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J. Harding  
Second Statement  
Exhibit JH1  
6 February 2012

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

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**EXHIBIT "JH1"**

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This is the exhibit marked "JH1" referred to in the witness statement of James Harding dated the 6<sup>th</sup> day of February 2012.

# Bloggers lose right to anonymity after Times wins landmark case

Frances Gibb Legal Editor

Thousands of bloggers who operate behind the cloak of anonymity have no right to keep their identities secret, the High Court ruled yesterday. In a landmark decision, Mr Justice Eady refused to grant an order to protect the anonymity of a police officer who is the author of the Night-

Jack blog. The officer, Richard Horton, 45, a detective constable with Lancashire Constabulary, had sought an injunction to stop *The Times* from revealing his name. In April Mr Horton was awarded the Orwell Prize for political writing, but the judges were unaware that he was using information about cases, some involving sex offences against

children, that could be traced back to genuine prosecutions. His blog, which gave a behind-the-scenes insight into frontline policing, included strong views on social and political issues. The officer also criticised and ridiculed "a number of senior politicians" and advised members of the public under police investigation to

"complain about every officer . . . show no respect to the legal system or anybody working in it". Some of the blog's best-read sections, which on occasion attracted half a million readers a week, were anecdotes about cases on which Mr Horton had worked. The people and places were made anonymous and details changed, but they could still be traced back to real prosecutions. In the first case dealing with the privacy of internet bloggers, the judge ruled that Mr Horton had no "reasonable expectation" to anonymity because "blogging is essentially a public rather than a private activity".

The judge also said that even if the blogger could have claimed he had a right to anonymity, the judge would have ruled against him on public interest grounds. The police officer, the judge said, had argued that he should not be exposed because it could put him at risk of disciplinary action. But Mr Justice Eady criticised that argument as "unattractive to say the least". He added: "I do not accept that it is part of the court's function to protect police officers who are, or think they may be, acting in breach of police discipline regulations from coming to the attention of their superiors."

He added: "It would seem to be quite legitimate for the public to be told who it was who was choosing to make, in some instances quite serious criticisms of police activities and, if it be the case, that frequent infringements of police discipline regulations were taking place." The action arose after Patrick Foster, a *Times* journalist, identified the NightJack blogger "by a process of deduction and detective work, mainly using information on the internet," the judge said.

Hugh Tomlinson, QC, for Mr Horton, had argued that "thousands of regular bloggers . . . would be horrified to think that the law would do nothing to protect their anonymity if someone carried out the necessary detective work and sought to unmask them". Mr Tomlinson said that Mr Horton wished to remain anonymous



Detective Constable Richard Horton

and had taken steps to preserve his anonymity.

But Mr Justice Eady said that the mere fact that the blogger wanted to remain anonymous did not mean that he had a "reasonable expectation" of doing so or that *The Times* was under an enforceable obligation to him to maintain that anonymity.

Antony White, QC, for *The Times*, argued that there was a public interest in non-compliance by a police officer with his obligations under the statutory code governing police behaviour and also with general public law duty on police officers not to reveal information obtained in the course of a police investigation.

Lancashire Constabulary said: "He has been spoken to regarding his professional behaviour and, in line with disciplinary procedures, has been issued with a written warning."

## Writer advised on how to evade long arm of the law

Behind the story Patrick Foster

If the Police arrive to lock you up, say nothing. You are a decent person and you may think that reasoning with the Police will help. Wrong. It is not quite the advice you would expect to receive from a serving police officer.

But Detective Constable Richard Horton, of Lancashire Constabulary, gave readers of his NightJack blog the full benefit of the knowledge that he had gained from 17 years in the force as to how to extract oneself from the grasp of the long arm of the law. "All you are doing by trying to explain is digging yourself further in. We call that stuff a significant statement and we love it." Other pearls of wisdom included: "Never explain to the police . . . Complain about every officer and everything they do . . . [and] show no respect to the legal system or anybody working in it."

Mr Horton, 45, who joined the police after a career as an accountant, attracted nearly 500,000 readers each week to his blog at the height of its appeal, drawn in by its pithy observations of life on the front line of policing.

He began the blog in February 2008. Critical acclaim followed, with a prestigious Orwell Prize for political writing, in April this year. At that stage he stopped, swapping virtual pages for their paper counterparts after using the attention to land the services of a top book agent.

What the Orwell Prize judges did not know is that he was also using the blog to disclose detailed information about cases he had investigated, which could be traced back to real-life prosecutions.

Each involved sex offences, often committed against children, and could be linked to investigations in the Lancashire area. One entry described the author investigating the rape of "Melissa", a 14-year-old girl who was plied with alcohol and then raped in a hotel room.

Mr Horton wrote that the offender had an Asian name, had hepatitis and assaulted the girl at a seaside hotel. He concluded: "Now me, if I had video of me molesting a 14-year-old on my phone, if I had used a well positioned door mirror to video my grinning evil self on the job and I was charged with raping her, I would delete it."

A month earlier Ajmal Mohammad received an indefinite sentence at Preston Crown Court for raping a drunk teenager in a Blackpool hotel room. The court heard that he was infected with hepatitis C and had filmed the attack on his mobile phone.

On the blog, Mr Horton revealed information that could have influenced the case, such as his suspicions that a key witness had misled police. Other cases described on the blog that can be traced to real events include the rape of a woman by a taxi driver and a child pornography investigation.

Mr Horton was adamant that he had taken great pains to keep his identity secret. But on his blog, he also described his visits to a jiu-jitsu club, adding a hyperlink to the website of the organising body for the martial art.

Lancashire Constabulary jiu-jitsu club lists only one member who is a detective — Detective Constable Richard Horton.

Mr Horton was also a member of a number of social networking websites. Those who logged on to his account on the Facebook website could follow posts written by his brother, Roger, who currently lives in Texas. The pair had conducted a conversation about the blog on a publicly accessible part of the website.

Mr Horton has deleted the blog and received a written warning for misconduct from his police force. His superiors are now aware of further allegations that he was also using the blog to disclose information gained during his investigations.

## My Everyman posts seemed to strike a chord

Richard Horton

For the past 18 months I have led a double life as the author of a well-known anonymous police blog called NightJack.

My first-hand accounts of investigating serious crime and posts on how I believed policing should work within society seemed to strike a chord and my readership slowly grew to about 1,500 a day. I got a book offer but I turned it down because my blog was never about making money.

Unexpectedly, I won the Orwell Prize. The next morning there was a leader in *The Guardian* and a full page in the *Sun*. Readership went up to

60,000 a day. My e-mail inbox had offers from newspapers, literary agents, publishers and film and television people.

There was a lot of attention heading towards my blog and I was nervous that somehow, despite my efforts, my identity would come out. As an anonymous blogger, I was just another policing Everyman but if it came out that I worked in Lancashire, I knew that some of my writing on government policy, partner agencies, the underclass and criminal justice would be embarrassing for the constabulary.

Also, as an anonymous police blogger I was shielded from any consequences of my actions but without

that protection there were clearly areas where I would have to answer for breaches in the expected standards of behaviour for officers.

When it became clear that my identity would be published, I went to court to stop *The Times* from publishing. I failed, as it was decided that the public right to know about me outweighed any claim to personal privacy.

My blog is gone now, deleted, slowly melting away post by post as it drops off the edge of the Google cache. My family life has changed in ways that they did not want, and that is down to me.

A longer version of this article appears at timesonline.co.uk/tech

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## A superb picture of real life

Daniel Finkelstein Commentary

A few years back I received one of those notes telling me to collect a parcel from the Post Office. When I got there, I was handed a package that contained a hardback book with a kind note inside from a good friend. It was the first time I realised that my friend had been keeping a diary. And here, under the imprint of a big name in publishing, was the result. "All our yesterdays" as my friend's note put it. He wasn't joking. The book contained a record of many of the meetings I had been in over the last few years and what I had said in them.

I was lucky. It was a good book and I came out of it well. I didn't resent it. But I was pretty shocked. And so, although the journalist part of me applauds any insight provided into the secret world of the police,

there is also a large part of me that sees why they would want to close NightJack down.

A blog sounds different from a formal diary. But it isn't really. And these publications, while riveting, do raise questions of the duty the authors had to keep private conversations private.

Yes, NightJack was anonymous. But this was never likely to last. If you publish a blog with the aim of entertaining people and even allow it to go forward for the Orwell Prize, you can't be altogether surprised if your name gets out.

It may have been entertaining and informative to blog about current cases and police action. But was it ethical? Or loyal to your colleagues? Those, however, are issues for the author and his employers to sort out.

For the rest of us, well, Nightjack was superb. To me, blogs which build a picture of real life are the king of our form.

Daniel Finkelstein writes *The Times* blog at Comment Central

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# The Times and the NightJack case

Ben Webster Media Editor

The Times published a report exposing the identity of an anonymous police blogger after a journalist at the newspaper had hacked into his e-mail account.

The report in 2009 revealed the identity of the author of NightJack, a popular blog by a police officer who gave behind-the-scenes insights into frontline policing.

The Times's decision to expose the Lancashire detective Richard Horton was widely criticised at the time but the newspaper said there was a public interest in doing so because his blog contained details that could be traced back to actual prosecutions. A High Court judge agreed that there was a public interest in naming him and overturned an injunction Mr Horton had obtained against The Times.

The e-mail hacking has come to light because James Harding, Editor of The Times, and Tom Mockridge, Chief Executive of the paper's parent company, News International, were asked questions by the Leveson inquiry about computer hacking.

Mr Harding referred to the incident in his statement, dated October 14 last year: "The Times has never used or commissioned anyone who used computer hacking to source stories. There was an incident where the newsroom was concerned that a reporter had gained unauthorised access to an e-mail account.

"When it was brought to my attention, the journalist faced disciplinary action. The reporter believed he was seeking to gain information in the public interest but we took the view he had fallen short of what was expected of a Times journalist. He was issued

with a formal written warning for professional misconduct."

The witness statement was made public after Mr Harding's appearance at the inquiry on Tuesday.

Mr Mockridge made two witness statements, the second correcting what he had said in the first about the computer hacking incident. His first statement, also dated October 14, said there had been a "suspicion" that a reporter from The Times "might have gained unauthorised access to a computer". The statement added that the reporter had denied doing so but had been given

**"We published the story in the strong belief that it was in the public interest even though concerns emerged about the conduct of the reporter**

James Harding, Editor, The Times

a formal written warning. However, the reporter, Patrick Foster, who has since left the paper, had in fact informed his managers before the story was published that he had, on his own initiative, hacked into Mr Horton's e-mail account. The incident raised issues about the approval process for newsgathering at the newspaper.

The role the hacking played in Mr Foster's investigation remains unclear. Mr Foster identified Mr Horton using a legitimate process of deduction based

on sources and information publicly available on the internet.

Mr Mockridge's second witness statement, dated December 16, said: "Following further enquiries, I now understand that the reporter in fact admitted the conduct during disciplinary proceedings, although he claimed that he was acting in the public interest. The journalist was disciplined as a result. He was later dismissed from the business for an unrelated matter."

In his original injunction application, Mr Horton said his identity had been disclosed to The Times "in a breach of

Bloggers have rights to anonymity after Leveson trial verdict

**A report in The Times after a judge ruled the blogger could be named**

confidence". In his ruling overturning Mr Horton's injunction, Mr Justice Eady said that Mr Horton's barrister "was prepared to proceed on the basis that the evidence relied upon from Mr Patrick Foster was correct; that is to

say, that he had been able to arrive at the identification by a process of deduction and detective work, mainly using information available on the internet."

Mr Harding said: "The newspaper published the story in the strong belief that it was in the public interest even though concerns emerged about the conduct of the reporter. After the judge handed down his judgment overturning the injunction on the grounds of public interest, we published. We also took the decision to look into the reporter's conduct and he was subsequently disciplined."

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## Editors are urged to offer celebrity opt-outs

A celebrity register, where famous people can opt out of appearing in the media, was suggested to the editors of Britain's top celebrity magazines at the Leveson inquiry yesterday (Ruth Maclean writes). Lucie Cave, of Heat magazine, Rosie Nixon of Hello! and Lisa Byrne of OK! greeted Lord Leveson's proposal for a central list, on which celebrities would "clarify" how much media attention they wanted, with tentative approval.

The inquiry heard

that stories pre-agreed with celebrities make up about 70 per cent of the content of Hello! and 80 per cent of OK!, and that both will allow celebrities to approve pages before printing.

Ms Byrne warned that a register could limit the reporting of celebrity stories about well-known people too much. "Every celebrity might say, 'No, I don't want any pictures of my family ever again'. Then it could cause a problem," she said. Ms Cave said it might be a "useful tool... It depends on the circumstances of the

celebrity at the time. It might be there's a moment in their life where they particularly don't want a photograph taken of them for whatever reason. But then at other times they might be happy to have a photograph taken... It would be a very useful tool for us if they used a body like the PCC to update them."

The inquiry also heard that celebrities' newborns are prized by photographers. "The sad truth is that there is almost a bounty on the head of that child for the first photos. They can make a paparazzo a lot of money," Ms Nixon said.

Camilla Cavendish, page 23