

<p>1 2 (2.05 pm) 3 MR JAY: Sir, the next witness is Mr Flanagan. 4 MR DINGEMANS: I had one question I understood I was going 5 to be able to ask? 6 LORD JUSTICE LEVESON: Of course you did. 7 MR DINGEMANS: That's all right. I know it's not very 8 valuable, but I'd still like to ask it. 9 LORD JUSTICE LEVESON: Well, that's a good trailer. 10 Questions by MR DINGEMANS 11 MR DINGEMANS: Can I take you to the article of 1 December 12 2007, for you sir the reference 1645. You were asked 13 what was your contribution to this article and on quick 14 scanning through, you couldn't work it out. Can you 15 read the fourth paragraph up from the bottom? 16 A. Yes. 17 Q. Does that help answer that particular question? 18 A. Yes. I think it was a meeting between the British 19 ambassador and police officers at the head of the 20 investigation and the Portimao District Attorney at the 21 police headquarters in Faro. 22 Q. Just in case people have no understanding of how joint 23 headlines and bylines work, does that mean, because your 24 name appears on the top, that this is like a sort of 25 lawyer's letter with two names at the bottom, or legal</p> <p style="text-align: center;">Page 1</p>	<p>1 is a statement of truth. Is that right? 2 A. It is. 3 Q. Is this the evidence which you stand by, as it were? 4 A. I do. 5 Q. You have been a journalist, you tell us, for 21 years. 6 You followed a typical career path, if I may say so, 7 through regional press and then you joined the national 8 press, indeed the Daily Telegraph in the year 2000 where 9 you have stayed ever since; is that right? 10 A. The Daily Express. 11 Q. Pardon me, the Daily Express. You now are a senior news 12 reporter at the Daily Express, is that so? 13 A. That's right. 14 Q. You tell us in paragraph 2 that you were the third 15 journalist sent by the Express to Portugal to cover this 16 story. You remained there for more than a month. You 17 visited Portugal four times, usually fortnightly spells, 18 to cover the story. 19 A lot of what you say has already been covered by 20 the previous witness, but did you have any sources on 21 the ground in Portugal which differed from those that 22 Mr Pilditch was talking to us about? 23 A. I don't know all Mr Pilditch's sources, but I was 24 checking this morning my records and I had between 50 25 and 60 names and numbers of people that I called</p> <p style="text-align: center;">Page 3</p>
<p>1 advice that is prepared by counsel, that is prepared and 2 signed and not altered, or do you just file separately 3 and it gets put together back in London? 4 A. The first name on the byline is normally the person who 5 is putting it all together. My role was as I stated. 6 I went to the airport, I'd literally just landed and it 7 was near the police station so I went straight there and 8 I just stood there and witnessed what was going on, and 9 all I did was relay that, I can't remember, either to 10 the news desk or to the reporter, but it was just simply 11 what I saw which was again police officers wouldn't talk 12 to me, but I saw the people involved leaving. 13 MR DINGEMANS: Thank you very much. 14 LORD JUSTICE LEVESON: Thank you. Mr Dingemans, you were 15 probably right, but it's important to be clear. Thank 16 you. 17 MR JAY: Thank you, Mr Pilditch. It's Mr Flanagan next. 18 MR PADRAIC FLANAGAN (affirmed) 19 Questions by MR JAY 20 MR JAY: Make yourself comfortable, please, Mr Flanagan. 21 Your full name? 22 A. Padraic John Flanagan. 23 Q. Thank you. I hope you'll find in the bundle in front of 24 you under tab 1 your witness statement, which is signed 25 and dated 12 December of this year, and appended to it</p> <p style="text-align: center;">Page 2</p>	<p>1 regularly on this story. Not all of them in Portugal. 2 Some of them, the extended families back in Britain, but 3 there was a wide variety of sources that I used in 4 Portugal. 5 Q. In relation to the Portuguese police, can we identify 6 who your sources were? You had no one in the police 7 itself, since they officially could not speak to you, is 8 that so? 9 A. Yeah. It was impossible to get any official comment 10 from the police. 11 Q. Right, so sources around the police, we've heard of two 12 journalists and a translator. Were they the individuals 13 who were effectively your sources as well? 14 A. Probably more than two journalists, I think. There were 15 lots of TV, radio and newspaper crime specialists who 16 were -- who we made contact with and became friends 17 with, and we helped them on the British side of the 18 story and they helped us on the Portuguese side of the 19 story. 20 Q. Right, but did they have contacts within the Portuguese 21 police? 22 A. Yes. 23 Q. Thank you. Can I ask you, please, about specific 24 stories you wrote. I think the first of these is 25 paragraph 11, 25 October 2007, which is page 31664.</p> <p style="text-align: center;">Page 4</p>

<p>1 You'll find this in the bundle you have probably under 2 tab 4. 3 A. Yeah. 4 Q. "Police want answers to 14 questions." 5 This is dated 25 October 2007. Can we be clear who 6 the source is for this story? The answer may be found 7 seven lines from the bottom. 8 A. I think this story originated actually in one of the 9 Portuguese newspapers and it was written by a journalist 10 I became friends with and I called him up and asked him 11 where he'd got it from and he said he was shown these 14 12 questions in a document that was to be sent over to 13 British detectives, and said it was absolutely true. 14 That's where it came from. 15 Q. So when you say "a source within the Policia 16 Judiciaria" -- 17 A. Yeah, that's via him, via the journalist. 18 Q. So the journalist who has written the piece in the 19 Portuguese paper, that was his or her source, and then 20 you're setting this out here in your piece; is that 21 right? 22 A. Yes, it is. 23 Q. Can I ask you, about ten lines from the top of the 24 story: 25 "Investigators believe [do you have that?] that Page 5</p>	<p>1 I had to make it clear to my superiors, you know, the 2 strength of the story and whether it was something that 3 they would want me to write up later in the day. 4 Q. So is this your evidence: you did make it clear to the 5 news desk that you felt that it would be difficult to 6 stand up this story if it were ever tested? 7 A. Well, I illustrate -- I don't think I would put it in 8 those stark terms, because at the time, working in 9 Portugal surrounded by every rival newspaper who were 10 working on the same stories, it was my duty to tell my 11 desk what the sources were and where the stories were 12 coming from, but I didn't feel as though it was my sole 13 decision to establish, you know, the -- whether I could 14 stand up in a court of law and defend it. 15 Q. No. But in order to assist their decision, did you 16 share your misgivings about the ability to stand this 17 story up with the news desk or not? 18 A. No. I think once you'd told them the sources and where 19 it had come from, then they could draw their own 20 conclusions. 21 Q. Mm. How would they do that? 22 A. Well, by reading what I've written. 23 Q. Right. So you felt that it would be obvious to the news 24 desk, given that you had misgivings about being able to 25 stand this story up, you needn't spell it out to the Page 7</p>
<p>1 members of the party -- dubbed the Tapas Nine after the 2 Spanish themed restaurant they were in when Madeleine 3 disappeared -- may have been involved in the crime." 4 Where did you get that from? 5 A. From the same source. 6 Q. How was it put to you? 7 A. I was talking to him as I often did about the latest 8 developments that he'd heard and, telling me about this 9 dossier of questions, he also told me about -- that he 10 thought the members of -- the friends that were with the 11 McCanns at the time of the disappearance may have 12 been -- may have had something to do with that. 13 Q. Anything more specific or was it at that level of 14 generality? 15 A. Yeah, it was that general. 16 Q. How did you believe that this piece, this story, if at 17 all, could be stood up if it ever came to litigation? 18 A. Well, it would be very difficult to do that. I think it 19 needs to be said that I wasn't sort of working alone, as 20 it were, in Praia da Luz, scratching around for 21 something to send back. These stories were all the 22 result of conversations with the news desk about the 23 strength of them and the sources, and a view was taken 24 whether to proceed or to drop it. 25 I mean, I'm not trying to evade responsibility, but Page 6</p>	<p>1 news desk, they would make the same deduction; is that 2 the position? 3 A. Broadly. Working in Portugal, the first question you 4 asked yourself wasn't: can I stand this up? It was: 5 what can I find today? What's the best material that 6 I can offer the news desk and keep up with my rivals and 7 do what I'm being paid to do? Considerations of the 8 law, you know, were always going to be further down the 9 line that day for my superiors. 10 Q. That's a very frank answer, Mr Flanagan, but are you 11 telling us that the predominant consideration, given all 12 the pressures you were under to produce a story, was to 13 produce really the best you could and then leave it to 14 others to worry about the legal niceties? 15 A. Well, it's quite a stark way of putting it. You would 16 be discussing with the news desk through the day what 17 you were doing, what was happening in Portugal, what 18 were the likely best lines of the day. I mean, bear in 19 mind that although we're concentrating on single stories 20 here, you know, it's highly likely that when I was 21 writing this, I might have been writing a front page 22 story and a spread inside the paper, so there would be 23 an awful lot of material to work through. 24 So it -- what I'm trying to say is that there were 25 constant discussions and I felt that the desk were fully Page 8</p>

<p>1 aware of what I was doing and the strength of the 2 material. 3 Q. So judgments about whether to publish in the light of 4 obligations under the PCC code, clause 1, the accuracy 5 requirement, would be for others, not for you; is that 6 what you're saying? 7 A. Ultimately, yes. 8 Q. But didn't you feel that you were under an obligation 9 under the code and generally to, if I can put it in 10 these terms, worry about the accuracy of the story? 11 A. Yes, you would, but you'd also be conscious of trying to 12 do the best that you could to stand up as much as you 13 could, where you could, but, you know, working in 14 a foreign country under their legal conditions proved 15 very difficult. 16 Q. Yes. I think that eloquently speaks to the difficulties 17 you were under and demonstrated why it would be 18 difficult, moreover, to stand up the story, but then 19 there's the sort of anterior question: why write the 20 story at all? 21 A. It would be quite a brave reporter to call the desk and 22 say, "I'm not really sure about this, I'm not going to 23 send anything back today". 24 Q. Yes. 25 A. Because --</p> <p style="text-align: center;">Page 9</p>	<p>1 rather than fight cases. 2 Q. Even though the damages in this case were mega, weren't 3 they? 4 Okay. I'll ask you about one other piece, 5 Mr Flanagan, at 31619, 22 January 2008. Do you have 6 that one? 7 A. Yes. 8 Q. "The manhunt by Madeleine investigators prompted by 9 a drawing of a possible abductor is designed to divert 10 suspicion from Kate and Gerry McCann, the Portuguese 11 police believe. 12 "Last night, sources in the Policia Judiciaria 13 revealed reports of a dishevelled man lurking around 14 Praia da Luz were investigated months ago and found to 15 be groundless. 16 "One stormed: "The purpose of this latest exercise 17 by the McCanns is the same as always. It's another 18 diversionary tactic." 19 So again the "sources in the PJ", that was the 20 journalist, not a policeman; is that correct? 21 A. Well, it was a policeman source of the journalist. 22 Q. Was this piece based on anything other than an article 23 in the Portuguese press? 24 A. I think it was -- I can't recall exactly, but during the 25 months that we were there a series of likenesses were</p> <p style="text-align: center;">Page 11</p>
<p>1 Q. Sorry, please continue. 2 A. -- I felt that they could see, if they had the copy, the 3 strength of the material and they could take a view on 4 it. 5 Q. We're interested in culture and practices. "It would 6 take a very brave reporter". Are you able to elaborate 7 on that a little bit for us, please, Mr Flanagan? It 8 may be so obvious it goes without saying. 9 A. As you mentioned before, the story was extraordinary, 10 this snowball going down the incline, as you said. Bear 11 in mind that every newspaper, TV, radio reporters were 12 there, there was a huge appetite in the UK for this 13 story and there was a huge appetite for this story on 14 the news desk and the -- with the editor of the 15 Daily Express. 16 Q. When it all went pear-shaped, if I can put it in that 17 way, a letter before action, I think there was a claim 18 form, it doesn't matter, there was a decision not to 19 defend the case on liability. Were you surprised or 20 not? 21 A. No. 22 Q. Because? 23 A. I think at the Express they're more likely to want to 24 avoid massive legal bills and -- I just get the feeling 25 that they're more likely to settle cases out of court</p> <p style="text-align: center;">Page 10</p>	<p>1 produced, which always generated a series of stories, 2 and this looks as though this is another release of 3 a likeness presumably based on Gail Cooper's description 4 to an FBI-trained artist. 5 But, yeah, the retired PJ inspector, Moita Flores, 6 was often on Portuguese TV and I think that would be 7 where his quote came from. 8 Q. Did you feel under pressure to deliver? Almost 9 a continual stream of this sort of story? Otherwise in 10 one sense you weren't doing what was required of you? 11 A. Yeah. For the Daily Express to send overseas, spend 12 that money on a news operation in a foreign country, is 13 considerable and you're sent there to produce stories. 14 It's quite clear that's what you're there to do, rather 15 than sort of investigate yourself and decide whether 16 there's anything worth writing about. 17 Q. You tell us in paragraph 19 of your statement there was 18 almost -- or there was constant dialogue between the 19 news desk and reporters. Did the news desk ever come 20 back to you with this sort of message: "Either we or the 21 editor is concerned about a particular piece; could you 22 stand it up for us, please, explain the reliability of 23 your source?" Was there ever that sort of conversation? 24 A. I don't remember a conversation like that, but there 25 might have been.</p> <p style="text-align: center;">Page 12</p>

<p>1 Q. You don't remember one? 2 A. I don't remember one. 3 MR JAY: Yes. Those are all the questions I have for you. 4 LORD JUSTICE LEVESON: I'd like to use the word I used 5 before. These were clearly very fragile stories in the 6 sense that it was all -- I used the phrase 7 tittle-tattle, but information coming from somebody who 8 was getting information from somebody else, who wasn't 9 supposed to be saying anything anyway. 10 A. Yes. 11 LORD JUSTICE LEVESON: That's certainly right. You told 12 Mr Jay that you had some concerns about that. Did you 13 do anything at all to express concern that a lot of 14 theorising was taking place, no solid fact, and this was 15 a great risk? 16 A. I didn't raise it specifically. I didn't phone and ask 17 someone and say, "Look, I'm really worried about this", 18 but I think everybody was aware of the strength of these 19 stories, how fragile they were. I think it's sometimes 20 the case on crime stories that this kind of procedure 21 takes place where there's supposition and theorising in 22 the absence of any hard information being released. 23 It's a kind of natural tendency to fill a vacuum, and 24 with the Portuguese police's stance on speaking to the 25 press, there was a very large vacuum there.</p> <p style="text-align: center;">Page 13</p>	<p>1 A. I think it does, but -- 2 LORD JUSTICE LEVESON: I'm pleased you said that. 3 A. -- it's very difficult on any given day to be able to 4 look at a story, as we are now, in the whole. We know 5 some things to be false, a lot of things to be false, 6 that we didn't know at the time. I think what you try 7 to do is faithfully and accurately report what you're 8 finding out from people who know more about what's gone 9 on than you do. 10 LORD JUSTICE LEVESON: You see, one of the things you could 11 have said in these articles, repeatedly, is, "This is an 12 impossible job. The police won't talk to us, they're 13 not permitted by law to, but for some unusual reason 14 they're prepared to leak like a sieve to people they 15 know, who will then tell us. How accurate all this is, 16 who knows?" 17 A. Well, there were critical reports of the Portuguese 18 police. There's a convention that newspapers don't tend 19 to write about their own problems, they don't write 20 about journalism, they don't write about the challenges 21 that reporters are facing to -- gathering stories. 22 Maybe in the media sections of the broadsheets they 23 will, but it's not saying -- 24 LORD JUSTICE LEVESON: But don't you think -- and I don't 25 edit a tabloid newspaper, indeed any newspaper, but</p> <p style="text-align: center;">Page 15</p>
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<p>1 LORD JUSTICE LEVESON: And you mentioned that all your 2 competitors are there. But who takes the decision -- 3 well, I suppose I can answer my own question. The 4 decision as to what is right and what is not right is 5 not yours; is that fair? 6 A. It's partly mine, I think. I do -- I do have some 7 responsibility, but, for instance, I can't write a story 8 that I know to be a lie and claim to the news desk that 9 it's true. 10 LORD JUSTICE LEVESON: No, I hope we'd agree about that. 11 A. But, also, the news desk and the editor also have a key 12 role. 13 LORD JUSTICE LEVESON: I understand that, and I'm sure 14 you're right. But you appreciate that I am looking at 15 this phrase that we bounce about customs, practice and 16 ethics all the time, and I'm just trying to grasp the 17 nature of the problem. You've been sent out to 18 Portugal, it's costing a lot of money. All your 19 competitors are doing the same. There's enormous 20 pressure, which you've told Mr Jay about, to file 21 something, you want something that's interesting, that's 22 going to command attention. Where does balance, 23 fairness, propriety come into it all? 24 A. I'm not sure I can answer that. 25 LORD JUSTICE LEVESON: Well, does it have a place at all?</p> <p style="text-align: center;">Page 14</p>	<p>1 don't you think that's itself a very substantial story? 2 You all back in the UK want to know about this missing 3 girl. We want to give it to you. We want to find out. 4 And this is the problem we've got. 5 A. Mm. 6 LORD JUSTICE LEVESON: And the result is that "Everything 7 I say you must now take with a pinch of salt." Because 8 you personally were taking it -- I'm not saying you 9 didn't believe that you were being given genuine 10 information, that's the honesty bit that you mentioned, 11 but I rather gather from the thrust of what you say that 12 you did not find this particularly comfortable, so 13 you're saying that's not a story? 14 A. I think it is a story, but then you're faced with the 15 problem: what do you fill the paper with the next day? 16 LORD JUSTICE LEVESON: But the one thing you don't want to 17 fill the paper with, surely, is stuff that is terribly 18 damaging to people and may be complete piffle. 19 A. As I said, I think all you can do is the best that you 20 can in the circumstances. 21 LORD JUSTICE LEVESON: Yes. 22 A. That's the dilemma. And it's true that especially 23 reporting on crime stories, you know, the effects on the 24 families of victims is appalling. And I would like to 25 take this opportunity to apologise to the McCanns for</p> <p style="text-align: center;">Page 16</p>
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<p>1 adding to their hurt and distress through what I wrote. 2 Only a week or two ago we had an advisory from the 3 Dowlers reminding us about the effects of seeing 4 a photograph of their murdered daughter in the paper 5 every time somebody wrote about the deleted emails 6 story, and it brings it home to you what a searing 7 experience it must be to keep being reminded. 8 So we are mindful that these stories can be 9 incredibly distressing, but at the heart of the story it 10 is a crime, a little girl went missing, and while I was 11 out there, that was the focus. 12 LORD JUSTICE LEVESON: I understand. But it's not as though 13 the problem is unique. I mean, one can look at what 14 happened -- and I'm not in any sense asking you 15 questions about it, but one could look at what happened 16 to Mr Jefferies thereafter. And everybody goes like 17 a train at a story, which is destructive. 18 I have made it very clear that I am an absolute 19 believer in freedom of expression, there's no question. 20 But I am concerned to find a way of identifying balance, 21 which might, I appreciate, mean that the story is not in 22 such bright colours. 23 A. I think that's a reason why we're all so interested to 24 hear what you conclude. 25 LORD JUSTICE LEVESON: You're not alone.</p> <p style="text-align: center;">Page 17</p>	<p>1 a staff news reporter at the Daily Mail? 2 A. Correct. 3 Q. Thank you very much. You tell us in paragraph 2 your 4 experience at the Express. You had covered a series of 5 major news stories, the tsunami in Sri Lanka and 6 Indonesia, criminal proceedings relating to the murder 7 of Caroline Dickinson and various other high profile 8 stories, is that so? 9 A. Correct. 10 Q. You also speak French and Spanish, which was relevant, 11 I think both languages, relevant to the Madeleine McCann 12 case; is that so? 13 A. Correct. 14 Q. You explain in your statement how you were involved in 15 the Madeleine McCann story. First of all, you went to 16 Morocco in September 2007 because you speak French and 17 you were following up a lead there, I believe; is that 18 right? 19 A. That's right, yeah. 20 Q. And then you went to Portugal. In Portugal, we've heard 21 about sources close to the PJ, two journalists in 22 particular, and a translator. Were your sources the 23 same or different? 24 A. My sources certainly would be amongst those, as we all 25 made friends with different people and there were</p> <p style="text-align: center;">Page 19</p>
<p>1 All right, thank you very much. Thank you very much 2 indeed. 3 MR JAY: The last witness is Mr Fagge, please. 4 MR NICHOLAS FAGGE (sworn) 5 Questions by MR JAY 6 MR JAY: Your full name, please, Mr Fagge? 7 A. It's Nicholas Hilton Fagge. 8 Q. Thank you. You provided us with a statement which bears 9 yesterday's date. It doesn't have a statement of truth 10 on it, but that's not a criticism, Mr Fagge. Do you 11 stand by this statement as your evidence? 12 A. I do. I don't think I have it with me. It's in the 13 other bundle. Excuse me. 14 LORD JUSTICE LEVESON: Do you not have a copy? 15 A. My statement is just there. Excuse me. 16 LORD JUSTICE LEVESON: That's all right. 17 MR JAY: Mr Fagge, dealing with your career, you started as 18 a journalist after a career in advertising in 1996. You 19 obtained your NCTJ qualification. You then worked in 20 the local press in Camden and then via the National News 21 Agency and Ferraris; you joined the staff at the 22 Daily Express at the end of the year 2001, is that 23 correct? 24 A. Correct. 25 Q. You left the Express in August 2010 and you're now</p> <p style="text-align: center;">Page 18</p>	<p>1 different people there at different times, I certainly 2 had two journalists I trusted and spoke to almost -- 3 well, on a daily basis, as well as other people I spoke 4 to more infrequently. 5 Q. Yes. Looking at this at a reasonably high level of 6 generality, because I think we've derived the picture 7 from previous witnesses, did you share the concerns 8 we've heard them express about the ability to stand 9 these stories up if it ever came to litigation or 10 something similar? 11 A. From the outset of my filing stories from Portugal, I'd 12 always make the news desk aware of who the source of the 13 story was, how much credibility we'd give to it, but 14 ultimately said to them they had to make the decision 15 whether or not they thought it was legally safe, and in 16 fact on the top of every single story I ever filed from 17 Portugal, I would write, "Please legal", as I'm sure my 18 colleagues did as well. This is a reference to ensure 19 the news desk pass the story to the lawyers working for 20 the newspaper to determine whether it was legally safe 21 or not to publish. 22 Q. But did you, regardless of the steps you took to get the 23 matter covered by legal advice, did you have concerns 24 about the ability of the Express to stand these stories 25 up if it ever came to litigation? Given the nature of</p> <p style="text-align: center;">Page 20</p>

<p>1 your sources.</p> <p>2 A. In Portugal, I wouldn't be thinking about if it came to</p> <p>3 the High Court, in all honesty. I would be doing my</p> <p>4 best to verify the story as best as I could. I wouldn't</p> <p>5 be thinking about a potential libel case some time in</p> <p>6 the future. I think that's unlikely.</p> <p>7 Q. But you would be concerned, of course, with clause 1 of</p> <p>8 the PCC code and the requirement of accuracy, wouldn't</p> <p>9 you?</p> <p>10 A. Yes.</p> <p>11 Q. And you'd also be concerned, wouldn't you, in more</p> <p>12 general ethical terms, that your story should indeed be</p> <p>13 true, and if the matter had to be tested, you would be</p> <p>14 able to substantiate your stories, wouldn't you?</p> <p>15 A. I'd certainly verify the story as best as I could and</p> <p>16 try to be as accurate as I possibly could be, but, as</p> <p>17 you've heard before, you couldn't get the police to</p> <p>18 verify anything at all, therefore you'd have to rely on</p> <p>19 less credible sources because you'd have to talk to</p> <p>20 somebody to talk to somebody else.</p> <p>21 Q. Yes. This weakness in the evidence base, if I can</p> <p>22 describe it in those terms, was that a matter which you</p> <p>23 expressly communicated to the news desk, or did you</p> <p>24 cover it simply by the moniker "legal please" or words</p> <p>25 to that effect?</p> <p style="text-align: center;">Page 21</p>	<p>1 Q. Okay, but in the evenings then over a beer in Portugal</p> <p>2 with your colleagues, seeing this obsession played out</p> <p>3 on the front pages of the Express, weren't you troubled</p> <p>4 by the direction in which this was going?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. We know this was a very big story, we know you've</p> <p>7 written other stories where the same difficulties</p> <p>8 haven't arisen, I trust. Was this the only occasion in</p> <p>9 which this sort of difficulty arose, or are there</p> <p>10 others?</p> <p>11 A. I can't think of another situation similar to this.</p> <p>12 MR JAY: Unless it's thought helpful, I'm not going to go</p> <p>13 through the individual stories because it's the same --</p> <p>14 LORD JUSTICE LEVESON: The same point.</p> <p>15 MR JAY: -- point. Thank you, Mr Fagge.</p> <p>16 LORD JUSTICE LEVESON: Well, you've heard what I've said to</p> <p>17 your colleagues. If you have any different answers to</p> <p>18 the questions I've asked, I'd be interested to hear</p> <p>19 them.</p> <p>20 It can't just be a question of sales, can it?</p> <p>21 A. I think you have to ask the editor that, sir.</p> <p>22 LORD JUSTICE LEVESON: I might do. But in relation to</p> <p>23 a story like this, where you're hearing through several</p> <p>24 layers, to what extent do you feel it's right, as the</p> <p>25 journalist on the ground, to spell out perhaps in an</p> <p style="text-align: center;">Page 23</p>
<p>1 A. The working day would start about 8 o'clock in the</p> <p>2 morning, when you'd speak with the news desk, explain</p> <p>3 what the developments had been overnight, explain what</p> <p>4 stories the Portuguese papers were running, and you'd</p> <p>5 probably last speak with them about 8 o'clock in the</p> <p>6 evening. All through the day they knew exactly what was</p> <p>7 happening, you'd explain the strength of the stories,</p> <p>8 and if there were legal concerns, you'd explain them as</p> <p>9 well.</p> <p>10 Q. So were you surprised when the matter, as it were,</p> <p>11 turned litigious in February 2008 and had to be resolved</p> <p>12 by a substantial payment to the McCanns?</p> <p>13 A. No.</p> <p>14 Q. And why not?</p> <p>15 A. Because the editor at the time decided it was the only</p> <p>16 story he was interested in and put it on the front page</p> <p>17 almost regardless of how strong the story was.</p> <p>18 Q. Can I just understand that answer, please? Are you</p> <p>19 suggesting that he ran the story regardless of its truth</p> <p>20 or are you suggesting something different?</p> <p>21 A. No, not of its truth, but the Madeleine story was on the</p> <p>22 front page of the Daily Express more than any other</p> <p>23 newspaper because he decided it would sell newspapers.</p> <p>24 It became an obsession of his. I don't know quite</p> <p>25 how -- what more to say.</p> <p style="text-align: center;">Page 22</p>	<p>1 article, perhaps some other way, the -- the word I have</p> <p>2 used is the fragility of what you're reporting. Or do</p> <p>3 you think it's just sufficient to say "legal"?</p> <p>4 A. No, these would be conversations that I would have with</p> <p>5 the news editor of the day, or -- over a number of days.</p> <p>6 I explained the difficulty of establishing exactly what</p> <p>7 did happen in certain circumstances, the information</p> <p>8 I received or the new information I'd learnt about.</p> <p>9 This would be conversations with the news editor and the</p> <p>10 news desk in general. It wouldn't merit an article or</p> <p>11 even really a --</p> <p>12 LORD JUSTICE LEVESON: But it is a -- maybe it isn't.</p> <p>13 I must be wary about seeking to write stories. It is</p> <p>14 a story, isn't it, how impossible it is to get</p> <p>15 information that's reliable? Or isn't it?</p> <p>16 A. It is a story that was published in the Daily Express</p> <p>17 and I think a number of other papers about how</p> <p>18 incompetent the Portuguese police appeared, but</p> <p>19 Madeleine continued to be missing, the interest in the</p> <p>20 story remained very high, there were new developments</p> <p>21 each day, of which the newspaper and the readership were</p> <p>22 interested in.</p> <p>23 LORD JUSTICE LEVESON: And the impact on the victims, that's</p> <p>24 unfortunate but there it is?</p> <p>25 A. Yes. It's tragic.</p> <p style="text-align: center;">Page 24</p>

<p>1 LORD JUSTICE LEVESON: Is it unfair of me -- and you're 2 entitled to answer "yes" -- is it unfair of me to be 3 concerned that after all that happened, then when we got 4 to a similar high-profile case somewhat later, the press 5 broadly act in a not dissimilar way in relation to 6 Mr Jefferies? 7 A. I wasn't there. 8 LORD JUSTICE LEVESON: I know. 9 A. You may take that view. 10 LORD JUSTICE LEVESON: I think that's probably fair enough. 11 Right, Mr Fagge, thank you very much indeed. 12 A. Thank you. 13 LORD JUSTICE LEVESON: Thank you. 14 MR JAY: Sir, that concludes the evidence for today. 15 I should point out that the statements of Messrs 16 Pilditch and Flanagan were made available on Friday, not 17 yesterday. Mr Fagge's statement, which we've seen is 18 dated yesterday's date, was necessarily only made 19 available to the CPs yesterday, which was as soon as we 20 obtained it. 21 LORD JUSTICE LEVESON: Thank you very much for that 22 information. Doubtless, it will be passed to 23 Mr Sherborne. Right. 24 Housekeeping 25 MR JAY: Sir, that leaves any housekeeping matters for</p> <p style="text-align: center;">Page 25</p>	<p>1 MR JAY: Certainly. 2 LORD JUSTICE LEVESON: Yes. 3 MR JAY: In order to facilitate the remainder of module one, 4 we have suggested that the core participants provide 5 a skeleton argument, which summarises their evidence, in 6 particular the evidence bearing on corporate governance 7 and systems. Those skeleton arguments, we hope, will be 8 available in good time for the 9 January start. We will 9 provide, if necessary, further summaries and focus on 10 the oral evidence which is most likely to assist you in 11 identifying culture, practices and ethics, but a lot of 12 evidence will be taken as read and will naturally be 13 considered. But the key evidence will be called in the 14 allotted time. 15 LORD JUSTICE LEVESON: Very good. 16 MR JAY: We hope that will work well and will mean that in 17 general terms the Inquiry is on its timetable. 18 LORD JUSTICE LEVESON: It's a mistake to say that, Mr Jay. 19 MR JAY: I'm going to continue to stick my neck out and run 20 the risk of being proved wrong, but it is not, of 21 course, the overriding objective. The overriding 22 objective is a fair Inquiry under section 17 of the Act. 23 LORD JUSTICE LEVESON: Of course it is. 24 MR JAY: But we have to have regard to the timetable and 25 we'll continue to do so.</p> <p style="text-align: center;">Page 27</p>
<p>1 9 January and beyond. 2 LORD JUSTICE LEVESON: Yes. 3 MR JAY: Maybe I can move myself to a slightly more 4 comfortable place. 5 The position is that the timetable for the remainder 6 of module one has been circulated to the CPs and I hope 7 you've seen the latest version. We are running three 8 and four-day weeks as before. We are starting on 9 9 January and we're finishing on Thursday, 9 February. 10 That will conclude module one. 11 LORD JUSTICE LEVESON: Not entirely. 12 MR JAY: No. 13 LORD JUSTICE LEVESON: Because it's likely that there are 14 some witnesses who cover all three modules, who by 15 definition we ought only to call once, and they will 16 come and deal with everything. 17 MR JAY: Yes. A strategic decision has been taken precisely 18 along those lines, that some witnesses exceptionally 19 will be called twice, for example Mr Campbell, but 20 otherwise we've taken the view, well, we'll call them 21 once, in which module do they most conveniently fit? 22 And that's the way in which we have proceeded. 23 LORD JUSTICE LEVESON: Yes. We've already had one example, 24 because you asked some questions of Mr Morgan yesterday 25 which touch on module three.</p> <p style="text-align: center;">Page 26</p>	<p>1 LORD JUSTICE LEVESON: If any of the core participants are 2 concerned that there is some feature of the case which 3 we have overlooked or not provided justice to, given 4 that I am not descending into the detail that a number 5 of the examples that have been generated have suggested 6 might be valuable, because I'm taking a much more 7 over-arching view, and only taking two or three examples 8 to look at in a bit more detail, the one of which we've 9 dealt with most of today, then of course I shall listen 10 to any concerns, but fairness remains the watchword that 11 I am trying to apply to all. 12 Is there anything else? 13 MR JAY: No. 14 LORD JUSTICE LEVESON: I have something else. I'm sorry 15 Mr Sherborne isn't here to hear this. I think when he 16 opened the case on behalf of the core participants for 17 whom he appears, he said that he intended to provide 18 something in writing to deal with aspects of the case 19 which he would not mention in his opening. I'd be very 20 grateful if he'd make good that -- I don't say 21 undertaking, but assurance. 22 MR JAY: Yes, it was written submissions on the law, which 23 would be helpful. If anybody else has written 24 submissions on the law, doubtless we'll get them. 25 LORD JUSTICE LEVESON: I'm sure we'll get them. I have no</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 doubt we're going to have to analyse where the law of 2 privacy presently stands.</p> <p>3 The second thing that I'd like those who are acting 4 for core participants to consider is this: there are 5 inevitably some credibility issues that will arise. 6 I take very much on board Mr Browne's point today about 7 specific points not being put, and the concern that 8 cross-examination is inevitably being very restricted, 9 if not effectively prevented.</p> <p>10 But I would be grateful if the core participants 11 would address themselves to issues of credibility so 12 that by the end of module one, or within two weeks 13 thereafter, if they have submissions on the credibility 14 of witnesses, they can make them in writing.</p> <p>15 I make it abundantly clear that the reason that I am 16 keen to do that in relation to module one, and I'll hear 17 anybody who wants to suggest that that's not feasible or 18 appropriate, is so that I can consider the narrative and 19 those features that are contained within Count 1 20 concurrently with the rest of the Inquiry.</p> <p>21 I am very concerned not to hear the entirety of the 22 Inquiry and then be left at whatever date we finish with 23 volumes of evidence, even more volumes of transcripts, 24 and then left, as it were, to start from scratch on the 25 analysis. So I want to start the analysis, because I do</p> <p style="text-align: center;">Page 29</p>	<p>1 in January as well.</p> <p>2 LORD JUSTICE LEVESON: Yes, I understand the point.</p> <p>3 MR DAVIES: And you have also already made the point this 4 afternoon that there will be some witnesses giving 5 evidence later on matters which relate to module one. 6 So to that extent it would be incomplete.</p> <p>7 LORD JUSTICE LEVESON: Yes, but I'm sure Mr Jay could 8 identify, if you can't identify, who those witnesses 9 might be and the impact they are likely to have on the 10 evidence that I've already heard.</p> <p>11 MR DAVIES: Yes.</p> <p>12 LORD JUSTICE LEVESON: Because although it has legitimately 13 been the subject of questions, I repeat I will not be 14 seeking to analyse precisely who said what to whom or 15 when, or did what to whom.</p> <p>16 MR DAVIES: Yes.</p> <p>17 LORD JUSTICE LEVESON: Because that would not be fair in the 18 context of part 1 of this Inquiry.</p> <p>19 MR DAVIES: No, we are very alive to that, but I just wanted 20 to make the point.</p> <p>21 LORD JUSTICE LEVESON: I understand.</p> <p>22 MR DAVIES: That there will be an incompleteness there. 23 Whilst I'm on my feet, can I raise two other matters 24 shortly? One is the question of what in fact happened 25 with Milly Dowler's voicemail. I don't want to say</p> <p style="text-align: center;">Page 31</p>
<p>1 think these three modules are comparatively 2 self-contained, sooner than that.</p> <p>3 From your perspective, Mr Jay, do you see any 4 problem with that?</p> <p>5 MR JAY: No.</p> <p>6 LORD JUSTICE LEVESON: Right. I'm going to ask others. I'm 7 sorry, Mr Rhodri Davies, you always seem to get the 8 short straw for a first go and you're entitled to think 9 about it and you can think about it over the break we're 10 about to have.</p> <p>11 MR DAVIES: Yes.</p> <p>12 LORD JUSTICE LEVESON: But I'm sure you understand why 13 I want to do what I want to do.</p> <p>14 MR DAVIES: Yes. One can well see that both from the 15 Inquiry's point of view and probably ours, it's not 16 a good idea to wait until the end of June or July in 17 order to make submissions on evidence which has already 18 been given now.</p> <p>19 Two thoughts have struck me. One is that two weeks 20 from the end of the evidence on module one may be a bit 21 quick for what might be a significant job, and the other 22 is that of course, as you mentioned --</p> <p>23 LORD JUSTICE LEVESON: You have the whole of Christmas to do 24 everything in the last five weeks.</p> <p>25 MR DAVIES: Indeed there are some things happening</p> <p style="text-align: center;">Page 30</p>	<p>1 anything substantive about that, but it's simply that 2 you indicated that before the Inquiry broke for 3 Christmas --</p> <p>4 LORD JUSTICE LEVESON: Yes. That's on my list, but by all 5 means address it now.</p> <p>6 MR DAVIES: Our position on this is that we have 7 a considerable interest in the material on that, but 8 most of it is not in our hands any more, so I don't 9 think that I can suggest anything positive for the 10 moment. I think it's more in the hands of the police.</p> <p>11 LORD JUSTICE LEVESON: So yours is just a gentle nudge to me 12 to remind me what I said so that I say something to 13 require it to be done?</p> <p>14 MR DAVIES: Yes.</p> <p>15 LORD JUSTICE LEVESON: Thank you very much. It's in my 16 mind.</p> <p>17 MR DAVIES: Thank you. The other point, which I only want 18 to mention, is in relation to the Motorman data you made 19 an order orally on Friday, I think, ten days or however 20 long ago it was, which was then quite recently put into 21 writing. To our perception, there is a difference 22 between what was said on that Friday afternoon and the 23 written order.</p> <p>24 LORD JUSTICE LEVESON: Oh.</p> <p>25 MR DAVIES: I've mentioned that to junior counsel for the</p> <p style="text-align: center;">Page 32</p>

<p>1 Inquiry and I just wanted to get it on the record, 2 because it's had the result that until the written order 3 came out, we were complying with what we thought you had 4 said, which turned out not to be the same as the 5 original order. 6 LORD JUSTICE LEVESON: You'd better tell me the difference, 7 Mr Rhodri Davies. 8 MR DAVIES: It's simply this. Our understanding at the end 9 of the Friday afternoon was that we could retain the 10 data on a hard drive, or in fact counsel's hard drive 11 and solicitors' hard drive, I think until the end of the 12 Inquiry, for the practical reason that it's 13 extraordinarily difficult to access it if you wipe it 14 off and return it to a single memory stick every time. 15 The order made is that it should not be retained on 16 a hard drive except for the period it's actually being 17 used. That's the written order. 18 When we saw the written order, as soon as we saw it, 19 we complied with it. So we are currently in compliance 20 with it but it's not quite what we expected and until -- 21 LORD JUSTICE LEVESON: I remember the discussion, because 22 the concern expressed -- I think it might have been 23 Ms Palin(?) who expressed it. 24 MR DAVIES: I think it was Ms Boase, but I may be wrong. 25 LORD JUSTICE LEVESON: I think you're right -- was that it</p> <p style="text-align: center;">Page 33</p>	<p>1 have gone to the detail. 2 LORD JUSTICE LEVESON: Yes, that's absolutely right, because 3 in order to reach conclusions about the general picture, 4 one has to go sometimes a bit into the detail. 5 MR CAPLAN: Yes. Sometimes we've gone rather a lot into the 6 detail. 7 LORD JUSTICE LEVESON: All right. 8 MR CAPLAN: But clearly I think it's a question of focusing 9 on those issues that clearly are going to form part of 10 the narrative as far as you are concerned, and it may be 11 it's for us to speak to Inquiry counsel to get more 12 particulars. 13 LORD JUSTICE LEVESON: That's entirely reasonable. The more 14 that everybody can be helpful, obviously, the better. 15 But, Mr Caplan, you will understand what I need to do, 16 not merely to identify the egregious behaviour about 17 which we have heard, but also to ensure, as I think I've 18 also said several times, that it is put into context 19 among the rest of the work of the press. 20 MR CAPLAN: Yes. 21 LORD JUSTICE LEVESON: So I want to be balanced and fair, in 22 other words to comply with the very standards that I've 23 just been putting to some of the witnesses. 24 MR CAPLAN: Yes. Obviously we're all anxious that should 25 happen.</p> <p style="text-align: center;">Page 35</p>
<p>1 would be difficult for more than one person to look at 2 it at any one time. 3 MR DAVIES: Yes, exactly. 4 LORD JUSTICE LEVESON: You're quite right. 5 MR DAVIES: Particularly if one of them is in Linklaters' 6 offices and the other is in chambers at the Temple. 7 LORD JUSTICE LEVESON: Yes. Thank you. I'll -- 8 MR DAVIES: I just wanted to make sure that was on the 9 record before we broke for Christmas. 10 LORD JUSTICE LEVESON: Yes. Let me see if I can do more 11 than put it on the record. All right. Thank you. 12 MR DAVIES: That was all. 13 LORD JUSTICE LEVESON: Thank you. Let me deal with the core 14 participants who are newspapers first. Mr Caplan? 15 MR CAPLAN: Thank you, sir. I would like the opportunity to 16 discuss it, if I may, with my team. 17 As far as the issues of credibility are concerned, 18 sir, obviously there are difficulties that arise from 19 the procedure under the Act and the procedure in this 20 Inquiry. I'm not sure in fact it's an issue, I hope, 21 that will concern us as much as others. 22 One issue I think that is of possibly some concern 23 is the narrative. I know that frequently you have 24 stressed that you are looking at the general picture and 25 not the detail, but there are many occasions when we</p> <p style="text-align: center;">Page 34</p>	<p>1 LORD JUSTICE LEVESON: Good. 2 MR CAPLAN: Thank you. 3 LORD JUSTICE LEVESON: Is there anything else that you want 4 to raise? 5 MR CAPLAN: Not at the moment, thank you. 6 LORD JUSTICE LEVESON: Thank you very much indeed. 7 Mr Dingemans, here you are. 8 MR DINGEMANS: I have nothing to say, thank you, sir. 9 LORD JUSTICE LEVESON: Thank you. Right. So the 10 Metropolitan Police? Yes? 11 MS MICHAOLOS: Sir, as regards the credibility issue, 12 I don't have any submissions to make now and we'd like 13 to consider that over the Christmas adjournment. 14 LORD JUSTICE LEVESON: Right. 15 MS MICHAOLOS: As regards what we're proposing to put before 16 the Inquiry in relation to the Dowler issue, Mr Garnham, 17 I understand, has been keeping the Inquiry informed. It 18 is in hand. The Metropolitan Police will be submitting 19 a note to the Inquiry. We hope to have that for some 20 time in the beginning part of the Inquiry sitting in 21 January, but obviously -- 22 LORD JUSTICE LEVESON: I hope you have it in time for the 23 beginning part of the sitting in January, too. 24 MS MICHAOLOS: But I'm not in a position to give any 25 guarantee, which I'm sure you appreciate.</p> <p style="text-align: center;">Page 36</p>

<p>1 LORD JUSTICE LEVESON: No, I'm -- 2 MS MICHAOLOS: The importance of anything being put forward 3 being accurate. 4 LORD JUSTICE LEVESON: You don't need to persuade me about 5 that at all. Right. Do you say anything about the data 6 point that Mr Rhodri Davies has raised? 7 MS MICHAOLOS: I don't, no. I can't make submissions about 8 that. 9 LORD JUSTICE LEVESON: All right, thank you very much. 10 I have not forgotten. Is there anything that you want 11 to say on behalf of Mr Sherborne and Collyer-Bristow? 12 MR LOWLES: Not at this time. 13 LORD JUSTICE LEVESON: Thank you very much. The Guardian? 14 MS PHILLIPS: No, save that we have given to Mr Jay our note 15 on the Milly Dowler incident. 16 LORD JUSTICE LEVESON: Thank you very much. 17 The National Union of Journalists? 18 MR HARRIS: No, nothing to add, thank you, sir. 19 LORD JUSTICE LEVESON: I'm sure you're aware that there's 20 a topic about which I do need some evidence, indeed 21 there are a number of things I think I'm waiting for 22 evidence from you. 23 MR HARRIS: Yes, sir, investigations are being undertaken. 24 LORD JUSTICE LEVESON: Thank you very much. 25 Right, Mr Jay? Mr Rhodri Davies raises the issue</p> <p style="text-align: center;">Page 37</p>	<p>1 granularity -- I'm sorry -- and secondly to ensure that 2 they're ordered in a way that's helpful rather than 3 everybody doing what they feel might be helpful and then 4 finding that I have eight different approaches. 5 MR JAY: Yes. 6 LORD JUSTICE LEVESON: Thank you very much. 7 Anything else anybody wants to raise? 8 MR DAVIES: I'm sorry to stand up again. Two things. 9 I didn't know the Guardian had lodged a note with the 10 Inquiry, and I would like to know whether that's going 11 to be available to core participants. 12 LORD JUSTICE LEVESON: It will be available to core 13 participants in some form, but at the moment it is not. 14 MR DAVIES: Yes. 15 LORD JUSTICE LEVESON: I have received it and I know I've 16 received it, but I know that I have received it at this 17 stage on a basis that does not permit me to provide it 18 to others, and I don't think at this stage it's 19 appropriate to do so. 20 MR DAVIES: Very well. 21 LORD JUSTICE LEVESON: Thank you. 22 MR DAVIES: And so far as the Motorman data is concerned, I 23 have to say, I wasn't here on that Friday afternoon, but 24 Ms Boase tells me that what happened was you gave an 25 oral judgment, she then raised the practical problems --</p> <p style="text-align: center;">Page 39</p>
<p>1 about data. I could go back to the transcript, but 2 I have a clear recollection of the discussion, even if 3 I incorrectly identified the person who raised the 4 problem. 5 MR JAY: Yes. 6 LORD JUSTICE LEVESON: And that was if more than one person 7 wanted to see the data, because different people are 8 working on different aspects of it, there would have to 9 be a facility to store it. I thought that I had agreed 10 that that was a sensible ... 11 MR JAY: The issue was batted about a bit and I'm afraid 12 I can't recall what your final view was expressed 13 orally. 14 LORD JUSTICE LEVESON: No. 15 MR JAY: My recollection is that that which you put in 16 writing reflected your final position orally. 17 LORD JUSTICE LEVESON: But I think we'll resolve that in the 18 hour we have for the afternoon. I think I want to 19 resolve that quite quickly. 20 MR JAY: Yes. 21 LORD JUSTICE LEVESON: Thank you very much. 22 I'm sure that you'll be able to have a discussion 23 with the other core participants in relation to how 24 views as to credibility might be marshalled first of all 25 to ensure that they are at the right level of</p> <p style="text-align: center;">Page 38</p>	<p>1 LORD JUSTICE LEVESON: That's true, she's right. 2 MR DAVIES: -- and that you indicated that you would modify 3 it. 4 LORD JUSTICE LEVESON: I remember it. Thank you. I will 5 solve it and, if necessary, amend the order before 6 concluding this evening. 7 MR DAVIES: Thank you. 8 LORD JUSTICE LEVESON: Ms Phillips, I've accurately 9 understood, I did not mention when Mr Davies identified 10 material because of the basis upon which I received the 11 document, but I'm sure that there will come a time when, 12 whether in that form or a slightly different form, it 13 will have to be made available. 14 MS PHILLIPS: I think that's correct. I think at the moment 15 because everybody is putting in what they are putting in 16 and because nobody is seeing what everybody else is 17 putting in, then there will need to be a process devised 18 so that if people want to pick other people's things 19 apart or whatever, we all have the same opportunity. 20 LORD JUSTICE LEVESON: I understand that. Once more, 21 I shall be fair about it. 22 MS PHILLIPS: Of course, thank you. 23 LORD JUSTICE LEVESON: Thank you very much. It only then 24 leaves me to thank everybody for the very hard work 25 they've put into the Inquiry, both in its preparatory</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

1 stages, and since we started in November. I'm conscious
 2 that some of those appearing before me have looked
 3 greyer on some mornings than on other mornings. Nobody
 4 said it would be easy. And I hope that in addition to
 5 doing all the tasks that I've set for everybody, they
 6 have an enjoyable break. Thank you very much indeed.
 7 (3.12 pm)
 8 (The hearing adjourned until 10 o'clock on 9 January 2012)
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