I think that's something 6 that's thrown around occasionally by political 7 representatives because it sounds good, but I think 8 there's a need to evaluate is there a correct 9 correlation between the need for regulation associated 10 with a particular medium and the system that we have? 11 That's the only thing I would say on the PCC, is 12 that it's not operating and there's been a lot of 13 tension between the PCC and the Video on Demand body 14 which is a co-regulatory one over the regulation of AV 15 material on a newspaper's website and Ofcom is currently 16 trying to sort that one out, but you can see tensions 17 like that developing, and a new PCC, if there were to be 18 one, would have to engage with those issues. It 19 couldn't simply say we know what the press is and we'll 20 figure it out as we go along. Those lines of 21 demarcation are very important to producers as well as 22 to the wider public. 23 MS PATRY HOSKINS: This morning there was quite a lot of 24 discussion of investigatory powers. We've not really 25 touched on that this afternoon --</p> <p style="text-align: center;">Page 57</p>	<p>1 and judges them to have broken not only the law, but 2 more importantly in this instance its code, what's the 3 point of having these judgments unless they're backed up 4 by sanctions? 5 One of the sanctions that was mentioned this 6 morning, by the way, I thought was a remarkably good 7 one, and that was forcing newspapers which have been 8 found to have erred against the new bodies, the code, to 9 have adjudications about those papers published in other 10 papers. That would hurt. 11 MS PATRY HOSKINS: Does everyone agree? 12 PROFESSOR HARGREAVES: Go ahead. 13 DR MAC SITHIGH: I think it would be important to -- if 14 there were to be a move towards investigatory powers, we 15 would want to look at the status and accountability of 16 the PCC itself. One of the difficulties with 17 self-regulation, and the academic literature is quite 18 strong on this point, is that a self-regulatory system 19 beyond which there is no appeal, which is, for example, 20 not subject to freedom of information and so on, can be 21 a problem, and the more responsibility you place on 22 a self-regulatory body, the more important these issues 23 become. 24 So certainly would I be comfortable with the current 25 PCC having investigatory powers? I would be deeply</p> <p style="text-align: center;">Page 59</p>
<p>1 LORD JUSTICE LEVESON: I think it's possibly worthwhile 2 having five minutes off. 3 MS PATRY HOSKINS: Oh, of course. 4 LORD JUSTICE LEVESON: Give the shorthand writer a break. 5 We'll just have five minutes off. Thank you. 6 (3.25 pm) 7 (A short break) 8 (3.30 pm) 9 MS PATRY HOSKINS: Before the break, I had just asked you 10 a question about the investigatory powers of the PCC and 11 you'll have heard the discussion this morning about 12 that. Is there anything that you wanted to add to that 13 particular debate? 14 PROFESSOR PETLEY: Not really, because it doesn't really 15 have any integrity -- it may have powers, but it doesn't 16 do adequate investigations. That would be my point. 17 LORD JUSTICE LEVESON: But do you think it should? 18 PROFESSOR PETLEY: Yes. I think a regulatory body, whatever 19 regulatory body in the end is finally invented, 20 certainly should have investigatory powers, yes, I do. 21 Definitely. 22 MS PATRY HOSKINS: And associated sanctions? 23 PROFESSOR PETLEY: And sanctions, yes, ultimately. I mean, 24 again, it comes back to an earlier point that if this 25 body makes judgments about specific pieces of journalism</p> <p style="text-align: center;">Page 58</p>	<p>1 uncomfortable with it. If it had an appropriate 2 structure, and again there are different degrees to 3 which the state is involved or indeed the courts are 4 involved, but a body that exercises powers of that 5 nature must be accountable and the PCC does not in my 6 view have the best of records in that way because it 7 resisted the -- or purported to resist the application 8 of the Human Rights Act to itself, is not prescribed for 9 the FOI act even though bodies with reasonably similar 10 functions either are or act as if they are. 11 So I think you would want to look quite carefully at 12 the body, and Ofcom has some record in this, as part of 13 that designation you would build in checks and balances, 14 because as I think was suggested this morning, these are 15 quite serious powers and they have very serious 16 consequences for press freedom. So you would need to do 17 that. But with that caveat, I thought what Professor 18 Petley as well as the speakers this morning said makes 19 an awful lot of sense. 20 PROFESSOR HARGREAVES: I think that is exactly right, and 21 I think I would be horrified at the sudden emergence of 22 a sort of investigative Praetorian Guard that was 23 stomping around Canary Wharf and South Kensington. One 24 of the reasons that we most need a light statutory 25 framing of this is so that the mandate is clearly set</p> <p style="text-align: center;">Page 60</p>

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<p>1 out and understood and responsibility then attributed 2 for who does what in making it work, and the improved 3 Press Council can play its part in that, but you'd need 4 to be very, very careful --</p> <p>5 If you think of what we heard in the open seminars 6 and one or two other places from the Richard Desmond 7 people, hearing the description that they gave of 8 feeling that they were being invited into a club where 9 somebody else had got all the best seats and was really 10 driving it, I understood for the first time why 11 Richard Desmond has a point. If I'd have been him, 12 I wouldn't have wanted to join it either, and the fact 13 that there's the financial issue as well, I'm sure 14 that's a real -- he's not a man who's known to spend 15 money lightly, but actually framing the mandate and the 16 governance is crucial to the culture being able to grow 17 and flourish, and what we've seen with Ofcom, which had 18 many, many enemies when it was set up, many enemies of 19 the idea, is that it has indeed -- it's grown to 20 understand its mandate, it's adapted to changing 21 political circumstances, but it's a strong creature in 22 the landscape and therefore available to play a key role 23 in all of this.</p> <p>24 PROFESSOR PETLEY: I mean, the example of Carlton's 25 programme "The Connection" was brought up this morning,</p> <p style="text-align: center;">Page 61</p>	<p>1 department has undertaken, I'd be very grateful. 2 For the technician, could we have a look at the 3 document which is numbered 48531. It's page 10 of your 4 witness statement, Professor Hargreaves. I'm just going 5 to find it.</p> <p>6 You were asked, Professor Hargreaves, to set out 7 a summary of any published research undertaken within 8 the last decade which is relevant to the terms of 9 reference for part 1 of the Inquiry and you set it out 10 there. You say the school has carried out a range of 11 research projects germane to the subject of journalistic 12 practices and media ethics and you set out a number of 13 them.</p> <p>14 I'd just like to ask you about two of the different 15 projects, please. The first is under heading 2 "The 16 quality and independence of British journalism" on that 17 page, and you tell us that Professors Bob Franklin, 18 Justin Lewis and Dr Andrew Williams "carried out the 19 first piece of research to look systematically at the 20 role of PR in news production and the ability of 21 journalists to maintain journalistic independence."</p> <p>22 I don't know whether you have heard the evidence of 23 Mr Chris Atkins to the Inquiry this week, but he was 24 talking about the whole concept of churnalism, or the 25 using of PR material in the writing of newspapers. I'd</p> <p style="text-align: center;">Page 63</p>
<p>1 you know, because they'd falsified film, basically, and 2 Carlton was fined £2 million, and quite rightly so, too. 3 That could never have been done, I think, if Ofcom 4 hadn't had the powers to investigate just exactly what 5 was wrong with that programme.</p> <p>6 Also I think this morning was mentioned two very 7 fine pieces of work that were done by the Press Council 8 in the 1980s, the looking at the coverage of the 9 Strangeways riot and also looking at the coverage of the 10 Peter Sutcliffe affair. That again was investigative 11 work, it was a really good piece of journalism, it was 12 a really fascinating thing. But of course the Press 13 Council didn't actually have the powers to compel some 14 of the people it wanted to interview, it didn't have the 15 powers to compel them to be interviewed, and I think any 16 new body, providing it was properly constituted in 17 a democratic and accountable way, as Ian has suggested, 18 would have to have powers. You can't have people 19 saying, "I'm sorry, I'm just not going to tell you 20 this".</p> <p>21 MS PATRY HOSKINS: I was going to move away from this topic, 22 so if there's anything else that you'd like to say about 23 it, this is your chance. No? All right.</p> <p>24 If I can ask Professor Hargreaves if I could turn to 25 a couple of the studies or research projects that his</p> <p style="text-align: center;">Page 62</p>	<p>1 like you to tell me a little bit, please, about that 2 study and what your colleagues were commissioned to do, 3 in essence.</p> <p>4 PROFESSOR HARGREAVES: Okay. Let me just give a health 5 warning. I wasn't involved in the research. When this 6 was being done, I wasn't even working in any large time 7 way at the school. But I am familiar with the work.</p> <p>8 This was a study of the way that journalists work. 9 It says here conducted in collaboration with the 10 Rowntree Foundation and the Guardian, and it was I think 11 used in Nick Davies' book, Flat Earth News.</p> <p>12 The main thing that it showed was that although in 13 the period studied there hadn't been a particularly 14 notable change in the number of journalists, there had 15 been a particularly notable change in the amount of work 16 that journalists had to do because of the emergence of 17 online and the changes in the way that journalism is 18 organised, and the figure that's put on that is that 19 there had been an increase there by a factor of three in 20 the, if you like, if you were looking at it from an 21 economic point of view, in the productivity of the 22 journalists concerned, but that this has got 23 consequences for the quality and level of ambition of 24 what journalists can do.</p> <p>25 MS PATRY HOSKINS: Can I ask you to pause there just for</p> <p style="text-align: center;">Page 64</p>

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<p>1 a moment. It's important to point out that the study 2 was drawn from the top end of British journalism, 3 Guardian, Independent, Mail, Telegraph, Times, BBC and 4 ITV News. This was not a study focusing on the red top 5 or tabloid end of the market, so those principles apply 6 equally to the top end of the market? 7 PROFESSOR HARGREAVES: That's what this piece of research 8 found. This is not the only piece of research that's 9 been done in the relationship between press release 10 writing and media production, and there's a reasonably 11 well-established body of data about that. You only need 12 to talk to any journalist and you know that is part of 13 what working life is for many journalists most days, if 14 not most journalists most days. But that doesn't mean 15 to say that there aren't other journalists who are 16 working in different conditions, because that's true 17 also. 18 MS PATRY HOSKINS: So the same number of journalists, three 19 times as much work. What sort of pressures did that 20 lead to? What did the study find? 21 PROFESSOR HARGREAVES: Well, it found that there was less 22 time given to fact-checking, and less opportunity for 23 journalists to use their own initiative and, as it were, 24 take optional courses. If you have so much on your 25 plate the whole time, that you don't have time to go and</p> <p style="text-align: center;">Page 65</p>	<p>1 PROFESSOR HARGREAVES: Yes, that is the implication of it 2 And this is where, you know, I just sort of contest some 3 of this work because I think it's -- you know, 4 anybody -- people sitting in this room now at all these 5 screens, we all work at an incredibly faster speed than 6 we used to do around the stuff, the information, the 7 data that we have to manage as part of our work. So I'm 8 not contesting our own research; I'm simply -- you know, 9 I'm standing back from it a little bit because I don't 10 personally subscribe to many of the large theories about 11 all journalism is no good these days, which sometimes 12 this kind of material is used to go in that direction, 13 and that's not what I see happening in the world. 14 MS PATRY HOSKINS: All right. The second piece of research 15 I wanted to ask you about is over the page, referred to 16 over the page -- two pages on, page 12 of your witness 17 statement. It's under the heading "Examples of positive 18 and negative journalistic practises: science and 19 religion". If you look at (iv) under that heading, you 20 explain that the school has undertaken research on the 21 British press coverage of Islam and Muslims, which 22 suggest the quality of tabloid news practices in this 23 area was often poor. Can you tell us about that 24 research? Again I understand that the caveat will 25 probably be that you didn't have much involvement with</p> <p style="text-align: center;">Page 67</p>
<p>1 look for more interesting dishes, and therefore 2 certainly the way that Nick Davies interprets this, and 3 he uses the word "churnalism", is that this has led to 4 a significant diminution in the quality of British 5 journalism. 6 I have to say I have some reservations about that 7 theory, but if we're just talking about this research, 8 I certainly don't need to air those for you. 9 MS PATRY HOSKINS: Of course it was about the role of PR in 10 news production. I think what your witness statement 11 goes on to say here is that the finding was that 12 journalists often heavily relied on public relations and 13 press agencies for news. Is that right, that's what the 14 study found? 15 PROFESSOR HARGREAVES: Yes. That's a bit like saying the 16 solar system relies on the sun to come out. I mean, 17 there's nothing new about press releases and PR. But 18 what is undoubtedly the case is that there has been 19 increased pressure on journalists, the amount of stuff 20 they have to get through, the number of stories they do 21 a day. That's what this nails as a piece of research. 22 LORD JUSTICE LEVESON: The real point is this, this is the 23 only point, isn't it, that there isn't the same time to 24 check the story and to make sure that it hasn't been 25 presented in an overfavourable light?</p> <p style="text-align: center;">Page 66</p>	<p>1 the actual research or -- 2 PROFESSOR HARGREAVES: No, that's true, although I have been 3 involved in work myself on Islamophobia. 4 This was a study of content and of the way that 5 a story emerged into the news with one apparent set of 6 meanings and then, as it worked its way through the sort 7 of gut of the media's digestive system, it came out 8 looking and sounding quite a bit different. 9 I mean one example of that was a speech given in 10 2007 by Muhammad Abdul Bari, who was at the time head of 11 the Muslim Council of Great Britain, and he gave 12 a speech in which he referred to the 1930s and the rise 13 of anti-Semitism and a period in which people's minds 14 were poisoned. 15 This got reported one way at first, but then it 16 became, and these are actual headlines from actual 17 newspapers, it became "Muslim fears Nazi UK" and then 18 that got into "Fury as Muslim brands Britain Nazi", with 19 all of this happening I think at the time around 20 Remembrance Sunday. 21 It's an example of how the reporting of a speech 22 with a pretty clear intention behind it as a speech, if 23 you like bad faith is applied to it as it traverses 24 through the media and it's turned into -- something 25 which is an expression of concern is turned into a stick</p> <p style="text-align: center;">Page 68</p>

<p>1 to beat the Muslim community which is now throwing up 2 people who think that Britain is full of Nazis. That's 3 the point of that particular story, and this piece of 4 research followed a number of discourses of that kind 5 and found that pattern recurring again and again. 6 LORD JUSTICE LEVESON: The point there is that that's just 7 as good an example of the presentation of stories about 8 which you would have concern as some of the examples 9 that were identified by those who gave evidence to the 10 Inquiry? 11 PROFESSOR HARGREAVES: Absolutely so. You might even -- 12 this would be a matter of opinion, clearly. You might 13 even say this is a type of example which causes more 14 concern. This is not something which is an attack on an 15 individual. This is something which has very wide 16 political and social and cultural significance and which 17 can be part of prompting civil disorder or tensions in 18 society that would otherwise not be so provoked. 19 MS PATRY HOSKINS: Sir, I'm not going to ask 20 Professor Hargreaves any more about that study. It's at 21 tab 10 of the bundle that you have, for your note. 22 LORD JUSTICE LEVESON: Yes. 23 MS PATRY HOSKINS: I'm going to hand back to Mr Barr for 24 some further questions. 25 LORD JUSTICE LEVESON: Did you want to add something?</p> <p style="text-align: center;">Page 69</p>	<p>1 become embroidered in a kind of process of Chinese 2 whispers. 3 I'd be very happy to give the Inquiry a copy of this 4 book, if you'd like it, because there's a great deal of 5 empirical evidence and it also comes back to something 6 which Angela mentioned this morning. Again, Hugh and 7 Laura, who were major contributors to this book, 8 interviewed a whole number of Muslim journalists working 9 on newspapers, and again it was very, very interesting, 10 not one of those journalists wanted to be identified. 11 Not one. Which says an awful lot, I think, about the 12 climate -- 13 LORD JUSTICE LEVESON: For various reasons it probably is 14 one of the ever-burgeoning group of books that I ought 15 to read. 16 PROFESSOR PETLEY: Well, I'll happily give you a copy of it. 17 MS PATRY HOSKINS: I think we'd be very grateful for that. 18 Thank you very much. 19 PROFESSOR PETLEY: I should just say, by the way, that the 20 book does actually end with some recipes for how things 21 might be made better, so the book isn't just a series of 22 complaints and criticisms, and that particular chapter 23 might be of interest to the Inquiry because we do 24 actually talk about how to make journalism better. And 25 because a lot of the book has been written by</p> <p style="text-align: center;">Page 71</p>
<p>1 PROFESSOR PETLEY: Just briefly. I've actually published 2 some of this research in a book which I co-edited called 3 "Pointing the finger: Islam and Muslims in the British 4 media" because I was very impressed with this research. 5 The whole book really is about the representation of 6 Islam and Muslims, it's more about the British press and 7 the British media as a whole, and the picture which 8 emerges I'm afraid is very, very much along the lines 9 throughout the whole book of the rather grim picture 10 that Ian has painted now, and one of the things that we 11 did look at was, you know, mythological stories. 12 I'm sure you'll all be familiar with the story that 13 Christmas has been banned because it offends Muslims and 14 piggy banks have been banned because it offends Muslims 15 and the terms BC and AD have been banned, you know. In 16 fact, we got two Guardian journalists, Hugh Muir and 17 Laura Smith, to actually investigate these stories and 18 of course they turned out not just to be a bit 19 exaggerated or a bit distorted, but completely and 20 utterly untrue. 21 I do think it's quite shocking for people sometimes 22 to discover that stories that newspapers publish are 23 just quite simply not true, and of course, as you know, 24 and Ian's just illustrated it, stories very easily 25 bounce from one newspaper to another and then they</p> <p style="text-align: center;">Page 70</p>	<p>1 professional journalists, or one-time journalists, 2 I think it carries a fair amount of weight. 3 MS PATRY HOSKINS: Thank you very much indeed. 4 Further questions from MR BARR 5 MR BARR: I'd like to resume by taking some of the concepts 6 Professor Petley sets out in his statement and exploring 7 them further with you all. 8 Professor Petley, you start by reminding us that we 9 must be careful not to conflate the idea of freedom of 10 expression with freedom of the press. Would you like to 11 attempt in a nutshell to explain to us the vital 12 difference between those two concepts? 13 PROFESSOR PETLEY: I will do my best. 14 Obviously one goes back when talking about freedom 15 of expression to Article 10 of the European Convention 16 on Human Rights. There we have a kind of statutory 17 right to freedom of expression. Actually, a relatively 18 recent one, really, so everybody has that right. 19 The question I think really is not: does the press 20 have more rights or less rights than anybody else? We 21 all have that right. My argument would be that with the 22 right to exercise what you might call commercial speech 23 comes certain obligations which I don't think are really 24 there with the right to exercise individual speech. 25 I would have thought that the only obligation,</p> <p style="text-align: center;">Page 72</p>

<p>1 really, that comes to an individual when he or she is 2 exercising that right to free speech is to make quite 3 sure that you don't stop anybody else exercising their 4 right, but it does seem to me that when you get 5 commercial speech by powerful organisations which have 6 big consequences, much, much bigger consequences than 7 individual speech has, then certain responsibilities and 8 duties come with that.</p> <p>9 I've drawn quite explicitly in my witness statement 10 on the work of Professor Onora O'Neill, and in 11 particular her Reith Lecture on trust in the early part 12 of this millennium. I don't know whether she's somebody 13 who you might be inviting to speak to you, but 14 I certainly owe her a large debt of gratitude, I think, 15 because she certainly helped me to develop my ideas 16 around this notion of, you know, the responsibilities 17 which come with the ability to exercise commercial 18 speech.</p> <p>19 MR BARR: Am I understanding correctly that the heart of the 20 distinction is the power and influence that comes with 21 the ability to communicate to a very large audience? 22 PROFESSOR PETLEY: Absolutely. 23 MR BARR: And to the inequality of voice? 24 PROFESSOR PETLEY: Yes. 25 MR BARR: Is there anything that either of you would like to</p> <p style="text-align: center;">Page 73</p>	<p>1 now put on notice.</p> <p>2 PROFESSOR PETLEY: I'm putting it on the Inform blog so 3 that other people can read it too, if that's okay with 4 the Inquiry.</p> <p>5 LORD JUSTICE LEVESON: Of course it is. I'm afraid we'll 6 also publish it. It provided, if I might say so, 7 a window, particularly a historical window, which I had 8 not previously appreciated, and I'm pleased for the 9 opportunity to say that.</p> <p>10 PROFESSOR PETLEY: Thank you very much.</p> <p>11 DR MAC SITHIGH: I think the Inquiry will be going on good 12 lines here. The European Court of Justice has had call 13 to deal with this on a number of occasions, even around 14 something very topical for this investigation, the 15 status of the data protection directive, which talks 16 about journalistic purposes, and it had to investigate 17 in quite some detail the difference between the rights 18 of the press and the rights of the individual to 19 communicate and to speak freely, and I think that's 20 really an important thing, that of course many of us 21 probably have said free press today, but there's strong 22 legal authority that that is something that does not 23 belong to the press and that the focus should be on 24 achieving abilities for individuals to communicate and 25 to express, and that would be paramount. That will</p> <p style="text-align: center;">Page 75</p>
<p>1 add or qualify about that?</p> <p>2 PROFESSOR HARGREAVES: I'm certainly a member of the 3 Onora O'Neill fan club, and she gave a lecture a few 4 days ago which developed her line of thinking, and it is 5 a very powerful antidote to an oversimplistic freedom of 6 the press argument. Where it takes you in terms of the 7 practicalities of the kind of mission that the Inquiry 8 has before it I think is to be unafraid of the big scary 9 headlines here.</p> <p>10 It's easy to try I to boss this debate by saying, 11 "You can't possibly do anything like that because of 12 freedom of the press and you can't possibly do anything 13 like that for the opposite set of reasons", whereas 14 actually there is a perfectly reasonable design on which 15 actually most people probably can agree it simply 16 requires, you know, the industry and the skill to do it 17 and the political circumstances in which it can be taken 18 up, and it's the latter that has been missing through 19 all of my working life in journalism.</p> <p>20 DR MAC SITHIGH: A clear point has been made. I have not 21 read Professor Petley's contribution on this but I've 22 seen the arguments he's made in the past. 23 LORD JUSTICE LEVESON: His statement is worth reading. 24 DR MAC SITHIGH: I'm looking forward to it. My students 25 will be reading it too, so those who are watching are</p> <p style="text-align: center;">Page 74</p>	<p>1 benefit the press, but the benefit to the press is not 2 the only objective. That's something that probably 3 hasn't had enough circulation in the public debate in 4 the UK, but I would commend Professor Petley's work and 5 hope that it does.</p> <p>6 MR BARR: And does the distinction show us the space that 7 there is to regulate the press without necessarily 8 impinging upon the fundamental right of freedom of 9 expression?</p> <p>10 PROFESSOR PETLEY: Yes, because I think one of the points 11 which I make in this, and it's a point I make to my 12 students when I'm teaching them, is that we have to 13 think about regulation not only in negative terms but in 14 positive terms.</p> <p>15 Now, there was a good deal of discussion this 16 morning about the principles of public service 17 broadcasting, and how they in fact have helped to 18 maintain and indeed protect good journalism, both within 19 the commercial broadcasting system and the BBC. Because 20 these are various forms of thou shalt. Negative 21 regulation is thou shalt not, but positive forms of 22 regulation are thou shalt. So regulating into the 23 system things like diversity, accountability, 24 accessibility, accessibility, to use Onora O'Neill's 25 phrase. These are really really important things, which</p> <p style="text-align: center;">Page 76</p>

<p>1 I think people actually have a right to. 2 I talk about communicative rights in my submission 3 to the Inquiry, and this I think is really, really 4 important. 5 So to me, none of these things are proscriptions; 6 rather they're prescriptions. They're encouragements to 7 do better, and in particular they're encouragements to 8 do what the media according to, you know, classical 9 fourth estate theory, et cetera, are supposed to do in 10 a democracy. You know, this is not some kind of 11 wonderful invention by me. This actually is kind of 12 going back in many ways to what the principles of 13 journalism have for a long time proclaimed themselves 14 as, both in the -- particularly in the US, but to some 15 extent in the UK as well, saying, look, you say this is 16 what you're doing, you say you're the fourth estate, you 17 say that you're a watchdog, you say that you're making 18 power accountable to people, but actually you're not 19 living up to these ideals. 20 In particular, one of the points I make is to argue 21 that it's all very well to talk about journalism 22 speaking truth to power, but journalism very rarely 23 acknowledges its own power, acknowledges that it is 24 a really, really, really important power in the land. 25 To go back to a point which Ian made just now, one Page 77</p>	<p>1 haunt me. 2 PROFESSOR PETLEY: You're absolutely right. But it would 3 seem to me that much of the press, you know, the usual 4 excellent papers like the Independent and the Guardian 5 and so on, do exercise their power responsibly, they do 6 actually have quite a kind of reflexive attitude to what 7 it is they do. 8 I quote in my submission from the Guardian's 9 David Walker, who is one of those journalists who does 10 acknowledge the power of the press, or the Observer's 11 Will Hutton. But when you go out of the upmarket 12 papers, it seems to me that the attitude of the red tops 13 and the attitude of the Mail and the Express towards 14 government are completely and totally different. You 15 get a much more bullying aspect there. 16 The other evening when Lord Patten introduced 17 Onora O'Neill at the Oxford lecture, he talked about 18 that in a very interesting way, saying that essentially 19 the Daily Mail seemed to have a kind of stranglehold 20 over the way in which drugs policy has developed in this 21 country, and someone like the Justice Secretary, 22 Kenneth Clarke, has also talked about the way in which 23 large sections of the press have kind of bullied 24 politicians into enacting more and more illiberal penal 25 policies, probably against their better judgment and Page 79</p>
<p>1 of the reasons why politicians have been so wary, 2 I think, to take on questions about the regulation of 3 the press, both in a positive sense and a negative 4 sense, is because they're actually terrified of the 5 press. But this is not the press being a watchdog. 6 This is the press being an attack dog, and there's 7 a very, very big difference between the two. 8 Everybody would agree with the importance of the 9 press as a watchdog, keeping watch over corporate power 10 and state power, political power, but also, as 11 Nick Davies and David Leigh have shown, quite 12 brilliantly, in my view, this is a fantastic example of 13 journalism speaking truth to power, but the power here 14 is not the power of the state, it's the power of the 15 Murdoch empire, in this particular instance. 16 LORD JUSTICE LEVESON: Or the power of the press generally, 17 to be fair. I mean -- 18 PROFESSOR PETLEY: Yes. 19 LORD JUSTICE LEVESON: -- I understand why we got here, but 20 the whole question is: who is going to take on abuse of 21 power in the press? Because nobody does. If it is 22 abused. 23 PROFESSOR PETLEY: It is your opening remark, isn't it, quis 24 custodiet custodians. 25 LORD JUSTICE LEVESON: Yes, there it is, it's come back to Page 78</p>	<p>1 their better sense. 2 But the problem here really is not so much a problem 3 to do with the attack doggery of the press. The real 4 problem, surely, is that politicians of both main 5 political parties have allowed this to happen, and 6 I think that's the point that Ian ended up on before 7 I started. 8 LORD JUSTICE LEVESON: You might talk yourself back into 9 module 3, unless you're careful. 10 PROFESSOR PETLEY: I'm very happy to do so. 11 MR BARR: Perhaps I could ask Professor Hargreaves to pick 12 that up by putting it in this way. I'm sensing that 13 what's being said is power should bring with it 14 responsibility, that should manifest itself not just in 15 negative obligations but also in positive obligations. 16 Is that a proposition with which you agree? 17 PROFESSOR HARGREAVES: Yes, it is a proposition with which 18 I agree. The only qualification I would put on the back 19 of what Julian just said so eloquently is that there 20 will be occasions when the newspapers that you listed 21 are saying what they're saying and doing what they're 22 doing because they have tapped into and understand 23 public feeling or something which politicians, for 24 another set of reasons, are not attending to. 25 It's not right to sort of construct the idea of the Page 80</p>

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<p>1 Mail, the Express, the Mirror and the Sun as some kind 2 of ill-motivated beast. You know, they are also looking 3 for a relationship with their audience and trying to 4 give voice to what they think their readers think and 5 are concerned with, and that's a very great skill in its 6 own right, but it does come with -- it does come with, 7 absolutely, a set of responsibilities, and it can be 8 bullying. But nice liberal people can be bullies as 9 well. Even broadsheet newspapers. My word, I've known 10 the odd one.</p> <p>11 MR BARR: If I can pick that up and expand it in my question 12 to Dr Mac Sithigh. The ability to communicate with the 13 masses is now, through the Internet, something which 14 lots of people can do without buying a newspaper in 15 order to do it. Do you agree that with the power of 16 mass communication should come positive 17 responsibilities? And if so, how do we translate that 18 into the Internet?</p> <p>19 DR MAC SITHIGH: I agree that positive responsibilities and 20 positive regulation is very important. In the case of 21 broadcasting, it's been a very significant part of the 22 regulatory mix, but it's not just about saying what you 23 can't do, but what you can do. Or encouraging you to 24 what you should do.</p> <p>25 When you go online, the entry barriers are lower.</p> <p style="text-align: center;">Page 81</p>	<p>1 response to speech that you can then promote further 2 opportunities to speak.</p> <p>3 The last thing I'd say is that online media may 4 still need encouragement in terms of allowing a diverse 5 range of views to be aired, of enabling non-commercial 6 approaches to be taken. Public service broadcasters, 7 not just in the UK but elsewhere, have had trouble going 8 online because it is difficult to translate a public 9 service mindset into an online environment because you 10 don't have the old trade-off of in response to a limited 11 spectrum you will represent all the nations or all the 12 regions equally.</p> <p>13 But when broadcasters and newspapers go online, they 14 can add to the type of conversation that is taking 15 place, but there may still also be a role for the state, 16 not simply in the only time we hear talk of law on the 17 Internet being about what should be banned, but about 18 creating communicative spaces online, including 19 potentially financial support where necessary because we 20 have seen a crisis in the local media where local 21 newspapers are in trouble, where the BBC on competition 22 grounds has had difficulty going into local video, and 23 there is a need to recognise that we can't simply rely 24 on the Internet to come along and solve all our 25 problems. That would be my conclusion on that. There</p> <p style="text-align: center;">Page 83</p>
<p>1 You don't need to invest in a printing press or have 2 access to limited spectrum, so by definition there is 3 a lot of speech out there.</p> <p>4 Where I would draw the line is saying that simply 5 having lots of opportunities to speak, that means we're 6 out of the woods; I don't think that's the case. If you 7 look at online traffic, there are some large UK 8 newspapers that are also very significant players 9 online. There are also other intermediaries, search 10 engines and web hosts, who will influence the way in 11 which the user gets to see what's going on, so although 12 everybody can produce, there are a lot of voices, so 13 there are other centres of power which may not be 14 newspapers or broadcasters, but are important and active 15 online.</p> <p>16 But there are -- the benefit of the online media is 17 something that was touched on this morning around the 18 right of reply, which is that in some online discussion 19 areas, the right of reply is part of the culture. It is 20 built into the nature of online communications that you 21 can respond to it. I would favour a right of reply for 22 the press. It works in a number of other European 23 states, it's important in terms of broadcasting.</p> <p>24 I think where it complements what my two colleagues on 25 the panel have said, it's about promoting more speech in</p> <p style="text-align: center;">Page 82</p>	<p>1 are great opportunities for speech, for criticism, for 2 investigation and so on online, but just pointing 3 towards the Internet won't do it.</p> <p>4 MR BARR: If I rewind just a little bit in that answer and 5 ask you to tell us a little bit more about where power 6 rests, so where the power rests is where one might think 7 about imposing the duties. Internet service providers 8 presumably the most powerful part of the Internet?</p> <p>9 DR MAC SITHIGH: Well, it's important to break down the 10 Internet service providers as, for example, under 11 electronic commerce law where you distinguish between 12 what's called a mere conduit, someone who provides 13 a connection, and a host, someone who provides the 14 opportunity to display the material. That's an 15 important distinction because the degree of liability 16 might be less for the conduit than for the host.</p> <p>17 LORD JUSTICE LEVESON: That's a search engine?</p> <p>18 DR MAC SITHIGH: Well, by conduit I would refer to an 19 internet service provider, BT, Virgin, and so on. 20 A host, examples would be Facebook, YouTube, et cetera. 21 Search engines would be a particular type of host. But 22 they all have different parts to play.</p> <p>23 What I would say around a host is that you need to 24 find a method that if you're going to make the host 25 responsible for something, that does not make them the</p> <p style="text-align: center;">Page 84</p>

<p>1 new arbiter of right and wrong. This is a major concern 2 around private regulation, that if we say that it is up 3 to YouTube to take things down without the proper 4 process in place, then what stays up is not what should 5 stay up, but those who have the legal strength to argue 6 back, or indeed you have a problem of smaller hosts 7 taking down material when there might actually be 8 a legal case to keep it up, but they are afraid of the 9 cost of the legal action and so on.</p> <p>10 This has been a big part of the debates on libel 11 reform and there have been a number of suggestions 12 around rapid responses, mediation, temporary take down, 13 put back up again, and they are important because if we 14 say that online is an opportunity to speak but then we 15 hand that control over, we may have a future inquiry 16 where rather than talking about the power of the editor 17 of the Daily Mail and the Sun, we are talking about the 18 powers of Internet intermediaries. So there is a danger 19 there.</p> <p>20 But certainly they can have a part to play in 21 regulation. We see this, for example, with ISPs around 22 the -- their obligations to carry your traffic. The 23 old-fashioned idea of a common carrier, you take anyone 24 who comes to you in return for a certain degree of 25 protection from legal action. To me, those two issues</p> <p style="text-align: center;">Page 85</p>	<p>1 proprietors and press editors argue in favour of press 2 freedom, which is of course something we're all in 3 favour of, press freedom is very much kind of hurrah 4 words, in fact what they're really doing is they're 5 arguing for a property right. They're really saying, 6 "Look, it's my newspaper and I will do with it as I damn 7 well please."</p> <p>8 It seems to me that in a democracy, that really 9 isn't good enough. There have to be certain kinds of 10 responsibilities and duties laid upon newspapers and 11 I would argue, and I argued in that submission, that one 12 of the most important ones is the one which is actually 13 enshrined in the very first clause of the Press 14 Complaints Commission Code, which is the duty to be 15 accurate.</p> <p>16 I don't want to go on too much about the Press 17 Complaints Commission, but it is an absolute fact that 18 the vast majority of complaints which the PCC receive 19 are not about privacy at all. That's something in the 20 region of 20 per cent. The vast amount of complaints 21 that the PCC receive, about 70 per cent, are about 22 accuracy.</p> <p>23 My point here would be if people are not able to 24 receive accurate information about things of public 25 interest, how are they supposed to function as citizens</p> <p style="text-align: center;">Page 87</p>
<p>1 go very closely together. If you want immunity, then 2 there may be public service obligations associated with 3 that.</p> <p>4 MR BARR: Thank you. I'm going to move in 5 Professor Petley's statement to the next concept that 6 you deal with, which is you set up the proposition free 7 enterprise is a prerequisite of a free press, and then 8 proceed to demolish it.</p> <p>9 PROFESSOR PETLEY: Yes.</p> <p>10 MR BARR: I would like to ask you a little bit more about 11 that.</p> <p>12 PROFESSOR PETLEY: Yes.</p> <p>13 MR BARR: Is it right that in your opinion there's a myth 14 that free enterprise is required in order to get a free 15 press?</p> <p>16 PROFESSOR PETLEY: Well, in my view, free enterprise, that 17 it an unregulated free market, does not lead to a free 18 press in the fullest sense of the word.</p> <p>19 MR BARR: Is that because there's an inequality of power 20 that emerges?</p> <p>21 PROFESSOR PETLEY: Yes. There's an inequality of power. By 22 the way, both -- between newspapers themselves, but 23 also, of course, between newspapers and their readers 24 and also between newspapers and members of the wider 25 society. So my argument really is that when press</p> <p style="text-align: center;">Page 86</p>	<p>1 of a democracy? So what's happening, in fact, is that 2 press proprietors -- and there's nothing particularly 3 new about this, by the way -- have traditionally used 4 their newspapers to propagate either their own views or 5 views which are in one way or another convenient and 6 useful to them. There is nothing new about complaints 7 about press proprietors because one of the very, very 8 few British politicians ever to stand up to the press in 9 this country was a Conservative Prime Minister standing 10 up to a largely Conservative press and that was Stanley 11 Baldwin, and that of course is where that expression, 12 you know, what the press barons want is the prerogative 13 of the harlot throughout the ages, power without 14 responsibility -- and that's largely what they've got. 15 Those lines I believe were written by Kipling for 16 Baldwin, who was his cousin.</p> <p>17 That, I think is the title of the book by 18 James Curran and Jean Seaton, Power Without 19 Responsibility, which in my view, at least, remains the 20 best book on the current state of the British media. 21 It's a very, very good book in terms of the empirical 22 detail which is in it, but it's also, as the title 23 suggests, a critical book as well.</p> <p>24 I think what's needed here in journalism studies and 25 media studies generally is a really good mixture of</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 detailed empirical research like the kind that's carried 2 out at Cardiff that we've heard about, but also which 3 has some kind of reputable theoretical basis to it. The 4 basis of my own work would be very much in kind of 5 critical political economy, and that's the perspective 6 that this comes at you from. 7 But to return to the question, I don't think that 8 really a conception of press freedom, which is in the 9 end merely a property right, is one that I personally 10 would want to defend. 11 I mean, the organisation which I chair is called the 12 Campaign for Press and Broadcasting Freedom, but that 13 was really founded in the 1970s, partly by -- mainly, in 14 fact, by journalists and print workers who were 15 concerned that their freedom to operate properly as 16 journalists and print workers was being increasingly 17 constrained and narrowed by press proprietors, but 18 particularly Rupert Murdoch. 19 MR BARR: Thank you. Perhaps I can ask 20 Professor Hargreaves: do you agree that free enterprise 21 is a prerequisite of a free press? Would you align 22 yourself with Professor Petley? 23 PROFESSOR HARGREAVES: When I heard your question, not 24 having had the opportunity to read Professor Petley's 25 text, I would have read your question, unadorned by his</p> <p style="text-align: center;">Page 89</p>	<p>1 concentration, and that is the history, unfortunately, 2 of -- 3 LORD JUSTICE LEVESON: But this isn't new. 4 PROFESSOR PETLEY: No. 5 LORD JUSTICE LEVESON: This has been going back 50 years. 6 PROFESSOR PETLEY: Indeed. 7 PROFESSOR HARGREAVES: The problems that you've been asked 8 to steer your way through, it's very, very important to 9 keep remembering that they're half a century old in 10 their current form. There's a version of them before 11 that. 12 LORD JUSTICE LEVESON: This is one of the points that 13 Professor Petley made, the American presidents. 14 PROFESSOR PETLEY: I think what has happened is that these 15 are kind of vegetative processes which have developed 16 over a long time. You can almost argue that they've 17 developed for the whole lifetime of the modern British 18 press, which we can really date to the end of the 19th 19 century, and again here I would refer you to the work of 20 people like James Curran. And of course there have, as 21 I'm sure you're aware, been attempts to examine the 22 British press. We've had three Royal Commissions on the 23 press, which were mentioned this morning, and we've also 24 had the Colcutt committees as well. 25 LORD JUSTICE LEVESON: Twice.</p> <p style="text-align: center;">Page 91</p>
<p>1 answer, as a question about whether or not you were 2 asking me whether we would have a better press if it 3 were all publicly owned in the way that our dominant 4 broadcaster is publicly funded, and my answer to that 5 would be emphatically no. What I believe that we want 6 is a diverse news media ecology, which includes these 7 different sorts of animals now mightily enhanced by the 8 availability of all of these strange new players 9 creeping out of the blogosphere and so on, and that is 10 our best defence against all of this going wrong again. 11 You know, I connect that back to the theme which 12 I've laid some emphasis on, which is making sure that as 13 part of the regulatory apparatus we're also ensuring 14 that there is not excessive concentration of power 15 within this over-arching power structure. I would be 16 worried about excessive concentration of power if it 17 were all concentrated in the hands of the BBC, which the 18 Director General who I worked for at the BBC used to go 19 around saying was the best organisation created anywhere 20 in the world in the 20th century, which was a large 21 claim, but not necessarily a completely absurd one. 22 PROFESSOR PETLEY: I'm with you. I think that the problem 23 with the so-called free market, which I don't believe is 24 a free market, is that it does precisely, if not 25 properly regulated in the public interest, lead to</p> <p style="text-align: center;">Page 90</p>	<p>1 PROFESSOR PETLEY: Twice, exactly. But really, nothing much 2 happened as a result of that. In the end, the last 3 Royal Commission kind of was more critical than the 4 first two and then rather kind of held up its hands and 5 said, "Oh, woe is us, we can't really do much about 6 this". Then of course Colcutt 2 comes up with something 7 which nobody who believes in press freedom could 8 possibly agree with, namely this kind of court of the 9 Star Chamber, basically. 10 Then what happens is the Press Council is actually 11 in the end replaced with a body which had even 12 a narrower remit than the Press Council did, which is an 13 extraordinary position to have reached, in my view. 14 LORD JUSTICE LEVESON: Indeed. At one of the seminars 15 somebody said that what was required was less 16 regulation, not more. I think somebody said that. 17 PROFESSOR HARGREAVES: Yes, less regulation not more is 18 a good idea if you're a skilled surgeon and know which 19 are the decaying body parts in the regulatory apparatus. 20 Yes, get rid of those. But regulatory systems have 21 constantly -- they're organic things. They have to keep 22 changing and they are healthy because -- I'll now go 23 gardening in the metaphor -- they need to be pruned and 24 shaped in the right way. And this particular plant was 25 cut in the wrong places and at the wrong time in the</p> <p style="text-align: center;">Page 92</p>

<p>1 wrong way.</p> <p>2 PROFESSOR PETLEY: So you really do have a chance now to put</p> <p>3 right at least two Royal Commissions and both Colcutts.</p> <p>4 PROFESSOR HARGREAVES: Think of yourself as the head</p> <p>5 gardener of the --</p> <p>6 LORD JUSTICE LEVESON: I cannot tell you how pleased I am</p> <p>7 when very distinguished people who have spent their</p> <p>8 lives thinking about issues such as those that we've</p> <p>9 been debating come along and encourage me to seize the</p> <p>10 moment and do something that is going to solve all the</p> <p>11 problems that everybody has been talking about for so</p> <p>12 long. That gives me tremendous confidence.</p> <p>13 PROFESSOR PETLEY: Good. And we're happy to help.</p> <p>14 MR BARR: I may immediately have to take up that offer.</p> <p>15 Fascinating though it would be to continue going through</p> <p>16 the various concepts introduced in your paper,</p> <p>17 Professor Petley, I think we only have time for one</p> <p>18 more, which I'll introduce in a moment, but then we'll</p> <p>19 have to satisfy ourselves with reading and re-reading</p> <p>20 your paper and those of your colleagues and if it may be</p> <p>21 that you can help us with matters such as the public</p> <p>22 interest, which I put to your colleagues this morning in</p> <p>23 writing.</p> <p>24 Against that, I'll just introduce the last concept</p> <p>25 that I'd like to deal with this afternoon. You tell us</p> <p style="text-align: center;">Page 93</p>	<p>1 of concentration, there will just be less and less and</p> <p>2 less newspapers. We've seen sadly, you know, over the</p> <p>3 years, a truly remarkable decimation of newspapers.</p> <p>4 What happens now, of course, is you have really</p> <p>5 really intense competition for readers at the red top</p> <p>6 end of the market and also in the mid-market segment</p> <p>7 between the Mail and Express. If one was to believe the</p> <p>8 kind of free market theorists, what we'd have here is</p> <p>9 very different newspapers competing with one another and</p> <p>10 against each other. What seems to happen is they all</p> <p>11 seem to compete on the same ground. They all seem to</p> <p>12 compete with the same kind of material for presumably</p> <p>13 the same kinds of readers or the same range of interests</p> <p>14 in that range of readers.</p> <p>15 So, for example, when Rupert Murdoch bought the Sun</p> <p>16 and turned it into a very, very different newspaper from</p> <p>17 what it had been before, the Daily Mirror, rather than</p> <p>18 maintaining its previous, in my view, excellent kind of</p> <p>19 example of popular journalism, instead starts to try to</p> <p>20 compete with the Sun on its own terms. So the range of</p> <p>21 material within the press, at those two levels, the</p> <p>22 mid-market and the red top, seems to become narrowed by</p> <p>23 competition, not broadened by competition.</p> <p>24 So what the free market theorists argue should</p> <p>25 happen doesn't seem to happen. You have more diversity</p> <p style="text-align: center;">Page 95</p>
<p>1 about the concept of market censorship and where the</p> <p>2 market, in your opinion, is taking the press to is a</p> <p>3 situation where it distorts content rather than giving</p> <p>4 rise to freedom of expression in a broad sense.</p> <p>5 Is that why there is perhaps an issue between</p> <p>6 getting a lot in the press of what the public is</p> <p>7 interested in, because that is what they pay for, and</p> <p>8 there being a temptation to let that override what is</p> <p>9 actually in the public interest?</p> <p>10 PROFESSOR PETLEY: Yes. Well, of course, as we said this</p> <p>11 morning there is an enormous difference between what</p> <p>12 sections of the public are interested in and what is in</p> <p>13 the public interest, and I think it's important to --</p> <p>14 just to recap a little bit of what was said this</p> <p>15 morning, that there are plenty of interesting and</p> <p>16 workable definitions of the public interest. The Press</p> <p>17 Complaints Commission likes to suggest it's a very, very</p> <p>18 difficult thing to define, the public interest. I don't</p> <p>19 think it actually is. If you look at the BBC editorial</p> <p>20 guidelines, as were mentioned this morning, I think</p> <p>21 those are a very good encapsulation of the public</p> <p>22 interest, but to come back to your question, how does --</p> <p>23 you know, how does the market operate as a censor, well,</p> <p>24 you know, if in the so-called free market the big fish</p> <p>25 eat the little fish, and you get an ever greater process</p> <p style="text-align: center;">Page 94</p>	<p>1 at the top end of the market. You know, a paper like</p> <p>2 the Telegraph, which is quite significantly different</p> <p>3 from a paper like the Independent, which is again</p> <p>4 different from the Guardian, I would argue. You have</p> <p>5 market differentiation there, but part of the reason for</p> <p>6 that is that, oddly enough, broadsheet newspapers are</p> <p>7 not so dependent upon readers for their revenue because</p> <p>8 the broadsheet newspapers can attract much, much more</p> <p>9 advertising revenue than the red tops and the mid-market</p> <p>10 tabloids do. So you don't have that kind of desperate</p> <p>11 competition for readers, which as I say, unfortunately</p> <p>12 doesn't seem to broaden the range of papers at the</p> <p>13 mid-market and red top end, it seems to narrow the range</p> <p>14 of news -- everyone seems to be competing for the same</p> <p>15 readers and for the same interests in those readers, and</p> <p>16 that of course again is the section of the market which</p> <p>17 is -- you know, where the journalism has occurred which</p> <p>18 has brought about this Inquiry.</p> <p>19 MR BARR: Perhaps I could ask Professor Hargreaves: is the</p> <p>20 market operating as a censor and one which pushes</p> <p>21 journalists towards unethical techniques?</p> <p>22 PROFESSOR HARGREAVES: No, I don't buy that argument.</p> <p>23 I think that in the UK we have both a strikingly mixed</p> <p>24 economy of news provision, and have had since the dawn</p> <p>25 of broadcasting, and emphatically, so no.</p> <p style="text-align: center;">Page 96</p>

<p>1 We also have a thickly populated newspaper space at 2 the national level, more thickly populated than in most 3 other countries, and it's thickly populated by 4 newspapers which on the whole, at the top end of the 5 market, lose lots of money, but are owned by people who 6 don't seem to mind that, and at the end of the market, 7 where they're expected to deliver a commercial return, 8 they compete very hard against each other.</p> <p>9 Of course it's true that competition has undesirable 10 side effects as well as positive side effects, but if 11 you ask me to choose between the market structure that 12 we have for the news media in the UK and one which was 13 all administered by grants from a central public news 14 commission sitting in London with branches in Cardiff, 15 Edinburgh and Belfast, I know which I would choose.</p> <p>16 MR BARR: I think the Ministry of Truth theory is probably 17 not one that we're going to be detained by for very 18 long. Thank you for that. And could I ask 19 Dr Mac Sithigh if you could help us from the Internet 20 perspective where presumably market forces are very 21 different to the old media, is there any market-driven 22 censorship of media news?</p> <p>23 DR MAC SITHIGH: I think market censorship is going to be 24 present in any commercial space. It's unavoidable. It 25 is a situation where you will have web posts and they</p> <p style="text-align: center;">Page 97</p>	<p>1 to have clear terms and conditions for users, methods of 2 resolution that do not involve long trips to the courts, 3 expectations that are community wide.</p> <p>4 So one of the -- successful online media, 5 particularly those that have user engagement, have 6 a sense that people respect one another's views, that 7 they do not try and embroil web posts in legal 8 difficulty, that they do not appropriate the work of 9 others and so on. When you see the Internet at its 10 best, it's where that culture is part of the online 11 space. That is not universal.</p> <p>12 The more people go online, I think some of those 13 cultural ideas become challenged in different ways, but 14 finding ways to use that as part of what we talk about, 15 freedom of expression, there are good examples of things 16 happening online and of the ability to communicate being 17 opened up, and it's important not to lose sight of that.</p> <p>18 But yes, market censorship can and does exist online 19 as it does in the press.</p> <p>20 LORD JUSTICE LEVESON: But they also interact, don't they, 21 because it's the use of advertising on the Internet that 22 is strangling the regional press because it's removing 23 the advertising revenue and the classifieds from them, 24 which therefore robs the local community of that vital 25 local news input which reported on its daily courts or</p> <p style="text-align: center;">Page 99</p>
<p>1 act in a very different fashion. Some will pay very 2 strong attention to what their users say, some will pay 3 very strong attention to what their advertisers say, 4 others might do what their lawyers say, which might be 5 most advisable. I'm not going to make that claim today.</p> <p>6 LORD JUSTICE LEVESON: Very wise.</p> <p>7 DR MAC SITHIGH: I think the issue is the impact of the 8 Internet on other business models for the media, that 9 where other formats have been unsupported and where 10 advertising is moving from, say, the classified section 11 of a newspaper to online, but without the associated 12 potential investment in journalism, I think that's 13 a structural problem because then you have to consider 14 whether that advertising which used to support aspects 15 of the media, what it is supporting and whether that 16 creates a gap in it.</p> <p>17 But, I mean, my work on intermediary censorship 18 I think demonstrates that there are plenty of examples 19 where decisions are made which are not in the best 20 interests of freedom of expression by online 21 intermediaries and sometimes that's a degree of prudence 22 and you don't want to be too critical of those who are 23 trying to protect their own role in investment, but if 24 the question is: what delivers the greatest degree of 25 individual freedom of expression, then there is a need</p> <p style="text-align: center;">Page 98</p>	<p>1 its daily local authorities or what's happening in an 2 area, and that's a matter which may be outside my terms 3 of reference, but is clearly of real significance.</p> <p>4 PROFESSOR PETLEY: Absolutely. But that's partly because 5 the newspaper publishers in localities and in the 6 regions were very, very slow in investing in online 7 versions of their newspapers, or adequate online 8 versions of their newspapers, so the advertising which 9 might have slipped out of the hard copy could have 10 slipped into the online part of the newspaper but in 11 fact slipped out of the newspaper's grasp altogether.</p> <p>12 So there's been very serious, I would say, 13 underinvestment in the local press by those who owned 14 it, and whereas the national press, the Mail and the 15 Guardian in particular, have done brilliantly in my view 16 in different ways online, the local press owners were 17 very, very remiss indeed, in my view.</p> <p>18 MR BARR: Thank you very much, gentlemen, for all your 19 contributions. You're warmly invited to make further 20 submissions in writing. Unless any of you think it's 21 a matter of such burning importance that it needs to be 22 raised orally now, I won't ask you any more questions.</p> <p>23 LORD JUSTICE LEVESON: If there is anything that you feel 24 that you've come along wanting to say that you've not 25 had the opportunity to say, please say it.</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 PROFESSOR PETLEY: I think there's just one thing that 2 Daithi really said. The answer to speech that we don't 3 like is more speech that we do like. I'm a great 4 believer in that. And that one of the ways to mend the 5 markets, since I've talked about market censorship, is 6 to, you know, ensure that maybe there are subsidies for 7 smaller distribution publications to stop the kind of 8 distribution stranglehold that people like WH Smiths now 9 occupy. It's really, really important, I think, that we 10 do everything that we can to encourage more speech 11 rather than less speech, that's why I'm a very, very 12 strong defender of what was discussed this morning at 13 great length, namely the right of reply. 14 I think if there's one thing that could make an 15 enormous difference to journalistic standards within the 16 British press, and particularly the parts of the press 17 which have caused this Inquiry to come about, it is 18 a statutory right of reply. 19 LORD JUSTICE LEVESON: Thank you. Do either of you other 20 gentlemen? No? 21 DR MAC SITHIGH: The only outstanding point I would have, 22 and I think I touched on it when we were talking about 23 education, is not just from teaching but from preparing 24 for appearing before you is the complexity of the law 25 that to those of us who teach and research it on a daily</p> <p style="text-align: center;">Page 101</p>	<p>1 very much indeed. 2 Right. 3 MR BARR: Sir, I think that concludes our business for 4 today. Tomorrow we're going to hear from Mr Thomas, and 5 as you heard earlier, to deal with the other matter at 6 a convenient time. 7 LORD JUSTICE LEVESON: Thank you very much indeed. Thank 8 you. 9 (4.41 pm) 10 (The hearing adjourned until 10 o'clock the following day) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 103</p>
<p>1 basis, as well as many of those in the room who practice 2 it, it's extremely difficult. The differences between 3 platforms, between different types of public interest 4 defences and so on, has reached the stage where I would 5 see a major contribution that could be made would be 6 clarifying the differences between forms of regulation 7 and the types of defences that operate in the interests 8 of journalism and of freedom of expression. 9 They are difficult for the citizen to understand. 10 They're even difficult for journalists and lawyers who 11 are at the sharp edge of it to understand, and I hope 12 that the Inquiry will be able to assist in not just 13 describing the law, but also proposing ways that it can 14 be easier to communicate to our students and to others. 15 LORD JUSTICE LEVESON: As I have been trying to do that in 16 relation to the criminal law for as long as I can 17 remember, that's not an entirely easy exercise. 18 DR MAC SITHIGH: Indeed, I appreciate that. 19 LORD JUSTICE LEVESON: Okay. Thank you all very much and 20 I hope you heard what I said to the Professors who came 21 this morning. I'm very grateful to you for the enormous 22 amount of work that you put into this. I do hope that 23 you will continue to monitor what I am doing and make 24 such contribution as you feel will assist to get to 25 a solution which will work for everybody. Thank you</p> <p style="text-align: center;">Page 102</p>	<p>1 I N D E X 2 3 4 PROFESSOR STEVEN BARNETT (affirmed)3 5 PROFESSOR GEORGE BROCK (sworn)3 6 PROFESSOR BRIAN CATHCART (affirmed)3 7 PROFESSOR ANGELA PHILLIPS (affirmed)3 8 Questions from MR BARR3 9 Questions from MR PATRY HOSKINS44 10 Further questions from MR BARR104 11 PROFESSOR JULIAN PETLEY (sworn)124 12 PROFESSOR IAN HARGREAVES (sworn)124 13 DR DAITHI MAC SITHIGH (sworn)124 14 Questions from MR BARR125 15 Questions from MS PATRY HOSKINS166 16 Further questions from MR BARR191 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 104</p>

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