

<p>1 2 (2.15 pm) 3 LORD JUSTICE LEVESON: Yes, Mr Jay. 4 MR JAY: We now have Dr Neil Manson, please. 5 LORD JUSTICE LEVESON: Thank you. 6 DR NEIL MANSON (affirmed) 7 Questions by MR JAY 8 MR JAY: You don't have in front of you, but maybe you know 9 it off by heart. Your written -- 10 LORD JUSTICE LEVESON: Oh, let's not put him under that 11 pressure. 12 A. If you're going to refer to numbered paragraphs, your 13 pagination is different from mine and I haven't 14 memorised it off by heart, so it might be helpful if you 15 are going to refer to it. 16 LORD JUSTICE LEVESON: Better have mine. 17 MR JAY: This is your submission of 14 June 2012. I'm just 18 going to ask you to confirm it's obviously your work and 19 that in as far as there are facts and opinions honestly 20 held, that's the case. 21 A. Yes. 22 Q. You've given us your full name. You're a senior 23 lecturer in philosophy in the department of politics, 24 philosophy and religion at Lancaster University? 25 A. That's correct.</p> <p style="text-align: center;">Page 1</p>	<p>1 all too easy to think this is a unified entity that is 2 the press, and of course, that's just a kind of accident 3 of linguistics and had linguistic history been very 4 different, there might well have been different names. 5 There might have been -- I mean, prejudicing -- the top 6 press and the bottom press or press number one and press 7 number two and so on. Were that the case, were the 8 language more finetuned from the start, there would be 9 less slippage between arguments that are relevant to 10 preserving the freedom of one kind of press, less 11 slippage that would then transfer across to preserving 12 the freedoms of other kinds of press insofar as they do 13 very, very different things. 14 Giving it the label "the press" covers all sorts of 15 different activities, both in terms of different 16 institutions, different newspapers, different media, but 17 even within the media, within the newspaper, within 18 a particular issue of a newspaper, there's going to be 19 many different kinds of actions and activities, some of 20 which are ethically absolutely fine and justifiable and 21 permissible, and others which are much more 22 questionable. So it's just an underlying worry that the 23 way in which we frame the debate in terms of freedom of 24 the press in contrast to something else -- say, 25 censorship of the press -- isn't really finetuned enough</p> <p style="text-align: center;">Page 3</p>
<p>1 Q. Can I ask you, please, to tell us about your main 2 research and intellectual interests. 3 A. The research interests, broadly, are to do with things 4 to do with the ethics of communication and knowledge. 5 Over the past few years, I've written particularly in 6 the area of medical ethics rather than the ethics of the 7 press, but many of the same issues arise there in terms 8 of privacy, confidentiality, what sort of things ought 9 we know or not be allowed to know and so on. 10 More recently, my research has turned to the press 11 and I've written on the nature and ethics of spin, 12 political spin, and also upon the ethical importance of, 13 in certain cases and contexts, not finding things out 14 and not seeking knowledge. So as I say, broadly, the 15 ethics of communication and knowledge, which are, of 16 course, directly relevant to the issues at hand. 17 Q. Thank you. We're not going to be able to cover, in the 18 time available, each and every point which you argue 19 with considerable care in your presentation to us. I'm 20 going to alight on the highlights, as it were. I know 21 you have this general observation: when we talk about 22 a press, are we referring to a monolithic entity and if 23 we aren't, what are we referring to? 24 A. This is an underlying worry, that when we talk about -- 25 particularly talk about freedom of the press, that it's</p> <p style="text-align: center;">Page 2</p>	<p>1 to sort of tease out where the ethical issues actually 2 lie. So it's that sort of sensitivity that I was trying 3 to allude to. 4 Q. Without placing newspapers into individual categories, 5 what are these two kinds of press you're referring to, 6 or rather what sort of journalism is each one carrying 7 out? 8 A. You could divide up presses in all sorts of different 9 ways, but for the purposes of this submission, one of 10 the key distinctions that I wanted to make was -- it's 11 something that links us to certain kinds of argument, 12 which maybe we'll come back to in a minute. Certain 13 kinds of argument are supposed to justify freedoms of 14 the press, and those arguments are about a certain kind 15 of press that provides truthful relevant claims to 16 an informed populace or in order to inform the populace 17 for reasons of furthering and facilitating democratic 18 participation. So that would be one way of 19 distinguishing actions when the press did do that kind 20 of thing from actions in the press that do other kinds 21 of thing. 22 The other kind of thing obviously includes lots and 23 lots of things which are perfectly innocent, perfectly 24 permissible. I mean, the editors of Good Housekeeping I 25 take it write lots and lots of things which aren't</p> <p style="text-align: center;">Page 4</p>

<p>1 specifically about furthering democracy. There's</p> <p>2 obviously notwithstanding wrong with writing with sofas</p> <p>3 and furniture and so on.</p> <p>4 So at the other end, there are problematic actions,</p> <p>5 activities and so on, where the press engages in</p> <p>6 activities which may breach important rights, which may</p> <p>7 harm people and where this argument from this appeal to</p> <p>8 democracy or furthering democracy doesn't really come</p> <p>9 into play. I wouldn't want to give them labels. That</p> <p>10 was just for a hypothetical reasons --</p> <p>11 LORD JUSTICE LEVESON: Can I ask you to slow down a bit?</p> <p>12 A. Oh yes.</p> <p>13 LORD JUSTICE LEVESON: I'm conscious that first of all</p> <p>14 I have to carry forward what you're saying, but also it</p> <p>15 all has to be written down.</p> <p>16 A. All right.</p> <p>17 MR JAY: Justifications in a free press, or rather the value</p> <p>18 of a free press. You define those on the second page,</p> <p>19 our page 00888. You describe them as content-based</p> <p>20 instrumental justifications. You then say immediately</p> <p>21 that there are considerable limitations in relations to</p> <p>22 those justifications. First of all, what do you mean by</p> <p>23 "content-based instrumental justifications", and</p> <p>24 secondly, what are the limitations?</p> <p>25 A. All right, so by content-based, one kind of argument in</p> <p style="text-align: center;">Page 5</p>	<p>1 expand on as we go along. Obviously that's not without</p> <p>2 bounds, without limits and so on, because any act of</p> <p>3 communication takes place within a rich normative</p> <p>4 context -- legally, ethically -- where there are further</p> <p>5 constraints upon things like finding things out. So we</p> <p>6 mentioned the investigative role of the press. The fact</p> <p>7 that the press has certain investigative powers doesn't</p> <p>8 mean automatically that it has carte blanche to do</p> <p>9 whatever it wishes to find things out.</p> <p>10 Similarly, its communicative powers will</p> <p>11 automatically be limited because all speech has certain</p> <p>12 constraints on it. Some of it's to do with contents,</p> <p>13 some to do with other elements. So if the proprietor of</p> <p>14 a very decent newspaper decides to broadcast their</p> <p>15 important content through a megaphone at 3 o'clock in</p> <p>16 the morning, that might be ethically improper, even</p> <p>17 though that was nothing to do with the content. In</p> <p>18 other cases -- the standard case of things like</p> <p>19 obscenity and hate speech -- it may be much more to do</p> <p>20 with the content.</p> <p>21 So the two points there is that the democracy-based</p> <p>22 argument is focusing on content, and the instrumental</p> <p>23 argument -- even that kind of argument isn't</p> <p>24 unconstrained. It has limits because considerations of</p> <p>25 speech always take place within a context, where there</p> <p style="text-align: center;">Page 7</p>
<p>1 favour of freedom of the press, which I've just</p> <p>2 mentioned briefly before, is that the press is in</p> <p>3 a special position to provide knowledge of certain kinds</p> <p>4 of facts to the populace that they otherwise would not</p> <p>5 know. So the investigative role and the communicative</p> <p>6 role of the press is very valuable, not in providing any</p> <p>7 old facts -- not just, you know: "Here's a list of all</p> <p>8 the things we thought of this week, or here's a list of</p> <p>9 all the cars this have driven down The Strand since</p> <p>10 Thursday." Those are facts, but not facts relevant to</p> <p>11 an informed populace making democratic decisions and so</p> <p>12 on.</p> <p>13 So immediately, we've narrowed the field of facts to</p> <p>14 the content that is relevant to achieving that goal.</p> <p>15 Now, it's an instrumental justification because the</p> <p>16 special kind of privilege of the press is being</p> <p>17 justified by appeal to its instrumental role. It's not</p> <p>18 valuable necessarily in itself; it's valuable insofar as</p> <p>19 it facilitates and furthers the provision of these</p> <p>20 special kinds of facts. So that's what we mean by</p> <p>21 "content-based" and "instrumental". So "instrumental"</p> <p>22 is furthering some other end, and "content-based" is:</p> <p>23 that further end requires certain things to be known.</p> <p>24 Not all contents, some contents.</p> <p>25 In terms of limits, I think this is something we'll</p> <p style="text-align: center;">Page 6</p>	<p>1 are other rights, other normative considerations in</p> <p>2 play.</p> <p>3 Q. The argument from truth, which you deal with on page 3,</p> <p>4 which works along the lines that suppression of</p> <p>5 publications is problematic insofar as it reduces our</p> <p>6 chances of gaining true rather than false beliefs, you</p> <p>7 trace that back to Milton and its carried through to</p> <p>8 Charles Mill. What, in essence, is wrong with that</p> <p>9 argument?</p> <p>10 A. Well, there's two general things that are wrong with it.</p> <p>11 When I say "wrong with it", there are two limitations to</p> <p>12 it. First of all, it only applies to those areas of the</p> <p>13 press or those actors in the press who are committed to</p> <p>14 getting at the truth. It certainly doesn't apply to</p> <p>15 people who are just saying whatever comes into their</p> <p>16 head or saying whatever is sensational in order to sell</p> <p>17 newspapers. So the argument on truth is limited in that</p> <p>18 respect.</p> <p>19 Much more problematically, the argument on truth is</p> <p>20 also limited in the sense that there's no guarantee that</p> <p>21 a free and unconstrained kind of free-for-all in terms</p> <p>22 of putting forward people's opinions is going to</p> <p>23 generate truths at all. One move you might make is to</p> <p>24 define truth in terms of whatever survives the</p> <p>25 competition, but that just seems crazy. Throughout</p> <p style="text-align: center;">Page 8</p>

<p>1 history, lots of truths -- opinions have emerged to the 2 fore, believed by lots of people that have, as it were, 3 survived the competition of opinion at the time but they 4 have been fundamentally flawed or false. 5 So the deeper problem of the argument on truth is it 6 seems to be appropriate and work very well if we picture 7 certain contexts: an academic seminar or a small town 8 village debating society where everybody listens 9 critically to everyone else, each has one voice and no 10 more than one voice, and all are reasonably well 11 informed and committed to observing certain standards of 12 communication. It doesn't work very well where you have 13 people expressing their opinions with other aims in mind 14 other than getting the truth -- for example, if their 15 aims are to influence people, to sell newspapers, to 16 rouse the rabble into doing something -- and where 17 audiences themselves are not perfect. They may be -- 18 already have false beliefs, prejudices, biases or lack 19 the critical competence or the information needed to 20 assess the claims that are being offered to them. 21 We know from the history of how prejudices and 22 biases and so on take hold of communities that the 23 argument on truth seems to present this -- partly 24 tempting but peculiar picture where if we all allow 25 everybody to say what they want, somehow the truth will</p> <p style="text-align: center;">Page 9</p>	<p>1 Now, freedom of movement you might think is central 2 to democracy, but my freedom to go to Slough doesn't 3 thereby give me permission to drive there in the car 4 across your garden without an MOT whilst drunk. There 5 are lots and lots of standards there that are 6 restrictive on movement in certain contexts which in 7 that case would stop me going to Slough, and it would be 8 absolutely insane of me to then say, "But my freedom of 9 movement -- you're being anti-democratic, even though 10 I'm drunk, have no licence, no insurance, have driven 11 across your garden." 12 I'm analogously going back to the press. Of course 13 we're committed to the press being an absolutely central 14 part of democracy and in a democracy you want to permit 15 freedom of expression. That's absolutely right. Just 16 as you want to permit freedom of movement. But it's not 17 limitless. There are other norms in play, and then, 18 even more strongly in the case of freedom of the press, 19 if the press really is free, then of course it's free 20 to, if you like, oppose democracy, to do things which 21 actually might be undermining of democratic 22 participation. So then you get into the slightly more 23 paradoxical area where, in order to further democracy or 24 democratic participation or the democratic wellbeing and 25 civil health or civic health, then certain kinds of</p> <p style="text-align: center;">Page 11</p>
<p>1 out in the marketplace of ideas. But a little more 2 of -- and this isn't my original line of thought. 3 A number of philosophers have criticised quite heavily 4 the whole idea that the marketplace of ideas will lead 5 to emergence of the truth. 6 LORD JUSTICE LEVESON: I'm just concerned for the smoke that 7 is emerging from the lady who has to write is down, so 8 I would be grateful. 9 A. All right. 10 MR JAY: It might be said it's a hallmark of a liberal 11 democracy that the press is free, therefore any 12 interference with a free press is inimical to the ends 13 after democracy and is per se objectionable. Do you see 14 any force in that contention? 15 A. Well, not exactly, because, of course -- I mean, here we 16 have an analogy with something else outside the press. 17 Suppose we argue that freedom of movement is absolutely 18 central to a democracy. Seems quite plausible. 19 I shouldn't, as the Prime Minister, be allowed to forbid 20 people to go to Slough just because I don't want them 21 to. It's very anti-democratic. We should be allowed to 22 move where we wish, to assemble, meet people where we 23 wish and so on. Various countries across the world 24 don't have freedom of movement. You can't go certain 25 places, meet certain people, and so on.</p> <p style="text-align: center;">Page 10</p>	<p>1 restriction might be necessary. 2 Q. What are the points of contact and the points of 3 dissimilarity between concepts of freedom of expression 4 on the one hand and a free press on the other? 5 A. They are -- I'd like to say they were obviously 6 different but if one reads a lot of things which are 7 written in the public domain on freedom of the press, 8 they're often articulated in terms of freedom of 9 expression. But freedom of expression and freedom of 10 the press are very different. 11 Freedom of expression primarily, in the first 12 instance, applies to individuals. Individuals have 13 a freedom to express themselves in a wide variety of 14 ways. It may be in linguistic ways, symbolic ways. It 15 may be -- freedom of expression can include things like 16 your hairstyle or what hat you want to wear. 17 Now, that's on, if you like, the content of freedom, 18 but the distance between freedom of expression and 19 freedom of the press becomes even greater when we think 20 about the justifications of those two freedoms. Why are 21 they ethically important? Well, freedom of expression 22 is ethically important for the development of 23 individuals, to allow them to form relationships, for 24 their psychological wellbeing and so on. 25 Now, the press, although it involves individuals, is</p> <p style="text-align: center;">Page 12</p>

<p>1 not an individual. It doesn't have interests. It 2 doesn't form relationships in the way that individuals 3 do. It doesn't develop from being a creature that can't 4 speak to eventually being one that can and has formed 5 its own path through life. 6 When you add in the further facts about the 7 differences between individuals and the press -- 8 individual such as myself or anyone in this room, we can 9 express ourselves in all sorts of different ways, but 10 when I talk to you or I talk to someone on the bus, I'm 11 not broadcasting my views to 4 and a half or 5 million 12 people. So there's an important disanalogy there in 13 terms of press power. 14 So if you start adding up those differences, it 15 looks like freedom of the press is very different from 16 individual expression and freedom of individual 17 expression. 18 Q. Thank you. 19 LORD JUSTICE LEVESON: And may have different 20 counterbalancing features, therefore. In other words, 21 nobody would deny that there are legitimate restrictions 22 on free expression: hate crime, the famous shouting 23 "fire" in a crowded theatre. Equally, there are and 24 should be limitations on the freedom of the press, which 25 are not necessarily the same.</p> <p style="text-align: center;">Page 13</p>	<p>1 One of the examples I allude to in the submission is 2 the simple lack of clarity about what constitutes the 3 distinction between private and public. There's lots of 4 allusion to that in debates about press freedom, 5 particularly things like: if I do something in a public 6 space, is it thereby private? 7 Now, here it's all too easy to draw a simplistic 8 distinction, either in terms of spatial privacy or 9 information privacy, which says that when we are in 10 a public space, then all of a sudden all legitimate 11 claims of privacy disappear, which seems to me to be 12 underargued for, to say the very least. 13 For example, suppose I have an embarrassing spot on 14 my nose, and I walk down the street with that 15 embarrassing spot on my nose. It's clear that my 16 embarrassing spot, although in a sense I'd rather it 17 remained private, I'm exposing it to people when I'm 18 walking down The Strand and walking down Oxford Street. 19 Now, that's a form of controlled exposure. I might not 20 behave in the same way if people were three inches away 21 from me with little cameras, broadcasting -- or with 22 a long lens camera, broadcasting it to 10 million other 23 people. There, our privacy interests doesn't seem to 24 correspond to -- the fact that I'm in a public space 25 doesn't immediately justify -- if you need an argument</p> <p style="text-align: center;">Page 15</p>
<p>1 A. And of course, logically, they might be the same -- 2 LORD JUSTICE LEVESON: Not necessarily. 3 A. You would need an argument to establish why they would 4 be the same but given the major and important 5 differences between them, it would be very unlikely that 6 they would be the same. I don't believe they are the 7 same -- 8 LORD JUSTICE LEVESON: No. 9 A. -- just because I don't believe there is an argument 10 that connects the two of them automatically. 11 MR JAY: Balancing the public interest in a free press, as 12 we're defining it, with other public interests and 13 private rights -- this is section 4 of your submission. 14 You focus on privacy, which I suppose is one of the 15 preeminent private rights. You say first of all one 16 over-arching problem is lack of clarity about the key 17 concepts and their normative significance. Can I ask 18 you to explain that for us? 19 A. Yes. The notion of privacy -- I have quite abstract 20 philosophical views, which I shall spare you, here, just 21 to spare everybody -- but more relevantly there is 22 uncertainty about what we mean by privacy, both in the 23 descriptive sense and then there's uncertainty in the 24 normative sense as well, in terms of what private rights 25 we're recollecting and what their limits are.</p> <p style="text-align: center;">Page 14</p>	<p>1 to justify -- the kind of broadcast of that information 2 to 10, 20 million -- 3 LORD JUSTICE LEVESON: But you don't need the spot on the 4 end of your nose at all, do you? 5 A. That was just an example. 6 LORD JUSTICE LEVESON: No, no, because if you're a famous 7 person because you've made a film or you've written 8 a book or for whatever reason, there is an argument that 9 you are entitled to go about your life as a privacy 10 citizen without having long lenses and all the 11 paraphernalia of lost privacy and your movements spread 12 around the world, isn't there? 13 A. I agree with you, but the difficulty here is 14 articulating in a clear and defensible way why that 15 distinction should hold, because one of the -- the 16 counterargument that could be used by a journalist is: 17 "They're already in a public space. All I was doing was 18 recording something that were a reader of the newspaper 19 to have been there, they would have seen what I saw. 20 Were they to have been on that beach with binoculars, 21 they would have seen what I saw, so in a sense they were 22 in a public space." 23 But the problem with that line of argument -- it 24 just assumes a very, very simplistic conception of the 25 private/public distinction. It doesn't take into any</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

1 account what our privacy interests in particular are.
 2 **Our privacy interests -- part of our privacy**
 3 **interests -- and there's lots of evidence from**
 4 **psychology, right down into animal ethology and animal**
 5 **behaviour -- we don't like being looked at, for example.**
 6 **It's distressing if people are staring at you. When you**
 7 **walk down Oxford Street, people tend not to look at you.**
 8 **Imagine walking down Oxford Street and everybody turns**
 9 **and stares at you and walks -- I know this happens to**
 10 **famous people, but there's a sense in which the**
 11 **responses that we make to knowing we're being looked at**
 12 **that way are very different to being just in a public**
 13 **space.**
 14 LORD JUSTICE LEVESON: So you agree with the argument that
 15 those who are publicly known are entitled to a degree of
 16 privacy, even though anybody who was in Oxford Street at
 17 the time could see them?
 18 **A. Yes, because --**
 19 LORD JUSTICE LEVESON: How then do you defeat the argument
 20 that actually they are in Oxford Street and therefore
 21 anybody can see them? Why do you reach that side of the
 22 equation rather than the other?
 23 **A. Of course, because the fact that anybody could see them**
 24 **is very different -- because we would behave very, very**
 25 **differently if we thought everybody was looking at us,**
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1 and we shape our behaviour -- this is why I pointed to
 2 the spot on the nose example. I would behave very
 3 differently walking down Oxford Street with a spot on my
 4 nose to if somebody said, "You are going to appear at
 5 Wembley Stadium with a spot on your nose with 30,000
 6 people watching you and it's going to be floodlit for
 7 all to see." I might put a bit of powder or concealer
 8 on.
 9 Then the point is -- you can't run with the fact
 10 that were each of those 4 million people stood in front
 11 of me, they could see it, therefore it's all right for
 12 all of them to see it, especially with the long lens
 13 example, especially if the image is taken covertly,
 14 because that doesn't give the privacy subject a chance
 15 to alter their behaviour in line with the situation that
 16 they're actually in.
 17 LORD JUSTICE LEVESON: But it doesn't matter, does it?
 18 Because unless that person is never entitled to leave
 19 their front door, they can't alter their behaviour not
 20 to be in Oxford Street or whatever, because that's part
 21 of the stuff of living. So it's not sufficient to draw
 22 a distinction between the long lens and the close lens
 23 because of altering behaviour, because in you're in
 24 a public space and you're well known -- so it's not
 25 a spot on the nose type example -- there's nothing you
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1 can ever do about it. You can't ever escape.
 2 **A. You can't ever escape. I'm agreeing with you. We're**
 3 **arguing about something one step down the line, which is**
 4 **why we should think that that claim holds true, and what**
 5 **I was trying to allude to was there is a difference**
 6 **between walking down Oxford Street just normally, with**
 7 **people going about their business who occasionally turn**
 8 **their heads and go: "Oh look, it's Hugh Grant", or**
 9 **whoever, "walking down over there", and being in**
 10 **a situation where you are being exposed to millions of**
 11 **people in a different way.**
 12 LORD JUSTICE LEVESON: I know we're agreeing. I'm trying to
 13 obtain from you the best articulation of why it isn't
 14 good enough to say, "Well, they're in public, therefore
 15 it's open season."
 16 **A. I think the best -- there's more than one thing. What**
 17 **I was trying to allude to was the way that our privacy**
 18 **interests vary depending upon the situations that we**
 19 **believe ourselves to be in.**
 20 LORD JUSTICE LEVESON: Yes.
 21 **A. You're absolutely right. There are lots of things --**
 22 **a famous person walking down the street can't conceal**
 23 **themselves and alter their behaviour in every**
 24 **circumstance, but that wasn't the claim. It was about**
 25 **having an interest in, if you like -- it's the classic**
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1 privacy interest, the right to be let alone, and there's
 2 a difference between being let alone in the street where
 3 people occasionally glance at you had and sort of murmur
 4 into their phone: "Guess who I've just seen", and from
 5 having your face or image plastered on every newspaper.
 6 It's -- the legitimate interest in not having the latter
 7 seems to be enough to justify a protection of that kind
 8 of privacy interest.
 9 MR JAY: One of the points you develop under this section is
 10 the preamble to the code, which refers to the public's
 11 right to know, Dr Manson. You have a number of
 12 interesting points on that. Can I invite you, please,
 13 to explain those for us?
 14 **A. Yes. So this notion of the right to know is one which**
 15 **is also offered up fairly regularly as a justification,**
 16 **sometimes a justification for intrusive actions. One**
 17 **problem -- the logical problem is the right to know**
 18 **doesn't make any sense, because if it's supposed to be**
 19 **a claimed right -- you know: "I have a right to**
 20 **know" -- how can anybody else be under an obligation to**
 21 **ensure that I know? Because I may not believe them, for**
 22 **example. So that's the kind of sniffy philosopher's**
 23 **logic objection.**
 24 **But underlying and beyond that, there's actually**
 25 **a more important objection, which is that when people**
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<p>1 are talking about the right to know, there only really 2 is any content if we can appeal to or identify some 3 correlative duty. It may not be a duty to bring about 4 knowledge, because there couldn't really be any duty to 5 do that, but there could be a duty to inform and there 6 are lots of cases and lots of contexts where individuals 7 or institutions are under a duty to inform or a duty to 8 warn. 9 Now, if we look at the right to know as the 10 correlative of the duty to warn, then certainly there 11 seems to be lots of activities of the press which seem 12 to fall under that heading. So if the press discover 13 a serious wrongdoing by the Prime Minister or serious 14 discrimination in the higher echelons of the judiciary 15 or that a world famous football team has been taking 16 bribes, then there seems a -- the obligation or the duty 17 to inform relevant publics who would have an interest 18 in -- a legitimate interest in knowing that, that looks 19 okay. 20 But there isn't a correlative duty to warn people 21 about the state of Cheryl Cole's kneecaps or, you know, 22 the kind of thing that appears in lots of newspapers, 23 where again a journalist might cite in defence: the 24 public have a right to know this. The simple response 25 is: no, they don't. They don't have any right to know</p> <p style="text-align: center;">Page 21</p>	<p>1 "public interest" here, "public interest" has been used 2 in a much wider and general sense to mean something 3 along the lines of what is the over-arching interest for 4 all of us or what is the over-arching interest for the 5 populace at large, in freedom of the press, 6 truthfulness, privacy and so on. 7 So the primary interest in truthfulness is that 8 without it, we end up having no communication, or risk 9 end up having no successful communication and no 10 knowledge at all. If it becomes -- if a lack of 11 truthfulness becomes widespread, then we undermine 12 trust. If I routinely lie, others routinely lie or 13 mislead, then eventually communication itself becomes 14 something that's much harder to achieve. If you suspect 15 everybody of perhaps -- actually, as a matter of logic, 16 it doesn't work if everybody lies all the time, because 17 then you just take the negation of what they've said, 18 assuming certain competences, but if a sufficiently 19 large number of people are sufficiently misleading then 20 when somebody says something, unless you have further 21 independent evidence, really you can't really do 22 anything with what they have said without those further 23 checks, and one of the fantastic things about 24 communication is that we rely upon others for our 25 knowledge. In order to rely upon others for our</p> <p style="text-align: center;">Page 23</p>
<p>1 that at all. There's no obligation to warn them. They 2 may have an interest in knowing it in the non-normative 3 sense. They may be very keen to know it. They may buy 4 the paper for the reason of finding it ought. But it 5 doesn't mean that they have a right to learn of that, 6 nor does it mean that any other person is under any 7 obligation to inform them of it. 8 So as with the notion of freedom of the press that 9 we the started off with, this notion of right to know is 10 one which, when you push it a bit further, doesn't 11 really have the normative or legitimating mileage some 12 people might think it has. 13 Q. Thank you. The public interest in truthfulness. You 14 deal with that. I think we're particularly interested 15 in the issue of sources and Milton on the bottom of the 16 10th page. Before we get there, could I invite you to 17 explain what you mean by this public interest in this 18 particular context? 19 A. When we're talking about the public interest here, 20 there's two different roles that public interest is 21 playing, both in my submission and within the Inquiry 22 more generally. In the one sense, public interest is 23 used quite narrowly talking about the specific public 24 interest defence. That's not the sense I'm concerned 25 with in this particular section. When we talk about</p> <p style="text-align: center;">Page 22</p>	<p>1 knowledge, a sufficiently large number of people have to 2 be truthful. 3 So that's the kind of deep and over-arching concern 4 with truthfulness. Much more narrowly, of course, we 5 all have much more specific and involved concerns with 6 truthfulness, just in the sense that it's actually 7 hurtful, distressing and so on to be lied to. And 8 that's just a fact about human beings. Leaving aside 9 any sort of detriment that might be caused if we act 10 upon the basis of a false belief -- if we're deceived 11 into believing that a certain investment opportunity 12 will pay us lots of money and in fact it was going to 13 pay us nothing at all, then obviously we've suffered 14 financially and maybe in other ways, but even if we 15 don't suffer financially or in other ways -- we're not 16 going to be sort of lied today and led to our deaths, 17 for example -- just the actual fact of being lied to is, 18 by and large, one that is distressing, particularly if 19 we're being lied to for self-interested reasons, ie 20 self-interest on the part of the other party. 21 LORD JUSTICE LEVESON: And if that happens, at a public 22 level, from public authorities, that has itself 23 a damaging impact on our democratic process and the way 24 in which we live our lives. 25 A. Indeed. There's A term I used elsewhere which I didn't</p> <p style="text-align: center;">Page 24</p>

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<p>1 use in here, which is epistemic pollution -- "epistemic" 2 means to do with knowledge and "pollution" just being 3 pollution -- where people who routinely deceive at the 4 level of public life and in the media -- it is akin to 5 a form of pollution, because we rely upon the great sea 6 of others to provide us with knowledge, as a -- sorry, 7 the metaphor does run a bit thin when the sea is 8 something you're going to drink because you wouldn't 9 drink from the sea, but we need to drink from the sea of 10 knowledge in order to know that other people pollute 11 that, make it unusable. So when the lying gets to 12 a grand scale and is widespread, in particular, then the 13 effects may be much, much greater than if it's just you 14 know sort of localised and involving individuals in 15 their own sort of everyday lives.</p> <p>16 MR JAY: The point at the end of page 10, our page 00896, 17 derived from Milton: a requirement that publications 18 identify their author. Almost a moral requirement to 19 identify a source in contradistinction to clause 14 of 20 the code, which creates a moral obligation to protect 21 confidential source. How do you see those two norms 22 working out in practice?</p> <p>23 A. Milton's claims aren't about journalistic sources, 24 though he's particularly concerned with political 25 pamphleteering. So it is the source of opinion.</p> <p style="text-align: center;">Page 25</p>	<p>1 kind of information was accessible. Whether it ought to 2 be disclosed in hard copy print might be quite difficult 3 because it would make hard copy print unreadable, if you 4 have, you know: here's a 400-word article about 5 something and here's 600 words of footnotes telling you 6 everything about it.</p> <p>7 But these days, given changes in information 8 technology, that kind of information could be made 9 readily accessible on a newspaper's website and I don't 10 really see anything being wrong with that, if you are 11 committed to truthfulness and being co-operative with 12 audiences.</p> <p>13 LORD JUSTICE LEVESON: But it's quite the reverse from there 14 being nothing wrong with it. As I understand your 15 argument, that would positively improve the value that 16 those who read the article can derive from it, because 17 they can factor into their assessment of what the 18 journalist has written the advantage that the journalist 19 has received. So if it was somebody who said -- well, 20 is it the Michelin inspectors who go into restaurants 21 without disclosing who they are, paying the bill and 22 simply experiencing the food? That is different to the 23 journalist who is invited to the restaurant, given 24 a free meal and then writing about it. So it's -- am 25 I right? It's not merely not a bad idea; it's</p> <p style="text-align: center;">Page 27</p>
<p>1 Now, actually, in the statement here, I don't 2 specifically address anything to do with the protection 3 of journalistic sources. The claim here was more 4 narrowly focused on the information that we need as 5 audiences to assess and evaluate the claims that we're 6 given. I think that more can be done to allow us, as 7 audiences, to understand what we're getting. So if the 8 source of a news story -- this is particularly true of 9 sort of PR and churnalism, people just cutting and 10 pasting stuff from PR companies -- if we were to know 11 the source of a claim -- I mean, lots of papers publish 12 lots of things all the time that say things like: 13 "A fantastic new holiday resort has just opened in Wales 14 and we think it's brilliant." Now, if it's said the 15 source is a PR company for that company, we would 16 evaluate it very differently than if we thought it was 17 a discovery made by the journalist his or herself and so 18 on.</p> <p>19 As for the --</p> <p>20 LORD JUSTICE LEVESON: How far can you take that? Let's 21 assume that holiday company had offered the journalist 22 a free holiday at the resort. Should that be 23 identified?</p> <p>24 A. There's a balancing act here because in an ideal world, 25 it would be useful if there were somewhere where that</p> <p style="text-align: center;">Page 26</p>	<p>1 positively beneficial?</p> <p>2 A. Absolutely. It's positively beneficial, but my note of 3 caution was in moving from the positively beneficial to 4 a stronger claim that therefore it ought to be required, 5 because there are lots of other considerations that 6 might be relevant for why that might not be the first 7 port of call in terms of obliging people to publish that 8 type of thing.</p> <p>9 Philosophically, yes, of course, it would make that 10 information much more accessible, evaluable by people in 11 relevant ways, which would be a very good thing and thus 12 not only, as you say, permissible but actually something 13 that, were we to be -- what's the word? -- trying to 14 construct a set of press practices that were going 15 towards the ideal, from the point of view of audiences, 16 then yes, it would be required.</p> <p>17 LORD JUSTICE LEVESON: I'm a long way short of ideal.</p> <p>18 A. Yes.</p> <p>19 LORD JUSTICE LEVESON: It's a question of balance.</p> <p>20 MR JAY: Section 5, the extent to which the overall public 21 interest is currently well served. Your short response 22 is "could be better", and you identify two main 23 problems, which it's fair others have spoken to as well. 24 I was going to ask you to focus on one key aspect of 25 this, which is your call for a properly independent</p> <p style="text-align: center;">Page 28</p>

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<p>1 regulatory body, and drawing up the distinction between 2 statutory underpinning of that body and the state 3 determining the content of news media, which is at the 4 bottom of page 12, 00898. Could I ask you, please, to 5 explain that for us? 6 A. Yes. This just, again, returns to the point we started 7 with, which is the way that the debate is framed in 8 terms of an opposition between censorship on the one 9 hand and freedom of the press on the other seems to be 10 misleading and ill-conceived, and that when we think 11 about sort of developments and changes to regulation it 12 becomes relevant once again, because the enforcement or 13 the assurance of good standards in communication 14 isn't -- doesn't involve censorship of content any more 15 than having an MOT test on your car determines where 16 you're allowed to drive. It makes sure that when you do 17 drive somewhere, others can rely you on not to crash 18 into them because your wheels have fallen off. 19 Similarly, ensuring standards of truthfulness in the 20 press means that others can rely on what you say and 21 take it into account in their actions, their voting 22 decisions or whatever it might be. So that doesn't tell 23 you anything about what the content is -- so it's not 24 restriction on content; it just says that if you are 25 going to put content in the public domain, it has to Page 29</p>	<p>1 A. No, especially if the main justification for a free 2 press is in terms of its utility in informing us of 3 relevant facts. I mean, I'm not ruling out 4 entertainment, because entertainment is something else 5 that the press does and there may be different questions 6 that arise there, but in terms of factual reporting or 7 putatively factual reporting, that's one of the main 8 arguments. It gives us truth and those truths are 9 relevant for our participation in democracy and to then 10 say: in order to do that, the communication has to meet 11 certain standards -- well, that's obvious and obviously 12 true. There can be no possible complaint that that 13 somehow constitutes illicit censorship which is 14 inconsistent with democracy because it's a requirement 15 of democratically relevant communication that it meets 16 standards of communication. 17 MR JAY: Can we just see how the indirect argument might 18 work, just to test the contrary view. 19 Suppose you had a code which was within a statutory 20 regime which recognised the right to privacy as the 21 existing code does but said in relation to public 22 interest that the right to privacy can only be 23 overridden in exceptional circumstances where an 24 overwhelming public interest is identified and that 25 interest is limited to detecting or exposing crime or Page 31</p>
<p>1 meet certain standards. Now, that seems to me to be -- 2 those seem to be so clearly distinct, it makes me 3 confused as to how anybody could move from suggestions 4 that standards be enforced -- whether they be standards 5 of truthfulness or standards where -- respecting norms 6 of privacy -- how that would thereby directly entail any 7 restriction on content. 8 It does do indirectly, of course, because, for 9 example, norms of privacy protect the discovery of 10 certain facts. So doubtless there are facts about all 11 of us which are -- would it would be a breach of privacy 12 for a enough to inquire and find out about. So in 13 a sense, the norm of privacy and rights of privacy 14 protect those facts from exposure in the public domain. 15 But the norm itself isn't concerned with content. The 16 link to content is always indirect. 17 Similarly with norms of truthfulness, to say that 18 you ought to be truthful -- you can say anything you 19 want as long as it's truth unlawful. So there's no 20 restriction on content at all. It doesn't allow you to 21 lie, so those contents are ruled out, but those are 22 contents we should be ruling out anyway. 23 LORD JUSTICE LEVESON: Therefore it's not -- it doesn't 24 impact adversely on free speech for an individual or 25 a free press or the press? Page 30</p>	<p>1 serious impropriety. It might be said that that regime 2 would be limiting freedom of the press indirectly and be 3 allowing politicians to get away with murder, some would 4 say -- I'm speaking metaphorically, of course -- 5 LORD JUSTICE LEVESON: You'd better choose a different 6 analogy, because I don't think it would allow that. 7 MR JAY: No, but it would make them unaccountable, since 8 they would be effectively protected unless you could 9 demonstrate extreme circumstances where their private 10 lives could be exposed. So you wouldn't have direct 11 intrusion, but you would have indirect intrusion and 12 that would be objectionable. Is it not just a question 13 of fact and degree then? 14 A. It is a question of the drawing the line in the 15 appropriate place. So the mood that I wanted to 16 highlight was keeping apart the notion of content 17 censorship from enforcement standards. 18 Now, once you get enforcement standards in place, 19 then of course you have this indirect restriction on 20 content. It's not content regulation, because content 21 isn't being regulated at all, but it does, as you say, 22 restrict it. 23 But what types of content get to be restricted 24 depends very much on where you draw the line, how you 25 formulate -- is it serious impropriety, risk of serious Page 32</p>

<p>1 impropriety, evidence of? Whatever it might be. But 2 that's a matter for -- might be for Parliament or the 3 courts to work out the detail of. But whatever details 4 they work out, it's still very, very important to 5 highlight the distinction between censorship -- content 6 regulation on the one hand and standard enforcement or 7 enforcement of standards on the other. 8 Q. I understand. Can we move on to section 6, please, the 9 distinguishing features of the conduct and practices of 10 a media industry which would make it an ethical one. 11 Could you identify the hallmarks, please, of such 12 a system? 13 A. Yes. I did put a brief warning at the beginning of that 14 that a full response to that question might take 15 considerably longer than we have here -- several 16 lifetimes -- but particularly because in philosophy 17 there are lots of different ethical theories with very 18 long and distinguished histories. But all of them -- 19 all the ethical theories that one finds in philosophy, 20 all give considerable weight to the notion of respect 21 for persons. There are different routes to getting to 22 respect for person -- if you're a consequentialist, you 23 get there one way; if you're a Kantian, you get there a 24 different way and say slightly different things about 25 it -- but respect for persons is absolutely essential to Page 33</p>	<p>1 pressure. That's all -- 2 LORD JUSTICE LEVESON: Yes, I understood what you said, but 3 I just wanted to make it quite clear before somebody 4 takes a headline out of that. 5 A. Yes. All right, thank you. 6 So respect for persons seems to be missing from at 7 least part of the sort of everyday practices of 8 a sizeable part of the media, and so -- the question was 9 about what would make it ethical? It would become much 10 more ethical if there were standards enforced where 11 respect for persons was put to the fore, and also there 12 would have to be something that actually enforced 13 compliance with that. That was -- do you want me to say 14 more about -- 15 MR JAY: It leads into the points you make under section 8, 16 page 00901. My understanding of this is that it's not 17 just being an adequate code, but you say something about 18 the social, institutional, legal or practical contexts 19 that motivates and secures compliance. That appears to 20 be directed to a culture which ensures or secures and 21 motivates compliance. Have I correctly understood it, 22 first of all? 23 A. Yes. 24 Q. Secondly, how are we going to bring about that culture? 25 It's not just the code which is going to do it, on my Page 35</p>
<p>1 all philosophical systems, and one thing that I was 2 struck by in reading through some of the earlier 3 evidence on the Inquiry was -- when I was linking it 4 over to a lot of my work in medical ethics, is over the 5 past 50 to 60 years, there's been a massive 6 transformation in medical ethics. It's undergone 7 a serious ethical culture change where it has put this 8 notion of respect for persons at the fore. So the old 9 paternalistic days of doctors deciding what to do on 10 patient's behalf and so on has been replaced by a very 11 different set of practices. 12 Now, obviously medicine and the media are very, very 13 different in many respects, but in the very abstract 14 level, it does look like the media or some aspects of 15 the news media in particular are operating without any 16 respect for persons at all, either respect for -- 17 actually, listening to the NUJ the other day, the NUJ 18 evidence, they have no respect for their journalists, no 19 respect for audiences, no respect for the subjects whose 20 privacy they invade. So across the board -- 21 LORD JUSTICE LEVESON: That's not the NUJ you're talking 22 about? 23 A. No, no, the NUJ had highlighted the fact that there 24 was -- in an economically competitive media environment, 25 especially younger journalists are put under incredible Page 34</p>	<p>1 understanding of what you're saying. 2 A. That's why I thought the analogy with medical ethics is 3 quite a useful one, because obviously then -- from the 4 1960s onwards, with the major changes in clinical ethics 5 across the globe, there was also resistance, people who 6 would say, "We're not engaged in all this stuff about 7 informing patients. We know best." But a generation 8 later, when you have compulsory ethics training as part 9 of your GMC registration and so on, things gradually 10 changed. But they changed -- it takes time to change. 11 If you don't have that cultural change, it's less clear 12 how -- certainly self-regulation wouldn't be effective 13 at all unless there was appropriate cultural change, so 14 I mean -- the short answer is: I don't know. It's 15 likely to be long and difficult and resisted, partly 16 because of economic pressures, partly because the media 17 is not restricted to a particular geographical location. 18 So you could change the culture here, but if other areas 19 of the culture hasn't changed -- 20 LORD JUSTICE LEVESON: It's not just the areas; it's also 21 media. So the press can say: well, it's true that the 22 broadcasters have to be impartial but the Internet 23 doesn't have to be anything. 24 A. That's true, but then something's limited about that 25 line of argument because -- and I've heard it said that Page 36</p>

<p>1 if you regulate us too heavily, people will just go to 2 the blogosphere and that will be all the worse. I don't 3 think that follows at all. My mum, who is in her 70s, 4 she may suspect some things they reads in her daily 5 newspapers, but that doesn't make her want to rush off 6 to the blogosphere. She'll put on BBC News.</p> <p>7 I don't think there's a rush to the kind of Wild 8 West. It may go the other way. If you are worried 9 about content regulation and all you're left with is 10 regulated broadcast news of a different kind -- the 11 broadcast media -- then that seems to be as likely as 12 people somehow disappearing off to the blogosphere for 13 their content.</p> <p>14 MR JAY: Dr Manson, you subjected the Editors' Code of 15 Practice to a narrow analysis. Can we go through that 16 quite carefully, please, and identify the key areas of 17 concern to you. I don't know whether you have a copy of 18 the code to hand?</p> <p>19 A. I don't, but --</p> <p>20 Q. Maybe you should borrow mine, since --</p> <p>21 LORD JUSTICE LEVESON: We can possibly put it on the screen. 22 Can we do that?</p> <p>23 THE TECHNICIAN: I do believe I have a copy here.</p> <p>24 MR JAY: Excellent.</p> <p>25 LORD JUSTICE LEVESON: Super.</p> <p style="text-align: center;">Page 37</p>	<p>1 A. Well, the worry about "misleading" is misleading is an 2 audience-relative notion. You can mislead some but not 3 others. So in order to assess what kinds of misleading 4 are relevant, we have to say a lot more about what kinds 5 of misleading we're concerned with. Is it misleading 6 the average person? Is it misleading the average person 7 who is really ill-informed about science? Is it 8 misleading the average person who has an understanding 9 of the base rate fallacy?</p> <p>10 Unless you can spell that out, there's lots and lots 11 of room there for either a misunderstanding at the top, 12 in the PCC or -- in looking at: is this a breach of the 13 code? Because if it's all blurred at the edges -- is 14 this a breach of the code? Well, it sort of looks like 15 it didn't mislead. Well, it might not have mislead you. 16 It might have misled 3 million people out there.</p> <p>17 I haven't got the answer. I haven't got the 18 detailed response to giving that account of what it 19 means to mislead and what's the ethically relevant sense 20 of misleading, but if it's not there, then really that's 21 just waving a flag, saying, "We don't want to do bad 22 things but we're not going to tell you what the bad 23 things are."</p> <p>24 Q. Another point you make is there's nothing in the code to 25 suggest the press has positive duties --</p> <p style="text-align: center;">Page 39</p>
<p>1 MR JAY: Can you read it, Dr Manson?</p> <p>2 A. I can.</p> <p>3 Q. You already made the point about the public's right to 4 know. Clause 1: 5 "The press must take care not to publish inaccurate, 6 misleading or distorted information, including 7 pictures." 8 You have a concern, I think, about that provision? 9 What is it?</p> <p>10 A. Well, one major concern is it doesn't tell you what 11 "inaccurate" or "misleading" or "distorted information" 12 amount to. There ought to be an addendum at the bottom 13 which says, "And by this we mean ... here is a further 14 expansion of what we mean by that."</p> <p>15 So if I publish -- I can publish something that's 16 true. One example I used in the submission was -- 17 there's the reporting of science, a lurid headline that 18 said some sort of terrible cancer has doubled, you're 19 100 per cent more likely to get it than you were 20 yesterday, but it doesn't mention the base rate. It 21 doesn't tell you how unlikely you were to get it in the 22 first place. You're still fantastically unlikely to get 23 it.</p> <p>24 In a sense there is -- it's accurate, it's true --</p> <p>25 Q. It's misleading, isn't it?</p> <p style="text-align: center;">Page 38</p>	<p>1 A. Yes.</p> <p>2 Q. -- in any respect.</p> <p>3 A. Yes.</p> <p>4 Q. Where would you expect the positive duties to be in the 5 code and what sort of duties would you like to see spelt 6 out?</p> <p>7 A. Well, I don't know -- I mean, the -- I don't know if it 8 is the place of this code to have positive duties 9 because if it's a heterogeneous press and a free press, 10 then I certainly don't have a direct argument that says 11 all media outlets, all news media must present -- must 12 have political reporting. That might be a very good 13 thing, but I don't think there's a solid philosophical 14 argument that would support that.</p> <p>15 So in terms of positive duties, I've actually -- 16 I noted the absence of it but that was actually linked 17 to slightly different point earlier on. I haven't got 18 an argument that says there ought to be positive -- 19 particularly positive duties to provide certain kinds of 20 content. I don't think I'd want to offer that argument. 21 I think the key concern that I have with the Editors' 22 Code as it stands is, first of all, its lack of clarity, 23 and second of all, that it really doesn't get across any 24 of the implication -- any implications for breaches. 25 So it's along -- as I mentioned in the submission,</p> <p style="text-align: center;">Page 40</p>

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<p>1 the word "must" is used 32 times in the Editors' Code, 2 but when you actually follow it through, it's like: 3 "Well, you must do X and Y otherwise you'll be breaking 4 the code", to which the response would be: "And?" Or: 5 "So what?" Well, you'd be breaking the code. 6 It's -- a very different kind of code would link 7 that "must" to: "You must do X or these will be the 8 consequences." And we know -- we've had the debate 9 about the PCC -- the consequences might not be that 10 great for breaches of the code anyway. So it was as 11 a -- as something that's supposed to be action-guiding 12 and action-directing, it fails on two counts, just 13 because it's unclear and thus can't direct action in 14 clear ways, and secondly it doesn't have any kind of 15 motivating force because it can lead to the "so what?" 16 response. "You must do that." "Well, suppose I don't?" 17 Q. The "so what?" response relates arguably to a different 18 issue; namely the sanction is inadequate. But if you 19 look at the code itself, just to run the contrary 20 argument by you, if we look at our imperative auxiliary 21 "must" -- you say it comes up 32 times -- it comes up in 22 clause 1, against which there's no asterisk. So if it 23 says you "must" do something, that is unqualified; you 24 must do it. But if you have an asterisk case like 3, 25 privacy, then you must do it unless you can show the</p> <p style="text-align: center;">Page 41</p>	<p>1 absolute "musts" still permit, if it's not inconsistent 2 to say so, exceptions. So, for example -- I take one at 3 random -- 6(3): 4 "Pupils must not be approached or photographed at 5 school without the permission of the school 6 authorities." 7 But that's subject to public interest. It's quite 8 difficult to see what public interest might justify 9 taking a photograph of a child at school without the 10 permission of the school authorities, but I won't press 11 for examples. 12 MR JAY: Can I ask you, please, about sections 10 and 11 of 13 your evidence, starting at page 18, 00904. The code is 14 underspecified and very unclear with regard to key 15 concepts. You propose a code which might have a summary 16 list of requirements, coupled with a richer and clearer 17 set of addenda that clarified key concepts and 18 constraints. Well, that's self-explanatory. 19 Section 11, other changes -- and these are cultural 20 changes. I think we did touch on some of those before. 21 A. Yes. 22 Q. And we looked at cultural change within the sphere of 23 medical ethics. It might be said that the main engines 24 for change were general dilution in culture elsewhere in 25 paternalism and in deferential society. That was</p> <p style="text-align: center;">Page 43</p>
<p>1 public interest exception applies. So although it's not 2 great -- 3 A. But -- 4 Q. -- the editor, who has experience of this code, will 5 work out what the obligations are, won't they? 6 A. When you say the one -- the subsequent one -- the press 7 must take care not to publish inaccurate -- well, again, 8 I think that's -- it's not unqualified. It's 9 syntactically unqualified, there's no explicit 10 qualification, but it's "must" or what? 11 LORD JUSTICE LEVESON: I'm not so sure that's right in 12 itself, because all it's saying is the press must take 13 care not to publish inaccurate or misleading 14 information. 15 A. Sorry, it's even stronger. 16 LORD JUSTICE LEVESON: In other words, it's not saying it 17 mustn't publish something that's inaccurate. It can 18 take care, and if it's got it wrong, well, it's got it 19 wrong. But then it's not a breach of 1(1) of the code. 20 A. Yes. Some of the "musts" are even weaker than others 21 and that's a particular -- that's a hedged "must". 22 MR JAY: Yes. There's some absolute "musts", there's some 23 qualified "musts" and there's -- 24 A. Even the absolute "musts" are limited here. 25 LORD JUSTICE LEVESON: It's interesting that some of the</p> <p style="text-align: center;">Page 42</p>	<p>1 diluted and it became reflected in what medicine did. 2 That leads to the final point you make about the 3 responsibility of audiences, because at least one 4 witness has said that part of the problem here is not 5 just the culture in the press; it's the culture 6 everywhere. If the press doesn't have an audience, it 7 is dead. What's the precise point you're making in this 8 final paragraph? 9 A. It was just something I wanted to put in for 10 completeness' sake, because a lot of the debate focuses 11 on -- can paint the press as somehow people sitting 12 around in a room making up evil things to do. There's 13 no -- if there's no demand for salacious gossip and long 14 lens photos, then -- people wouldn't be paying paparazzi 15 six-figure sums for photos of this or that member of 16 royalty or whatever if people didn't want to see them 17 and if it didn't make a difference to how they behave, 18 if they didn't click once more on the website, didn't 19 keep on buying a copy of whatever the paper was for 20 another week in order to -- or switch their paper, even 21 better, from one paper to another. 22 So I really want to highlight that audiences have 23 a responsibility too. If we're thinking about the 24 culture, we're thinking about -- it's not about blame 25 but in terms of characterising what normatively has gone</p> <p style="text-align: center;">Page 44</p>

<p>1 wrong, then audiences have a part to play as well. 2 Of course, the concern with audiences is primarily 3 a concern about the privacy intrusion, not a concern 4 with truthfulness, because audiences are actually the 5 victim of breaches of truthfulness, whilst in terms of 6 paying or contributing towards a culture of privacy 7 invasion, they actually share some of the responsibility 8 for it. 9 One thing that occurred to me which I hadn't 10 mentioned in the submission would be -- it would be very 11 interesting just to explore further the idea of whether 12 audiences would be quite so keen to commit themselves to 13 buying these papers if -- there's a famous kind of 14 thought experiment in philosophy. It derives from Kant 15 and the philosopher John Rawls developed it in his 16 ethics, where you have to imagine the world where you 17 don't know which person you're going to be born as and 18 then you have to reach a conclusion about what kind of 19 society that would be. 20 Q. The veil of ignorance? 21 A. Yes. Behind the veil of ignorance, what kind of society 22 would you choose? You can do a similar thing for the 23 purchase of newspapers. If you didn't know whether or 24 not you were going to be you or one of the victims of 25 this paper's intrusive privacy policy, would you Page 45</p>	<p>1 society and what rights do people have and what 2 practices breach those rights? 3 LORD JUSTICE LEVESON: I'm very pleased that you said that 4 rather than I did. 5 MR JAY: Thank you, Dr Manson. 6 A. Thank you. 7 LORD JUSTICE LEVESON: Dr Manson, thank you very much 8 indeed, not merely for this afternoon but for the 9 detailed submission you made. I've said to all your 10 colleagues: I'm very conscious that these philosophical 11 concepts do require thinking out and if there's anything 12 you want to elaborate on in what you've said, you're 13 very welcome to do so in writing at some stage, but it's 14 not compulsory. 15 A. Okay. 16 LORD JUSTICE LEVESON: Thank you very much. 17 MR JAY: We'll have five minutes. 18 LORD JUSTICE LEVESON: We'll take a break. 19 (3.25 pm) 20 (A short break) 21 (3.32 pm) 22 MR JAY: Sir, finally today, Professor Onora O'Neill, 23 please. 24 PROFESSOR ONORA SYLVIA O'NEILL (sworn) 25 Questions by MR JAY Page 47</p>
<p>1 continue to do it? What kind of newspaper policy -- 2 what kind of set of standards would you want for the 3 press if you didn't know whether you were going to be 4 just yourself or whether you were going to be someone 5 whose child had just died in an accident and had 16 6 camera people trying to get their lens through the hole 7 in the curtains? That kind of thought experiment is 8 very interesting to see what people's actual thoughts 9 were, but I'm guessing that most people would say, 10 "Actually, I want the press to have standards." 11 LORD JUSTICE LEVESON: But you put it the way that you do, 12 that audiences have responsibilities. The press would 13 spin that straight back at you and say, "But our job is 14 to provide the public with what we know the public 15 actually wants", and the contrast is then made between 16 the very substantial sales of tabloid and mid-market 17 papers as opposed to the sales of broadsheet newspapers. 18 A. We know from the history of ethics and the history of 19 the law that those kinds of arguments aren't very 20 powerful. If they were powerful, we would still have 21 slavery and bear baiting. "People really like bear 22 baiting! They really like the Colosseum, seeing people 23 torn apart!" Therefore we have to keep it? No, of 24 course we don't. We reflect upon things as rational 25 human ethical subjects and think how should we organise Page 46</p>	<p>1 MR JAY: May I ask you, please, for your full name? 2 A. Onora Sylvia O'Neill. 3 Q. You've kindly provided us with a statement dated 14 June 4 of this year and which you're content to adopt at your 5 formal evidence to us; is that correct? 6 A. Yes. 7 LORD JUSTICE LEVESON: Professor, thank you very much indeed 8 for this statement and indeed for the debate that you 9 started with your 2002 Reith Lectures, which has now 10 led -- I don't say inexorably but certainly by 11 a somewhat torturous route to the way in which I've 12 spent the last nine months. So thank you very much. 13 A. Thank you. 14 MR JAY: Professor, you've been Professor of Philosophy at 15 the University of Essex and Cambridge. You were 16 Principal of Newham College, Cambridge for 14 years 17 ending in 2006, President of the British Academy ending 18 in 2009, Chair of the Nuffield Foundation, ending in 19 2010, and you're now a cross bench member of the 20 House of Lords. In a nutshell, is that -- 21 A. That is all correct and I have been in the 22 House of Lords since 1999. 23 Q. Thank you very much. Can I ask you, please, first of 24 all -- in the second paragraph, you say that in your 25 opinion: Page 48</p>

<p>1 "Most public discussion of press freedom and 2 regulation during the last year has made little useful 3 progress because contributors assume some favoured 4 configuration of media freedoms without argument, then 5 infer that certain types of media regulation are -- or 6 are not -- acceptable." 7 I'm sure most of us know what the point you're 8 making there is, but could you make it absolutely 9 explicit, please?</p> <p>10 A. Yes. I think if we just say we're in favour of press 11 freedom, we beg all the important questions. The 12 important question is: which conception of press freedom 13 and how do you justify it? 14 Some people, including some who have given evidence 15 to this Inquiry, have said that they're in favour of 16 complete press freedom except where the law requires 17 otherwise. That too seems to me a question-begging 18 move, not only because the law is changing a lot -- we 19 have to think at present about new legislation on 20 defamation, the new draft directive on data protection 21 and other pieces of legislation on freedom of 22 information has just been amended -- but also because 23 a law is probably not the whole story, and some of your 24 other witnesses have said that, and I shall confirm that 25 that's my view.</p> <p style="text-align: center;">Page 49</p>	<p>1 is the principal focus of our Inquiry. It's not 2 individual self-expression. You list three 3 considerations towards the bottom of this second page; 4 is that right?</p> <p>5 A. Yes, I do, without going into (iii) there, which is 6 a comment about Mill's famous harm principle, in that 7 I don't think it does as much work as is popularly 8 supposed in liberal societies. It is very difficult to 9 work out the harm that a given speech act causes or is 10 likely to cause.</p> <p>11 Q. So the difficulty is in unpacking Mill's concept, 12 because there may always be some degree of harm from the 13 exercise of freedom of self-expression, but it's 14 a question of factor and degree? Is that the point?</p> <p>15 A. It's partly degree. It's partly that, of course, within 16 the context of Mill's argument, you're looking at the 17 whole utilitarian apparatus, where you're meant to argue 18 about the harm of types of act, and that is extremely 19 hard. If one considers, for example, the arguments 20 about press freedom and the Danish cartoons, great harm 21 was caused. There were hundreds of people dead at the 22 end of that episode. But showing whose act, at what 23 stage of a complex series of events, actually led to 24 those harms would have been very difficult.</p> <p>25 Q. Thank you. Then, on the next page, our page 01156, you Page 51</p>
<p>1 Q. Thank you. When we look at the term "freedom of 2 expression", you rightly point out that it's used in 3 various international, European Conventions and 4 declarations of rights. But can I ask you to amplify 5 the point you make on the second page of your statement 6 at page 01155 of our bundle: 7 "Contemporary claims about freedom of expression are 8 quite often confused with JS Mills' much more specific 9 claims about individual rights of self-expression." 10 What did you mean by that, please?</p> <p>11 A. I take it that the contemporary use -- by which I mean 12 across the last 60 years -- has been about freedom to 13 express content -- that is to say, a new term was needed 14 because "freedom of press" was too narrow, the written 15 word. Broadcasting had become important. Film was 16 important. So "freedom of expression" is taken to be 17 freedom to express content through whichever medium, 18 technological or other, whereas "freedom of 19 self-expression" was, as the term states very directly, 20 freedom to express one's own individuality or sense of 21 self and the like.</p> <p>22 Q. Thank you.</p> <p>23 A. So they require different arguments to justify them.</p> <p>24 Q. And the arguments, of course, are different in relation 25 to the speech rights of organisations, which of course Page 50</p>	<p>1 look at other arguments. Under (c): 2 "A quite different argument for freedom of speech 3 and of the press appeals to the importance of seeking 4 and establishing truth." 5 Now, what are the strengths and limits of that 6 argument?</p> <p>7 A. Its strength is that truth matters in every domain of 8 life, and by that I don't mean something particularly 9 grand. I mean just being accurate about what is the 10 case and what is not the case insofar as it's possible, 11 and the arguments from truth-seeking are the great 12 arguments of the 17th century, absolutely fundamental to 13 our whole modern constitutional tradition, but they are 14 arguments that, in my view, have two limitations. First 15 of all, they're not going to establish anything about 16 speech acts that don't aim or claim to say anything 17 about what's true or not. So they're not adequate 18 arguments for the media, because I think it's important 19 that the media be able to publish plays and crosswords 20 and the rest. So we need broader arguments than those 21 that appeal to truth.</p> <p>22 Secondly, where we do rely on those arguments, where 23 truth is the aim, I think that we get an argument for 24 a highly restricted and conditional form of press 25 freedom. That is to say, it has to observe the Page 52</p>

13 (Pages 49 to 52)

<p>1 disciplines of truth-seeking. This is a highly useful 2 argument. I think it's absolutely crucial to make the 3 case for investigative journalism, but of course what it 4 makes is not an unrestricted case. 5 Q. All these considerations lead you to conclude -- and 6 this is subparagraph (d) -- that: 7 "The public interest in freedom of expression and 8 specifically in a free press is best construed as an 9 interest in adequate or better than adequate standards 10 of public communication that allow readers, listeners 11 and viewers to gain information and form judgments so to 12 participate in social, cultural and democratic life." 13 So you're focusing there on the adequacy of 14 standards, which include, of course, ethical standards? 15 A. They would also include ethical standards, but I think 16 that, as it were, standards that some people will not 17 think of as ethical standards. For example, standards 18 in making judgments and in giving evidence, carefulness 19 in formulation, are also relevant here. Perhaps they 20 should count as ethical standards but not everybody sees 21 them that way. 22 Q. Thank you. Can I ask you, please, to develop the point 23 you made towards the bottom of that page: 24 "Readers, listeners and viewers need to be able to 25 grasp and assess not only speech content -- what is Page 53</p>	<p>1 A. Yes. 2 Q. Can we be clear what those interests were and what, as 3 it were, the seriousness of our omission amounts to? 4 A. You specifically probed asking for omissions and 5 I thought it was a useful question because when 6 I thought about it, the public interest in good 7 governance, things are that public goods for the whole 8 community -- good governance, a sound currency and so 9 on -- is one case of a public interest, and the public 10 interest in there being goods for individuals -- for 11 example, a right of self-expression, also a right to own 12 property, a right to take part in things -- is another 13 sort of interest. But it didn't seem to cover the whole 14 spectrum because there are many things that we would 15 regard as matters of public interest which are neither 16 those of individuals nor concern the public as a whole. 17 So we have a public interest, by two examples, that 18 research and inquiry take place, not just that 19 individuals be free to participate in research and 20 inquiry. We have a public interest in there being many 21 associations in civil society, not just in people being 22 free to join such associations if they exist. 23 Q. Yes, I understand. 24 Question 5 now, where the question was: to what 25 extent -- I paraphrase -- is the current performance of Page 55</p>
<p>1 said -- but speech acts -- what is done in saying it." 2 A. I think the import of that is the following: the 3 distinction between speech content and speech act is 4 familiar, I think not only among philosophers, certainly 5 there. What I do is quite important. I may say 6 something and it may be understood, but the question of 7 whether it is a joke or a truth claim matters quite 8 a lot, and we have many cases of things going awry in 9 daily life because people mistook not what a sentence 10 meant but what the act of saying it imported, and 11 I think we need to bear that distinction in mind. 12 The speech act that the media most routinely perform 13 is that of communicating, and in communicating I have 14 somehow to convey to my audience what I'm saying. Is it 15 serious or is it not? Am I, for example, conveying 16 a warning of some impending catastrophe, something 17 utterly serious, or am I just making a joke? That's the 18 most obvious example where taking things up the wrong 19 way, grasping the speech act the wrong way, will make 20 a huge difference. 21 Q. Thank you. Question 4, which is the top of the next 22 page, 01157. The question was looking at balancing 23 various public interests against the interest in the 24 freedom of the press. Your point was that our 25 formulation omitted certain types of public interest. Page 54</p>	<p>1 the press, I suppose, adequate or inadequate? Your 2 pithy response is that the current balance appears to 3 you to be out of kilter: 4 "It is evidently a matter of widespread and intense 5 public concern." 6 Can I ask you, please, as you do in your statement, 7 to elaborate that point? 8 A. I suppose that one way of thinking about it would be to 9 suggest that parts of the media express themselves in 10 ways that might not be inappropriate if they were 11 individuals and relatively powerless, but which, given 12 that that is not their situation because they are quite 13 powerful organisations, are not appropriate, and the 14 constant reiteration of the importance of press freedom 15 without thinking about the sorts of constraints under 16 which it is well configured seems to me inappropriate, 17 and not justifiable for the reasons I gave at the 18 beginning of this evidence. 19 Q. The standards which you look to to judge current 20 performance: accessibility, intelligibility and 21 assessability. You find the UK media as a whole 22 generally meeting the first two of those standards but 23 maybe not the third, assessability. Can we be clear 24 what you mean by that and the respects in which the 25 media are falling short? Page 56</p>

<p>1 A. I think it is extremely difficult for the ordinary 2 reader to know whether claims that they read in the 3 press are well-founded. It's as elementary as that. 4 They can't even know with any certainty whether those 5 claims are, in effect, paid-for content. They can't 6 know in whose interests they are being made. They can't 7 tell how good the evidence behind them is. 8 We all know that the standards can be met by the 9 media, because we have parts of the media that meet them 10 to a high standard. 11 Q. Do you feel that that is the main defect, as it were, in 12 the press as currently configured? You're not directly 13 addressing now -- I know you do elsewhere -- issues such 14 as harassment and intrusion of privacy rights, 15 et cetera, but -- 16 A. It's once we get beyond the standard legal constraints, 17 which I think, by and large -- there are exceptions when 18 we're discussing in public interest journalism, but by 19 and large, defendants of present media practice have not 20 been keen to say, "But we should be allowed to defame, 21 to harass and so on." They will say that they should be 22 permitted to make everything -- to say anything that 23 lies within the law. 24 Of course, it is the context of this Inquiry that 25 a great deal has been done that was a breach of the Page 57</p>	<p>1 to pursue these cases, because there are no victims who 2 report a crime to the police and it's very difficult to 3 uncover information and once you do, then there are all 4 sorts of good reason why it's quite difficult to get 5 through to the possibility of prosecution. Then there's 6 the civil law in its complexity and its expense and all 7 that surrounds there. But I am also looking at that 8 area which isn't necessarily a breach of the criminal 9 law or the civil law. 10 A. Yes. 11 LORD JUSTICE LEVESON: And I think that your third category 12 actually encompasses that. You mention intimidation, 13 and there may be other examples as well. It's how to 14 cope with that -- 15 A. I think that is the difficult thing, and, as it were, 16 the substance of the discussion of adequate press 17 regulation comes up there, in that it is not a matter 18 simply of extending the criminal or the civil law. 19 I take it that there may be reasons for such changes. 20 I suppose that the promised defamation legislation is an 21 example of such a change, if it comes about, but I had 22 in mind here something which is not a matter of civil or 23 criminal law. 24 The atmosphere of intimidation surprised me, because 25 it turned out that it was not what I think was Page 59</p>
<p>1 current legislation, so we now do know that there has 2 been hacking, we know that there are cases of 3 defamation, we know that people are frightened to speak 4 up because of the fear of what will be done to them. 5 I was quite struck last summer, as the scandal broke, to 6 hear members of the Commons culture, media and sport 7 committee saying quite publicly that they had refrained 8 from saying certain things not because they were afraid 9 that the media might turn against their political party 10 and lose them the election, which I had supposed might 11 have been a consideration, but because they were afraid 12 for themselves, and that seems to me very unhealthy in 13 any democracy, that people are intimidated -- 14 LORD JUSTICE LEVESON: But you've just given three examples. 15 The first two contravene the law. 16 A. Indeed. 17 LORD JUSTICE LEVESON: The third may not, depending upon 18 precisely how it's done. 19 A. It may not, but intimidation is a bad atmosphere in 20 a democratic society. 21 LORD JUSTICE LEVESON: That's a slightly different point, 22 because what I'm trying to focus on is not merely the 23 criminal law or the civil law. One can look, in 24 relation to the criminal law, at the adequacy and 25 ability, in its pursuit, of those who are in authority Page 58</p>	<p>1 frequently alleged, that newspapers or journalists led 2 politicians to be fearful of loss of support come the 3 next election; it was that they were afraid of, to put 4 it crudely, their personal lives being turned 5 upside down, and everybody has some person within their 6 family or circle whom they would not wish to see 7 exposed. 8 LORD JUSTICE LEVESON: I understand. That's merely -- I say 9 "merely". That is one example of the concern that's 10 been expressed in the Inquiry, among a number of others 11 as well, of course. 12 A. Yes. Yes. No, but I think it's a serious one because 13 when people who are not shrinking violets, like MPs, say 14 that they have pulled their punches in a routine way 15 because of this fear, I think that is quite damaging to 16 democratic life. 17 LORD JUSTICE LEVESON: Yes. 18 MR JAY: Thank you. Still on page 01158, you identify what 19 could be done to make it easier for the public to assess 20 media claims without detriment to press freedom. What 21 you're looking at, Professor O'Neill, is a regulator of 22 media process as opposed to media content, since the 23 later would constitute censorship, which worked to an 24 improved press code, would have a statutory basis, would 25 be independent from government and corporate interests. Page 60</p>

1 The importance of a statutory basis, though, and the
 2 strength of the contrary argument that a statutory basis
 3 is, in itself, offensive, since it in some way does
 4 amount to government intruding in a sacrosanct area --
 5 can I ask you to address those points?
 6 **A. I haven't actually seen any argument -- or certainly**
 7 **none that I found convincing -- to suggest that a code**
 8 **does intrude in a sacrosanct area. I have tried to**
 9 **think of them, but it is usually a matter of assertion**
 10 **on the assumption that a code will allow government to**
 11 **interfere with the expression of content. I think if**
 12 **government can interfere with the expression of content,**
 13 **that is indeed disastrous. That is censorship. That is**
 14 **what has to be avoided.**
 15 But regulation of process is another matter, and the
 16 regulation of process is something that, it seems to me,
 17 the advocates of the status quo, with its rather weak
 18 and disjointed code, already accept. They have no
 19 argument against certain forms of regulation of process.
 20 For example, they think that the advertising standards
 21 issues are perfectly acceptable restrictions on media
 22 freedom. If you have ever looked at product placement
 23 television in the United States, you will know what
 24 sorts of results you get when you don't have those
 25 restrictions.

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1 **So I don't think it's actually controversial;**
 2 **I think it's just a matter of assertion that you cannot**
 3 **have a code that does not intrude into what you called**
 4 **a sacred space. You certainly can, in my view.**
 5 LORD JUSTICE LEVESON: Which raises a slightly different
 6 question as well, which is whether a code which has any
 7 form of statutory backing or underpinning really allows
 8 Parliament -- or is likely to allow Parliament -- to get
 9 into the sacred space in a way that would be
 10 unacceptable.
 11 **A. I think that Parliament would have to keep itself out of**
 12 **that space, which it's perfectly able to do, and that's**
 13 **why I suggested, under clause (d) no power to require**
 14 **the publication or non-publication of certain specified**
 15 **content should form part of the code. No power to**
 16 **censor. That could be made explicit.**
 17 MR JAY: Thank you. At the bottom of this page, you deal
 18 with two big questions. The first big question is
 19 whether regulation should be voluntary or obligatory.
 20 You say that the question is not an easy one to answer.
 21 It's not clear, if I may say so, whether you favour the
 22 voluntary solution or whether you're merely respecting
 23 the strength of the argument that there should be
 24 voluntary participation.
 25 **A. I think that the reason I'm quite hesitant at this point**

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1 **is that we're in a period of media convergence which is**
 2 **making regulation of all sorts quite difficult, and**
 3 **because the so-called new media seemingly can, in**
 4 **practice, however you legislate, duck under any code,**
 5 **I'm particularly concerned about the possibility --**
 6 **indeed, the prevalence -- of anonymous publication,**
 7 **traditionally, of course, the domain of the poison pen**
 8 **and the hidden slanderer.**
 9 So I hesitate to be too definite at this point
 10 because I don't really entirely see how one proceeds on
 11 this issue, but the issue seems to me to be the one of
 12 feasibilities more than it is one of desirability. The
 13 arguments about what restrictions would be unacceptable
 14 or acceptable seem to me not too difficult, but the
 15 arguments about how you regulate the blogger who is, in
 16 fact, inventing a lot of his or her material seem to me
 17 extraordinarily difficult, and that's my reason for
 18 hesitation.
 19 I know you've heard other witnesses who have
 20 probably been able to say more about the implications of
 21 convergence, but I regard that as the most difficult
 22 single thing that faces this Inquiry, that if there is
 23 a different code, then perhaps all the practices that
 24 are damaging and intimidating to citizens will, as it
 25 were, be driven out of visibility, but the content will

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1 still be published and will be repeated.
 2 There are measures you can imagine that will deal
 3 with this, and one of them is for the code to take
 4 a dimmer view of the publication of content where its
 5 source is anonymised tips or the sorts of things you get
 6 in the vox pops.
 7 LORD JUSTICE LEVESON: The code could do that, but it
 8 doesn't actually deal with the rather wider problem of
 9 bloggers who may have a powerful megaphone themselves
 10 because of the extent to which their material is
 11 available on the Internet, but also who don't come
 12 within the jurisdiction because they have placed
 13 their --
 14 **A. Yes.**
 15 LORD JUSTICE LEVESON: -- servers in America somewhere and
 16 they don't live here. Then you have this rather
 17 difficult area or space with the broadcasters, with all
 18 the statutory regimes surrounding Ofcom and their
 19 requirement for impartiality on the one end, and then
 20 the bloggers on the other end, and you have the press in
 21 the middle -- and it doesn't matter whether the press is
 22 the published press or the digital press. There are
 23 a number of distinctions which we've discussed at
 24 various stages in the Inquiry. One could be those who
 25 are in the business of publishing news, which might

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<p>1 catch some bloggers who are obtaining revenue from their 2 website, or you could restrict it more and seek to catch 3 those who are in what might be described as the general 4 news business, where they are collecting facts and not 5 merely presenting individual comment, which is the 6 blogger, but researched facts and opinion on the basis 7 that it has been, if not peer-reviewed as science might 8 be, at least subject to certain criteria which the 9 citizen can accept as valid and worthwhile.</p> <p>10 A. Is your example something like Reuters here, who have 11 something like very high standards in the collection of 12 facts but aren't themselves a newspaper?</p> <p>13 LORD JUSTICE LEVESON: Correct.</p> <p>14 A. Yes.</p> <p>15 LORD JUSTICE LEVESON: Correct, and there may be others, 16 because it's quite important not to tie whatever happens 17 in the Inquiry down to print media, because ten years 18 ago one couldn't have visualised what it would be like 19 now, and I wouldn't care to start to imagine what the 20 position might be in ten years' time from today.</p> <p>21 A. My assumption is that the open access revolution will 22 slide through all forms of publishing, creating 23 commercial havoc, and that all those social and business 24 practices that underpin things like attribution or 25 fact-checking or going to sources are going to be</p> <p style="text-align: center;">Page 65</p>	<p>1 enables the public to judge what is said. There may be 2 cases where one has to hold back on the source of 3 certain information, but good public interest journalism 4 seeks to make the sources and the evidence as available 5 to the public as is feasible, given certain other 6 constraints.</p> <p>7 LORD JUSTICE LEVESON: Quite apart from the dynamic of the 8 Internet and all those problems, the other trick that 9 has to be grappled with -- or concern that has to be 10 grappled with -- is the distinction between that type of 11 journalism and the journalism that depends upon 12 inappropriate invasion of privacy, which is simply for 13 the purposes of entertainment without any public 14 interest basis to it at all.</p> <p>15 A. I would -- we have perhaps slightly skipped to public 16 interest journalism. I think that genuine public 17 interest journalism has to meet two standards. First, 18 it actually does have to aim at the accurate reporting 19 of something that is the case. It has to be aimed at 20 truth. So it has to, as it were, accept the disciplines 21 of truth-seeking. If we think of the famous examples of 22 investigative journalism, the sorts that people learn 23 about when they're becoming journalists, that was done. 24 Secondly, it has to be a matter of public interest 25 that this information be made available, so that if</p> <p style="text-align: center;">Page 67</p>
<p>1 changed. They won't necessarily always be worse, but 2 they're going to change a great deal and that is why 3 I find it particularly hard to comment on the limits 4 here.</p> <p>5 I take it that your terms of reference lead you to 6 look mainly at the press --</p> <p>7 LORD JUSTICE LEVESON: Absolutely.</p> <p>8 A. -- but they are no longer a discrete set of 9 institutions.</p> <p>10 LORD JUSTICE LEVESON: I'm sure you would agree with me that 11 we must do absolutely everything we can to facilitate 12 and encourage the practice of true journalism -- that 13 is, reporters going out there, researching the facts, 14 providing for the public the opportunity for the public 15 to hold power to account -- I think that might be 16 a better expression of it than themselves holding power 17 to account -- and then putting that out in the public 18 domain, which seems to me to be a very different 19 activity to those who simply pick up tittle-tattle or 20 gossip and then throw it out in a blog with some 21 comment, all of which is unattributable, and none of 22 which can be pinned down or necessarily verified.</p> <p>23 A. I very much agree, and I think that the -- contrary to 24 some of what one has read in the last year about public 25 interest journalism, good public interest journalism</p> <p style="text-align: center;">Page 66</p>	<p>1 you -- I think the journalists who discovered about the 2 Watergate scandal are a good example of this. It was 3 absolutely vital that people understand that from the 4 White House itself the law was being broken and it had 5 to be both accurate and in the public interest.</p> <p>6 So I don't have any difficulty in knowing what's 7 genuine public interest journalism. I have some 8 difficulty in answering the question: how, in practice, 9 do we prevent things that are neither in the public 10 interest nor a matter of truth-seeking masquerading as 11 public interest journalism? And I'm looking forward to 12 the debate on the Select Committee of the House of Lords 13 report on investigative journalism next week. I have to 14 refine my thoughts a bit before that.</p> <p>15 LORD JUSTICE LEVESON: Well, I'm also having some difficulty 16 in answering the question, and that, it seems to me, is 17 one of the very big questions that I must answer.</p> <p>18 A. Some of it seems to me less difficult than it might be, 19 in that if the journalism fails on either of the two 20 criteria -- that's to say, it wasn't truth-seeking 21 anyhow, or it wasn't a matter of public interest 22 anyhow -- then it's not public interest journalism, it's 23 not investigative journalism, it doesn't deserve special 24 protection. But in order to get to a position where 25 that would be something that we could hold on to a bit</p> <p style="text-align: center;">Page 68</p>

<p>1 more firmly, I think it has to be the case that there is 2 more clarity about the sorts of things that good 3 journalism is expected to be open about, like being open 4 about the sources and interests where it can be done 5 without endangering the sources. 6 LORD JUSTICE LEVESON: I understand that, but you also have 7 to be rather clearer about what you believe is truly in 8 the public interest. 9 A. Yes. I don't believe in these major matters which 10 require legislative framework, we ever sail with 11 a completely blank view about what is in the public 12 interest. So in the public interest is all the things 13 that enable the public to pursue not merely their 14 individual interests but their common life and the 15 political life of society. 16 LORD JUSTICE LEVESON: One of the reasons why I'm very 17 reluctant to embark upon a definition of the public 18 interest, which some have encouraged me to do, is 19 because the public interest is actually a very different 20 concept depending upon the context in which you are 21 considering the question. There isn't one over-arching 22 definition of the public interest which would serve 23 every single circumstance. That's what I presently 24 think. 25 A. I agree with that, although I believe it might be Page 69</p>	<p>1 A. I agree, and I don't think that one is going to find -- 2 get much headway by trying to have a fully spelt out 3 definition of the public interest. But we talked about 4 this previously, the three broad categories: that which 5 is in the interests of the public as a whole, that 6 which -- such as good governance and sound currency, the 7 associational interests, which it is of interest to the 8 public that these associations and activities exist, and 9 then the sorts of public interest which are closer to 10 individual rights, all seem to me important. 11 MR JAY: Press ethics now, Professor O'Neill. It's 12 section 6, page 01159. Just two points I'd like to draw 13 out, if I may, because what you say is largely 14 self-explanatory. 15 You refer to the meeting of adequate ethical and 16 epistemic standards in journalistic, editorial and 17 business practice. I'm particularly interested in the 18 last one, business practice. Could you tell us, please, 19 what you had in mind there? 20 A. I didn't pick it up in my examples, but I'm particularly 21 interested in the question of conflicts of interest 22 between a media organisation and what it is reporting. 23 Some media organisations go very light on reporting 24 certain sorts of content which the public have some 25 interest in being aware of. For example, I think there Page 71</p>
<p>1 possible to get off the deck what I have seen as the 2 most meretricious claims to be doing something that's in 3 the public interest on the grounds that something 4 interests the public. That subjective conception of 5 what is interesting to the public -- the tittle-tattle, 6 I suppose -- seems to me one that could be got off the 7 deck, and again, one would expect that an editor who 8 sanctions activity that he or she might not otherwise 9 sanction because a piece of journalism is important in 10 the public interest will be able to say, "I thought this 11 was a matter of great public interest because it was 12 this sort of thing. That is a matter of public 13 interest." 14 There will be borderline cases and that doesn't 15 bother me, but I do think we need to hold on to 16 a perception of the public good and the public interest 17 or I'm not sure what we should be expecting the media to 18 do at all. 19 LORD JUSTICE LEVESON: Yes, I agree. I'm not suggesting 20 that one doesn't have to flesh it out in some way, as 21 long as one isn't seeking to define the term for all 22 purposes for all times, because each fact-sensitive case 23 will throw up slightly different considerations, and 24 broadly similar situations might generate slightly 25 different results, for reasons which are good and valid. Page 70</p>	<p>1 are newspapers that go very light on commenting on 2 violations of human rights in China. There are other 3 much more local examples where certain local businesses 4 will be given a completely free ride. So it's very 5 often -- business practice that is uncommented on is 6 very often the business practice of the media 7 organisation itself and its connection with certain 8 matters of wider public interest. 9 Q. Thank you. The second point is that you refer to the 10 adoption of more specific ethical quotes suited to 11 particular types of the media. Can I ask you, please, 12 what you had in mind there? 13 A. Well, the media are a broad church, even if we're 14 talking about the mass media. I think there will 15 undoubtedly be different sorts of codes for 16 a publication that is mainly interested in business news 17 and that is mainly interested in sporting news. So 18 although I can see the point of a press code for all 19 print publications, I suspect that certain groups of 20 publications will have an interest in developing their 21 own code more specifically in dealing with certain sorts 22 of things. 23 For example, I cannot imagine that the FT needs to 24 say very much about the sorts of conflict of interest 25 that arise in covering sport and offers of so-called Page 72</p>

<p>1 hospitality by sporting organisations.</p> <p>2 Q. Thank you. Section 7 I'm going to pass over because</p> <p>3 that's self-explanatory, but section 8, please, about</p> <p>4 the strength or efficacy of professional ethical codes</p> <p>5 on their own, which is likely to be important in this</p> <p>6 area.</p> <p>7 You make it clear that a voluntary industry code is</p> <p>8 unlikely to achieve enough in the context of journalism.</p> <p>9 Why, in a nutshell, do you say that?</p> <p>10 A. I think we have enormous experience in this country of</p> <p>11 the limitations of self-regulation for powerful</p> <p>12 professions and institutions and in fact, we've more or</p> <p>13 less eliminated self-regulation, I think, even for the</p> <p>14 bar, by the way, but we have certainly eliminated or</p> <p>15 squeezed self-regulation for most other professions I am</p> <p>16 familiar with. If you think about doctors or</p> <p>17 accountants or the like.</p> <p>18 Often this is a matter of considerable regret</p> <p>19 because everything works very well if self-regulation is</p> <p>20 functioning as people hope that it will, but it goes bad</p> <p>21 when there are temptations, conflicts of interest,</p> <p>22 colleagues whose reputation and livelihood you can save</p> <p>23 by not really applying the code with any rigour.</p> <p>24 So I don't really see a good case for journalism</p> <p>25 being unique in retaining the privilege of</p> <p style="text-align: center;">Page 73</p>	<p>1 case my own profession is not a profession.</p> <p>2 Academics -- there are all sorts of demands before you</p> <p>3 become a university teacher but they are not a matter of</p> <p>4 getting certified or certificated, whichever the word</p> <p>5 may be. Therapists are another good example. There was</p> <p>6 a hope, an aspiration, that we should make therapy into</p> <p>7 a regulated profession or set of professions. It</p> <p>8 founded on the sheer lack of agreement about what this</p> <p>9 set of practices was.</p> <p>10 So we have, I think, numbers of other examples of</p> <p>11 things that are at least colloquially thought of as</p> <p>12 professional practice which are, as a matter of fact,</p> <p>13 not regulated in the sense that there is control of</p> <p>14 entry, and I explicitly said that I thought that</p> <p>15 journalism had reason to remain among those because</p> <p>16 regulation of entry is not an acceptable move there.</p> <p>17 I would, however, note that although regulation of</p> <p>18 entry is not an acceptable move, these other</p> <p>19 nonregulated professions often face a very large array</p> <p>20 of forms of regulation. So there may not be -- being</p> <p>21 a scientist may not be a regulated profession, but when</p> <p>22 you do scientific research, you will find a great deal</p> <p>23 of regulation.</p> <p>24 LORD JUSTICE LEVESON: So in other words, it isn't good</p> <p>25 enough to say, "We're not a profession" -- because</p> <p style="text-align: center;">Page 75</p>
<p>1 self-regulation in a society where other professions no</p> <p>2 longer have that privilege and business does not have</p> <p>3 that privilege.</p> <p>4 LORD JUSTICE LEVESON: Let me see if I can provide you with</p> <p>5 an argument to the contrary which has been advanced in</p> <p>6 the Inquiry: that if you take the professions, each of</p> <p>7 the persons who seek to practice that profession all</p> <p>8 require a licence to do so. Whether it's a doctor,</p> <p>9 a lawyer, a barrister, a solicitor, an optician, all are</p> <p>10 mandated, permitted by the state to do what they do and</p> <p>11 to subject other people to their profession, whereas</p> <p>12 journalists are doing no more than, collectively, each</p> <p>13 pursuing their individual rights of free speech, and</p> <p>14 because that is an inherent right, contra the ability to</p> <p>15 practice medicine or the law, there is something</p> <p>16 different about it.</p> <p>17 Now, I give it to you and I'd be very interested to</p> <p>18 hear how you would deal with it.</p> <p>19 Have I done it justice, Mr Jay?</p> <p>20 MR JAY: (Nods head)</p> <p>21 LORD JUSTICE LEVESON: Thank you.</p> <p>22 A. First, I think not all professions are regulated</p> <p>23 professions, if we actually look at the rich panoply of</p> <p>24 professions. I know some will say, "No, no, only the</p> <p>25 regulated ones really count as professions", in which</p> <p style="text-align: center;">Page 74</p>	<p>1 that's the other argument: "We're not professional,</p> <p>2 we're just running a trade." That doesn't wash. It</p> <p>3 doesn't get you through the problem of having to have</p> <p>4 some standards to which all who are involved should</p> <p>5 aspire. Is that --</p> <p>6 A. Yes, I think it's quite a risky argument to say, "We're</p> <p>7 only a trade", because we have no squeamishness about</p> <p>8 regulating trades.</p> <p>9 LORD JUSTICE LEVESON: I'm merely trying to put to you</p> <p>10 a number of the points that have been made during the</p> <p>11 course of the Inquiry.</p> <p>12 A. No, I see the great temptation, and it is linked to the</p> <p>13 fundamental failure to get in mind a determinate</p> <p>14 conception of press freedom which is to be defended, and</p> <p>15 the thought that "We're journalists so we can't be</p> <p>16 regulated" seems to me lame for a number of reasons. If</p> <p>17 they are just a trade, they can be regulated. If they</p> <p>18 are a profession, they can be regulated. If they're</p> <p>19 neither of the above, then what is the claim to</p> <p>20 privilege?</p> <p>21 MR JAY: Your conclusion in relation to an ethical code for</p> <p>22 the media is that it should have statutory backing but</p> <p>23 it should not threaten media freedom and set out</p> <p>24 requirements that are needed to secure communication</p> <p>25 that are adequate for social, cultural and political</p> <p style="text-align: center;">Page 76</p>

1 life. One of the arguments which you advance for the
 2 need for a statutory code is that you say:
 3 "Traditionally, ethical codes worked because there
 4 were embedded in cultural and social norms that were
 5 widely respected and adhered to, making shame and
 6 exclusion the principal sanctions for violation."
 7 Well, those attributes, I suppose, are lacking in
 8 journalism. It's implicit in what you're saying,
 9 I think.
 10 **A. I think that until very recently they were not lacking**
 11 **in journalism. I remember reading Mr Andrew Marr's**
 12 **book, "My Trade", in which he describes being a trainee**
 13 **journalist on the Scotsman some years back now, and if**
 14 **he did things badly, a reader would ring up the editor**
 15 **of the Scotsman and he would be carpeted, and that was**
 16 **the old culture.**
 17 **It is a much more fluid world now, in which it's**
 18 **clear that it is harder to rely purely on the cultural**
 19 **sanctions of -- as it would be in other professions.**
 20 **Q. Under section 9 of your evidence, you subject the**
 21 **Editors' Code of Practice to a thorough analysis and**
 22 **critique. Some of your points are specific to clauses**
 23 **in the code; others are more general. Can I ask you,**
 24 **please, to explain the more general point, which you**
 25 **characterise as various omissions, exaggerations and**
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1 weaknesses.
 2 **A. I didn't really think that this was a thorough analysis**
 3 **of the code, because of course by this stage in my**
 4 **evidence, I thought I was being rather lengthy, but --**
 5 LORD JUSTICE LEVESON: You'll encourage me to ask you,
 6 Professor, that if you don't think this is thorough and
 7 you'd like to be thorough ...
 8 **A. Lord Leveson, I think I've probably been thorough enough**
 9 **for your time and mine, and the code, it seems to me,**
 10 **needs rewriting. That is my conclusion. It does have**
 11 **gaps. It is -- and it doesn't have -- I don't know**
 12 **whether Professor Megone may have said this to you**
 13 **because I wasn't able to watch all of his evidence, but**
 14 **when I discussed it with him, he -- he knows a lot about**
 15 **professional ethics. It's not clear what the animating**
 16 **principle of the code is. The code is -- I think he has**
 17 **said this -- a series of prohibitions and a few**
 18 **requirements, but I think it would be more to the point**
 19 **for the code to take a clear view of what journalism is**
 20 **for, and I take it -- or the press are for, and I take**
 21 **it that it is for communicating with audiences, and that**
 22 **was my sort of central picture of what they seek to do,**
 23 **and that from what certain things follow about how you**
 24 **achieve that purpose and achieve it to an adequate --**
 25 **not an outstanding standard. We're talking about**
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1 **a code; we're not talking about the highest possible**
 2 **aspirations for all journalism, which I regard as a bit**
 3 **airy fairy.**
 4 LORD JUSTICE LEVESON: What you're trying to do is find
 5 somewhere between the base minimum, which is the
 6 criminal and the civil law, and the highest possible
 7 aspirational goal, to provide a level which satisfies
 8 the requirement of public interest journalism but does
 9 not inappropriately impact upon the personal rights of
 10 others. Would that be fair?
 11 **A. Yes, including that and probably quite a bit more. It's**
 12 **about the standard or standards that a reader, listener**
 13 **or viewer may reasonably expect to inform the**
 14 **publication that he or she is reading, or for that**
 15 **matter, listening to or watching. And those standards,**
 16 **it seems to me, could be clearer for all concerned, and**
 17 **something that are just -- could be just a matter of**
 18 **routine practice.**
 19 **So I wouldn't go for the aspirational in a press**
 20 **code.**
 21 LORD JUSTICE LEVESON: I agree. By using the shorthand
 22 words "public interest journalism", I was encompassing
 23 the standard that a reader might reasonably expect to
 24 receive so as to be informed.
 25 **A. Yes, I think that's right. And accuracy is important**
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1 **where there are truth claims. I would be peeved if the**
 2 **football results were misreported, but that doesn't**
 3 **happen, interestingly enough. Not much, anyhow. But**
 4 **inaccuracy in other domains of life is very often**
 5 **tolerated in a way that -- it seems to me halfway**
 6 **competent journalism can get certain things right and**
 7 **can correct them when it doesn't.**
 8 **Nobody is, after all, asking that journalism should**
 9 **miraculously attain standards of total accuracy on**
 10 **everything reported. They're asking that they should**
 11 **get it broadly right, and that when they get it broadly**
 12 **wrong, they should correct it. Promptly. With equal**
 13 **prominence and so on.**
 14 **But I do wish to say that I think there are**
 15 **standards also for the non-truth-seeking parts of**
 16 **journalism. Those matter as well.**
 17 LORD JUSTICE LEVESON: How would you articulate those?
 18 **A. I think that it is partly to do with not exposing either**
 19 **the people about whom you are ostensibly writing, if**
 20 **they are real people, to derision -- although that may**
 21 **come closer to the truth-seeking bits -- and not**
 22 **demeaning people. Most of the non-truth-seeking content**
 23 **is perfectly fine in this respect. So if one is**
 24 **thinking about games and puzzles and fiction and drama,**
 25 **I think there's generally no problem within the confines**
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<p>1 of the law, of course, but maybe there could be, for 2 example, games which have a sadistic or gladiatorial 3 aspect to them that one would want to ask questions 4 about.</p> <p>5 MR JAY: Professor O'Neill, the six principles of openness 6 that you refer to in relation to a future press code -- 7 four of those are either entirely self-explanatory or 8 you've already developed. Can I just ask you, please, 9 to comment on two of them? Item (iii), openness about 10 interests. Are you expecting there proprietors, 11 editors, if necessary, to be open about their own 12 interests in relation to the taxes they pay or do not 13 pay? How do you see that that one operates?</p> <p>14 A. I would have thought that was a pretty reasonable 15 requirement. We expect other people in public life with 16 less in the way of influence to be open about the 17 property they own and open about the political issues 18 they support, open about other things. I'm not perhaps 19 going to Scandinavian levels and suggesting that 20 everybody's tax return be online, which I did find 21 rather surprising, but at the same time I think we could 22 have a great deal more openness.</p> <p>23 If I may give my reasons, they have a lot to do with 24 what you might call humble rather than grand journalism. 25 For example, in the reporting of local council affairs</p> <p style="text-align: center;">Page 81</p>	<p>1 A. I think so. That's a standard practice in our walks of 2 life, that you have your declaration of interests on 3 a website, but then if you are present at a meeting 4 where a particular matter is discussed, depending on the 5 nature of the thing, you are silent or you withdraw or 6 you declare it and so on, and I think many of us in 7 public life are utterly familiar with the distinction 8 between declaring our interests and declaring our 9 conflicts of interest, and both are important.</p> <p>10 MR JAY: The other area, Professor O'Neill, was item 5, 11 openness about most sources.</p> <p>12 A. Yes.</p> <p>13 Q. We can read from the code as currently constituted, 14 clause 14 -- we looked at it this morning. Confidential 15 sources:</p> <p>16 "Journalists have a moral obligation to protect 17 confidential sources of information."</p> <p>18 That may or may not be understood to be an absolute 19 rather than a qualified moral obligation. It's clear, 20 however, from your analysis, that in your view there 21 should be a general rule that sources are disclosed but 22 there may be certain circumstances in which sources are 23 kept confidential. Why have it that way around?</p> <p>24 A. I think the default in favour of openness is actually 25 what good journalism does. They try to give the source</p> <p style="text-align: center;">Page 83</p>
<p>1 or in the sort of columns on property, it is 2 acceptable -- and I have actually discovered one case 3 where a journalist extolling the lovely houses in 4 a certain square in London actually owned two of them 5 and had one of them up for sale. Now, I think readers 6 should have been told about that, and there's nothing 7 that secures that at present. There's nothing that 8 secures other than a very limited set of requirements in 9 some newspapers that where shares are owned, editors are 10 informed about the ownership, and then there's a sort of 11 period of -- a no-go period during which they may not 12 write on those shares or may not trade in those shares, 13 perhaps, and I think that it would be only 14 straightforward and very simple indeed to inform 15 readers, listeners and viewers about the financial and 16 property interests of those who are publishing.</p> <p>17 LORD JUSTICE LEVESON: Well, that might be one of two ways. 18 As a matter of generality, that could, I suppose, be on 19 a website.</p> <p>20 A. Absolutely.</p> <p>21 LORD JUSTICE LEVESON: But in relation to your particular 22 example, that is so blatant that that would have to be 23 a declaration within the article itself.</p> <p>24 A. Yes.</p> <p>25 LORD JUSTICE LEVESON: Wouldn't that be right?</p> <p style="text-align: center;">Page 82</p>	<p>1 when they can.</p> <p>2 The difficulty about the confidential sources is the 3 problem that the reader has in knowing (a) was there any 4 source at all, and (b) was it a reliable source? And 5 I think I'm struggling -- and I'm not alone -- in 6 thinking that it's important to find some way of dealing 7 with that.</p> <p>8 A standard way is to say: no, you do not publish the 9 source but you file a letter with your editor or you 10 discuss it with your editor, but that may not work any 11 longer. But that is the sort of thing that seems to me 12 important.</p> <p>13 Let me put it this way: I'm very struck by the 14 difference between commercial confidentiality and 15 professional confidentiality. In professional 16 confidentiality, I may have a duty to keep in confidence 17 what my client tells me, and if I communicate it to 18 a third party, to do so with the agreement of the client 19 and with like restriction on the content. So that would 20 be a typical medical view of confidentiality.</p> <p>21 In commercial confidentiality, it seems to me that 22 people have much more freedom to slap confidentiality on 23 something that they would like to keep some parts of 24 confidential but they slap it on the whole thing, and it 25 is at the will or whim of the individual person in</p> <p style="text-align: center;">Page 84</p>

<p>1 business to say, "This is a matter of commercial 2 confidence." There are conventions, of course. 3 Now, journalism, it seems to me, is in danger of 4 going too close to the commercial one, which I think is 5 already questionable, and not to the professional one. 6 How it's to be worked out in detail is difficult, but 7 I think it has a lot to do with the quality of the 8 culture that an editor or programme maker sets for what 9 is done and that there are clearly newspapers which do 10 not permit their journalists to be so liberal with the 11 allegation of having a confidential source that the 12 readers can no longer judge whether there's any source 13 at all.</p> <p>14 Q. As you rightly pointed out, there are occasions in which 15 the claim the source is confidential is a mask for the 16 fact that the source simply doesn't exist, and the 17 journalist hides behind it for all purposes.</p> <p>18 A. Yes, and I don't know a way of dealing with that problem 19 other than editorial control. That may be a weaker 20 system than we like to believe, but that is the only one 21 I can see there. However, a lot of journalism does not 22 need to have any qualms about this because it would be 23 better for being open about its sources.</p> <p>24 Q. The moral problem arises to the extent to which 25 a journalist makes a promise to his or her source that</p> <p style="text-align: center;">Page 85</p>	<p>1 cases where the sources are obscure, the information is 2 unclear, and again, good journalism will indicate this. 3 We all know those conventions: "A usually well-informed 4 source said that ... Rumours are flying around that ... 5 They could not be corroborated." Those phrases, which 6 are the mark of quite responsible journalism, it seems 7 to me could be used more widely.</p> <p>8 We've all been listening to reporting on Syria, most 9 of it not from within Syria, or much of it not from 10 within, and we have heard those phrases again and again 11 as the qualifiers that mark good journalism by 12 indicating where the source cannot be named, must be 13 protected and so on. But very often, that's not the 14 situation and I don't think we can take the practices 15 that may be needed and can nevertheless be responsibly 16 handled when lives are at stake as the reality when 17 people are actually hiding their friend's commercial 18 interest in a local planning decision.</p> <p>19 MR JAY: Your practical proposal in relation to the process 20 for improving the code, this is section 10, you say: 21 "The first answer might be to secure Parliamentary 22 approval for having a statutory code and the appointment 23 of a body including but not dominated by media 24 representatives to undertake the subsequent tasks." 25 You'd want, presumably, a range of opinion upon that</p> <p style="text-align: center;">Page 87</p>
<p>1 the source will be kept confidential, but if the making 2 of such promises was not encouraged or if it were 3 encouraged, it would be on this basis, that the 4 journalist would tell the source, "I'm going to have to 5 share what you're telling me with my editor, but that 6 would go no further than my editor", that would or might 7 resolve some the practical issues you refer to, might 8 it?</p> <p>9 A. I think that that would probably be a fairly effective 10 discipline, because although there might be editors who 11 would be completely lax about this, I reckon that lying 12 to your editor is probably still regarded as an 13 unfortunate tactic. I hope.</p> <p>14 Q. Thank you.</p> <p>15 LORD JUSTICE LEVESON: Then it's necessary for the story to 16 be stood up anyway, because otherwise the source could 17 actually say anything --</p> <p>18 A. Yes.</p> <p>19 LORD JUSTICE LEVESON: -- and although obviously the 20 journalist and the editor have to be concerned about the 21 law of libel, it depends on precisely on what the 22 story's about as to whether there is a potential 23 defamation or actual defamation that might be thrown up 24 by the story.</p> <p>25 A. Yes, and I think we have a problem. There are lots of</p> <p style="text-align: center;">Page 86</p>	<p>1 body and that may include, might it, representatives 2 from the world of academia; is that right?</p> <p>3 A. I think those of us who know much about the press are 4 mainly in -- in the academic world are mainly professors 5 of law and journalism, so might be too close. I don't 6 think it's obvious, and I haven't gone that far, but 7 I do think one needs to get a code that brings together 8 the experience of very well-informed, perhaps retired 9 editors and journalists. You have to have people who 10 know the trade in there, but you also have to have 11 people who are concerned primarily for the public 12 interest, and in any future code it would seem to me 13 important to get some clarity about the statutory basis 14 and then the content of the code, and, of course, the 15 additional codes that particular newspapers may wish to 16 develop for their own staff or the like will separate 17 it.</p> <p>18 LORD JUSTICE LEVESON: It doesn't have to be a statutory 19 code, does it? It's sufficient if, on this model, and 20 I appreciate that people challenge the model, if 21 a statute underpinned an organisation that was itself 22 required to develop a code, with criteria as to the type 23 of persons who should be involved with utterly 24 independent appointment mechanisms?</p> <p>25 A. I think we're quite good in this country at making</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 independent appointments, and we put actually quite 2 a lot of money into the appointments processes, and 3 I don't see any particular difficulty here, although no 4 doubt the recommendations of any such body would be -- 5 and rightly -- contested and subject to a lot of public 6 debate.</p> <p>7 I suspect that it's the minimal statutory backing 8 that is the most controversial, because there are 9 clearly interests, mainly perhaps within the media, in 10 retaining the privilege of self-regulation, and I've 11 noticed a lot of misuse of the phrase "independent 12 regulation" for what is actually self-interested 13 regulation. So what we need first to do is to get away 14 from that, and the specific content of the code is, in 15 my view, a subsequent question, one that of course needs 16 answering, but as I've stated, I think such a code 17 should not be too aspirational.</p> <p>18 MR JAY: Professor O'Neill, thank you very much. Those are 19 all the questions I had for you.</p> <p>20 LORD JUSTICE LEVESON: Thank you very much. Is there any 21 aspect of material which we asked you to consider that 22 you feel you've not had the chance to develop?</p> <p>23 A. Something that I think I should have said more clearly 24 is that complaints procedures are important, but they 25 aren't adequate to secure public goods. Complaints</p> <p style="text-align: center;">Page 89</p>	
<p>1 procedures work in a context where you're considering 2 individual goods and an individual complainant, and 3 I believe that the Press Complaints Commission has been 4 hobbled by the fact that its main form of activity has 5 been as a complaints body. Somebody perhaps can pick up 6 that task, but it's a minor task in the context of 7 securing minimal standards.</p> <p>8 LORD JUSTICE LEVESON: It's a standards body to which you've 9 been addressing from your points.</p> <p>10 A. Yes.</p> <p>11 LORD JUSTICE LEVESON: Thank you very much. I've said to 12 your professional colleagues that I'm very conscious 13 that asking people to talk on this topic is difficult. 14 They've expressed their views in writing. If, on 15 reflection, there's something that you want to add, 16 please do not hesitate to do so.</p> <p>17 A. Thank you very much.</p> <p>18 LORD JUSTICE LEVESON: Thank you very much indeed for your 19 time.</p> <p>20 MR JAY: We're reading in the evidence of Professor Waldron 21 and Professor Thompson.</p> <p>22 LORD JUSTICE LEVESON: Thank you very much. Right, tomorrow 23 morning, 10 o'clock. 24 (4.47 pm) 25 (The hearing adjourned until 10 o'clock the following day)</p> <p style="text-align: center;">Page 90</p>	

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