

TRANSCRIPT OF PROCEEDINGS

Ref. U20200010

IN THE CENTRAL CRIMINAL COURT

The Old Bailey
London

Before DISTRICT JUDGE VANESSA BARAITSER

GOVERNMENT OF THE UNITED STATES OF AMERICA

-v-

JULIAN ASSANGE

**MR J LEWIS QC, MS C DOBBIN & MR J SMITH appeared on behalf of the
Prosecution**

**MR E FITZGERALD QC, MR M SUMMERS QC & MS F IVESON appeared on
behalf of the Defence**

**PROCEEDINGS
14th SEPTEMBER 2020, 10.00-15.55
REISSUE 1**

1 JUDGE BARAITSER: Yes, good morning.

2 MR FITZGERALD: Madam, I will be calling Mr Lewis.

3 JUDGE BARAITSER: Just pause. Mr Assange is not yet in the dock.

4 MR FITZGERALD: I am so sorry.

5 JUDGE BARAITSER: Are you asking for more time or not?

6 MR FITZGERALD: No, madam. I think this is probably just an admin issue because there
7 is agreement, that is to say, on Maureen Baird that the prosecution are not objecting to her
8 going in as a response to Luca Feltz's evidence, but obviously subject to their normal points
9 about admissibility at the end. Well, any submissions about weight and admissibility will
10 wait until the end of the day.

11 JUDGE BARAITSER: De bene esse situation.

12 MR FITZGERALD: De bene esse, exactly. That is where we are, madam, yes. So that was
13 the only matter and then Mr Lewis is coming, but I think my learned friend is going to raise
14 something about the conditions and whether we should all be wearing masks, as it were, in a
15 minute.

16 JUDGE BARAITSER: Mr Summers, are you going to wait for your client before you
17 address the court?

18 MR SUMMERS: No, I am happy to address you now, madam. The prospect of this hearing
19 continuing entirely remotely and the process of preparing submissions to you as to why that
20 should not occur was, I confess, a sobering one and one in which it became evident to us that
21 an entirely remote hearing would be, frankly, untenable with no contact with each other and
22 no contact with the defendant. Madam, mercifully, it has not been necessary and here we are
23 today, but it is realistically only a matter of time before somebody's son or father runs a
24 temperature and we are back where we were last week having to consider how to proceed.
25 Madam, in those circumstances, the way we envisage proceeding is for the case to proceed in
26 person without the person whose son is running a temperature but with ---

27 JUDGE BARAITSER: Just pause, your client is coming in now.

28 MR SUMMERS: Thank you.

29 JUDGE BARAITSER: You are very welcome to sit down, Mr Assange. I was just hearing
30 submissions from Mr Summers regarding the wearing of masks. He agreed to start the
31 submission in your absence, but he will continue in your presence. Mr Summers.

32 MR SUMMERS: Without that person who cannot attend in those circumstances but with
33 everybody else who can, hand on heart, say that they have obeyed social distancing and not

1 had impermissible contact with whoever that might be. In the circumstances, madam, we do
2 not invite you to order but we do invite you to permit and encourage the wearing of face
3 masks at all times in court.

4 Obviously, one cannot do it when we are addressing the court, but at all other times
5 there seems to us to be no good reason at all why that should not occur and for proper social
6 distancing to be in place and encouraged in so far as it is possible within the confines of this
7 relatively small courtroom, madam. Madam, we hope that is a sensible way forward.
8 Obviously, if anybody does not want to comply with that, then they will be the person
9 attending via CVP link in the event that somebody's child comes down with the flu and we
10 are keen, madam, to avoid what happened last week.

11 JUDGE BARAITSER: Nothing from you, Mr Lewis? No. Well, the Government has asked
12 that court and tribunal users wear a face covering in public and communal parts of court
13 buildings. In my view, this does not include the well of the court. Therefore, those that wish
14 to wear a mask in the well of the court are welcome to do so unless they are directly
15 addressing the court and I understand that masks are available for this purpose, but there is no
16 obligation to do so and I make no direction. I am not invited to do so in this regard. It is
17 certainly permitted, but it is at the discretion of those who attend to make the decisions about
18 whether or not to wear a mask.

19 MR SUMMERS: Madam, I do not want to take up your time unnecessarily, but the one
20 crunch point for this building and, frankly, the most dangerous is taking instructions from Mr
21 Assange through the glass and everybody has to get their faces very close to each other in
22 order to be heard and in order to speak confidentially. I see that Mr Assange has been
23 provided with a mask today, so that will deal with it but there have been difficulties in getting
24 him masks in the week leading up to this and I wondered whether, madam, you might say
25 something appropriate in order to ensure that he does not attend in this court without the
26 ability to mask.

27 JUDGE BARAITSER: That submission is directed at the jailers. Did you hear what was
28 said?

29 DOCK OFFICER: Yes.

30 JUDGE BARAITSER: So Mr Assange must have the ---

31 DOCK OFFICER: While I have been in charge, he has had a mask, your Honour.

32 JUDGE BARAITSER: Thank you.

33 MR SUMMERS: Yes, and we are agreed.

34 JUDGE BARAITSER: And Mr Assange must have the opportunity to wear a mask should

1 he choose to do so.

2 MR SUMMERS: Thank you, madam.

3 JUDGE BARAITSER: And, in relation to the issue which arose on Thursday or Wednesday
4 night, I am pleased to be able to confirm that the Covid-19 test which had some direct
5 relevance for a lawyer in these proceedings was negative and that this hearing can now
6 proceed in the usual way. Thank you very much. Mr Lewis.

7 MR LEWIS: Madam, with regard to the guillotine you wished to impose on cross-
8 examination.

9 JUDGE BARAITSER: Yes.

10 MR LEWIS: I had agreed with my learned friends that I will be up to four hours. I do not
11 anticipate only being two but, given that one never knows how a witness is going to answer
12 or what line of cross-examination it is necessary to go down, whether a witness will fillibust
13 in the case of the imposition of a guillotine, I must be conservative in my estimates and,
14 therefore, we have agreed four hours.

15 JUDGE BARAITSER: No observations about that one way or the other?

16 MR FITZGERALD: Well, madam, obviously, it does seem very long. We hope it will not
17 be that long. Madam, in the event, could Mr Lewis have a break at 11.30.

18 JUDGE BARAITSER: Yes.

19 MR FITZGERALD: And halfway through the afternoon.

20 JUDGE BARAITSER: Of course. Can you remind me as we get closer to that time?

21 MR FITZGERALD: Yes, madam. I hope he is available now and, madam, just so that we
22 know, his five statements are 18 October 2019 at tab 3; 17 January 2020 at tab 24; 12
23 February 2020 at tab 38; his fourth statement is 18 July 2020 at tab 70; and his fifth statement
24 is 28 August 2020 at tab 81. I would just propose to invite him to adopt the statements
25 without going through each tab number on each date.

26 JUDGE BARAITSER: I think that is very sensible, thank you. Can we make contact then
27 with Mr Lewis. Apparently, he is not showing on the lobby, therefore not preparing yet to
28 come into court. Can someone send him an email to make sure he is preparing to come in.

29 MS IVESON: Madam, I understand that Mr Lewis is waiting for the conference host to join
30 and so he believes he is signed in.

31 JUDGE BARAITSER: Thank you.

32 MR FITZGERALD: And, madam, the only other matter was the K bundle we may be
33 referring to. I think you have it with you, which has some of the press cuttings.

34 JUDGE BARAITSER: Ah.

1 MR FITZGERALD: Bundle K.

2 JUDGE BARAITSER: So I have the two core bundles. I have the prosecution bundle. I
3 have the most recent bundle that they gave me this morning dealing with exhibits.

4 MR FITZGERALD: Yes.

5 JUDGE BARAITSER: Will I need something beyond that?

6 MR FITZGERALD: Madam, yes, it is the K bundle. You will recall we referred to it when
7 Mr Feldstein was giving his evidence.

8 JUDGE BARAITSER: I wonder, if you would not mind, it is clearly marked, if you can find
9 the K bundle. Thank you.

10 MR FITZGERALD: And I think we have added two additional matters, but we can probably
11 take it quite ---

12 JUDGE BARAITSER: I wonder if Ms Iveson is trying to hand them up now.

13 MR FITZGERALD: Yes, OK. Yes, there is the revised index.

14 JUDGE BARAITSER: All right. If you can just leave it on the desk. I am sure they will
15 find their way to me. Now what progress with Mr Eric Lewis? Thank you very much. Ms
16 Iveson, two separate links have been sent to Mr Eric Lewis and he does not appear to have
17 responded to them.

18 MS IVESON: Perhaps we ought to call him, madam,

19 JUDGE BARAITSER: Ms Iveson, I have also noticed that Mr Timm was drinking coffee
20 whilst giving evidence. I wonder if you could just notify those witnesses who attend just to
21 be clear that it is a court that is sitting and obviously clear liquids they are welcome to use but
22 coffee - inappropriate.

23 MS IVESON: Certainly.

24 JUDGE BARAITSER: Thank you. Simon, any response? Ms Iveson, any news from
25 Mr Lewis?

26 MS IVESON: We cannot get through to him on the phone, but I am also emailing him.

27 JUDGE BARAITSER: Thank you.

28 MS IVESON: I am just trying to access the new link, madam.

29 MR LEWIS: Morning.

30 JUDGE BARAITSER: Good morning, Mr Lewis. Can I just confirm that you can see the
31 court and hear the court?

32 MR LEWIS: I'm terribly sorry that I was late. I was connecting to the link that I had been
33 sent by (inaudible).

1 JUDGE BARAITSER: But for the time being you can see the court and you can hear it. Is
2 that correct?

3 MR LEWIS: Yes, I can.

4 JUDGE BARAITSER: Thank you very much. In that case I am going to hand you directly
5 over to Mr Fitzgerald.

6 MR FITZGERALD: Yes. Just one thing first. Can you hear me, Mr Lewis?

7 MR LEWIS: Yes, I can.

8 ERIC LEWIS, Affirmed

9 Examined-in-chief by MR FITZGERALD

10 JUDGE BARAITSER: Thank you, Mr Fitzgerald.

11 MR FITZGERALD: Yes. Mr Lewis, is your name Eric Lewis? Is that right?

12 A. That is correct.

13 Q. And your qualifications are that you hold a JD from Yale University in 1983 and a
14 Masters in Criminology from Cambridge University before that, and is it right that you have
15 been an attorney in private practice for some 35 years.

16 A. Yes, that is correct.

17 Q. And you have extensive experience representing in international cases, including
18 representations of detainees in Guantanamo Bay and of investigative journalists, such as
19 Seymour Hersh. Is that right?

20 A. I do have that list, yes.

21 Q. And you are an elected member of the Council of Foreign Relations and the American
22 Law Institute. Is that right?

23 A. That is correct.

24 Q. And the US chairman of Reprieve.

25 A. Yes, I am,

26 Q. And also you are an Adjunct Professor of law at Georgetown University?

27 A. I have been a master at (inaudible).

28 Q. Right. Now, you have made five statements for this court. The first dated 18 October
29 2019 and the last and fifth 24 August 2020, which the court has. Do you stand by those
30 statements?

31 A. I do.

32 Q. Now, I want you first to deal with the question of the history of this prosecution,
33 which you deal with in your third statement at tab 38, madam. We know that the conduct that

1 was the subject of the original indictment and the superseding indictment took place in 2010
2 and 2011. Is that right?

3 A. That is correct.

4 Q. And that Manning was arrested in 2010 and convicted in 2013. Is that right?

5 A. Yes, that is correct.

6 Q. Is it significant in your view that Mr Assange was not indicted until 2018?

7 A. It is significant in my opinion.

8 Q. Now, I want you to first of all deal with the question of the inaction, the non-
9 prosecution under the Obama administration and you deal with that at paragraphs 14 to 15 of
10 your third statement, if you can just locate that. Do you have this?

11 A. Yes, I do.

12 Q. Yes. And we know that he was not prosecuted under the Obama administration
13 between 2010 and 2017. Can you just deal very briefly with your explanation of why that
14 was.

15 A. I begin by stating that I was not a member of the Justice Department and so I do not
16 have inside information and I am speaking as an observer and experienced lawyer who
17 watches the signals that the Justice Department gives and tries to put it into the context of
18 existing law. No publisher of information has ever been successfully prosecuted for
19 publishing national security information ever. So we begin with that background and then we
20 look at some news articles which, in my view, have a great deal of credibility and
21 corroboration that makes clearer that the Justice Department's view in or around 2013 and
22 further was that there was an impediment to prosecution that was going to be overwhelming
23 and that impediment would face what was referred to in the Justice Department as The New
24 York Times problem.

25 Q. Right. So just tell us, I think you have referred in your second statement to The
26 Washington Post article dated 25 November 2013, which is at bundle K, tab 5. Does that
27 assist on what was going on in the department of justice in 2013 and any decisions that were
28 being taken

29 A. Indeed it does. That was an article written by Sari Horwitz, who has covered the
30 Justice Department for quite a while. She has won four Pulitzer Prizes, including a Pulitzer
31 Prize for being part of the team that covered Russian interference in the 2016 campaign. So
32 she was very well regarded and knowledgeable and she clearly has sources that are highly
33 important, both named and unnamed, where they say on record that they have all but decided
34 not to prosecute Mr Assange because of the distinction between the person who has access to

1 the government computers and leaks it, like Chelsea Manning, and the publisher. That is The
2 New York Times problem in that there has never been an action against a publisher and it
3 relates to the Pentagon Papers case where Daniel Ellsberg had sent The New York Times and
4 The Washington Post the Pentagon Papers and the Pentagon Papers were highly sensitive, the
5 government (inaudible) national security secrets and revelation of (inaudible) evidence, and
6 the Supreme Court declined to prevent their publication and defined a series of standards in
7 balancing national security interests and (inaudible) protection.

8 Q. Right. Let us just ---

9 A. What we see – yes, go on.

10 Q. Yes. Just if I can just come in there. You have referred to the fact that it was a
11 decision in the sense that it was all but concluded that it would not bring a case and that is in
12 2013. Do you regard the press report there that they had all but concluded that as reliable?

13 A. I do regard it as reliable for a different number of reasons.

14 Q. Yes. And can you just give those reasons then very briefly?

15 A. First, because there is a named Justice Department exposed to Matthew Miller.
16 Matthew Miller is extremely highly regarded, who goes on the record and he said that you are
17 not going to profit from journalists from publishing classified information, which the
18 department (inaudible), and there was no way to prosecute Assange. Mr Miller had left the
19 department but he was in a senior position. Senior officials were often (inaudible) a
20 statement, who worked very close to the Attorney General Holder, Attorney General Holder
21 (inaudible), and I would very much doubt he would make such a statement like that without
22 running it by Attorney General Holder and Attorney General Holder's mark is on other
23 aspects of this order of senior ---

24 Q. I am sorry, if you are challenged on that we can come back to it, but moving on from
25 there, we know that he was then prosecuted under the Trump administration, and you deal
26 with that in your third statement from paragraphs 21 onwards, and you set out what you see
27 as the key chronology leading to his prosecution from paragraph 21. Can I ask you to
28 summarise it in this way: do you first refer to the fact of Trump setting out his intention “we
29 are going to find the leakers” and that he was going to, as it were, go for the leakers, a
30 statement he made on February 16, 2017, is that right?

31 A. Yes. Yes, he did. Mr Trump had said in 2010 that he thought Mr Assange should get
32 the death penalty. Then Candidate Trump said a lot of very nice things about WikiLeaks, he
33 mentioned (inaudible). Then he came into power. There were a huge number of leaks in his
34 campaign and there was a very significant focus on Mr Assange and WikiLeaks at the time,

1 very shortly after he came into power.

2 Q. I want you to move on from President Trump himself to Mr Pompeo. Did he also
3 make statements of significance in April 2017 in the run-up to the prosecution being
4 commenced?

5 A. Mr Pompeo made statements that were quite significant. At that time he was the head
6 of the CIA, and Mr Pompeo was quite a distinguished lawyer as well, and Mr Pompeo had
7 said some things that were quite remarkable with respect to an ongoing potential issue that
8 they were considering. He said “It’s time to call out WikiLeaks for what it really is: a
9 nonstate hostile intelligence service often abetted by state actors like Russia.” He called Mr
10 Assange “a darling of terrorists”. He said that, “We can no longer allow Assange and his
11 colleagues the latitude to use free speech values against us. To give them the space to crush
12 us with misappropriated secrets is a perversion of what our great Constitution stands for. It
13 ends now.” That was reporting (inaudible).

14 Q. Did he say anything about whether the First Amendment applied to foreigners, such
15 as Mr Assange?

16 A. He said it did not.

17 Q. You refer at paragraph 25 to what Mr Sessions then said. What was the significance
18 of what Mr Sessions said about Mr Assange?

19 A. Well, about a week after Mr Pompeo made his statement, Mr Sessions, who was the
20 attorney general, made clear that he thought there was a priority for the Justice Department to
21 arrest Mr Assange and that he, according to news reports, pressured prosecutors in the
22 Eastern District of Virginia to look again at the case that he had been pressured by the
23 President and personally I think the attorney general was scared stiff. He said with respect to
24 leaks, “I want the attorney general to be much tougher” and that would make it difficult for a
25 leak. It was a very curious statement in that Mr Sessions said that Mr Assange should be
26 arrested in April 2013, a year before there was an indictment. We had an arrest for a defence
27 to be filled in at a later time. I think that was curious.

28 Q. We know that the provisional arrest warrant was in December 2017, and then the first
29 indictment comes in March 2018. Do you reach any conclusion as to the motivation behind
30 the first indictment?

31 A. Yes. It is my view that the motivation behind the first indictment and the timing was
32 to make sure that there was then a retention period. But, in my view, it was the attorney
33 general directing top down from his office to the Eastern District of Virginia to be much
34 tougher on leakers, including Mr Assange, who he had said almost a year earlier should be

1 arrested, and then the original devised, and that period was devised, and Mr Assange was
2 arrested.

3 Q. I want to come on to a year later when the superseding indictment comes in. The first
4 indictment has one count, the second one has 18 counts, including 17 of espionage. Who do
5 you see as behind the bringing of the superseding indictment in May 2019? You deal with
6 that at paragraph 13.

7 A. I am happy to do that. We know that the original indictment requested an urgent
8 decision of Mr Sessions and Mark Crossen. I think it is a virtual certainty that the second
9 indictment in 2019 would make (inaudible) for about four months at the time of the second
10 indictment.

11 Q. Looking at that second indictment, the first of the superseding indictments, what
12 would comment on the fact there were now 17 separate charges of espionage?

13 A. The second indictment was going to a whole new place. The first indictment was a
14 conspiracy with Chelsea Manning who obtained access to certain computer information, or at
15 least to be able to gain access to a computer which he was otherwise able to obtain access,
16 but to be able to do so through the mechanism of a different name, as I read that indictment.
17 The second superseding indictment makes clear that, unlike the first indictment, which did
18 not deal with the New York Times problem, the second indictment makes clear that the
19 disclosure of information was not a First Amendment issue for the Justice Department and
20 the New York Times problem has been blown out of the water and (inaudible) more and
21 more independent. It also showed that the Justice Department was very serious, was very
22 aggressive in acting upon the statements of other officials and ultimately they were treating
23 this as one of the largest espionage related cases in US history. There was a whole different
24 approach to the First Amendment, and also to the severity and prominence of the charge
25 against Mr Assange, highlighting a very severe punishment.

26 Q. What is your comment -- obviously there is a prosecutor or a discretion -- as to the
27 adding of 17 separate charges of espionage?

28 A. My view is that adding of 17 separate charges of espionage, with the jeopardy that
29 comes with it of the First Amendment implications is that it is a prosecution which reflects
30 the new administration, and Mr Barr knew that he acts at the behest of the President
31 exercising all (inaudible). Mr Barr is simply his hand and that, in my view, is an abuse of fair
32 law enforcement power.

33 Q. An abuse of the criminal law enforcement power, is that what you are saying? Did I
34 hear you right?

1 A. Yes, that is my view. We have never had a prosecution of a publisher with an 18-
2 count indictment in 175 years based upon facts. All indicators are clear that they have been
3 the same facts that have been looked at for years and years. In my view it was a fundamental
4 change to implement the President's agenda with respect to leaks, with respect to national
5 security, and with respect to enemies of the people.

6 Q. In your fourth statement you comment in the first part on the history, and you also
7 comment in part two on the fact that Mr Kromberg, when saying that "this is just based on
8 press reports", offers no legal basis for the reversal of the previous decisions; is that your
9 view?

10 A. It is my view. I rely on (inaudible) and looking at what else is out there, what is
11 happening in the Justice Department. Mr Kromberg knows what happened in 2013. He
12 knows that there was no action entered in 2017, and presumably knows what those
13 deliberations were. He knows that Mr Sessions had ordered the (inaudible). We know that
14 two senior national security prosecutors had disagreed with it, but he simply says he relied on
15 the reports and he does not explain why the same evidence that had been around for five or
16 six years, suddenly there was a prosecutor decision into the superseding indictment.

17 Q. There was in April 2019 a statement by Sarah Sanders, as it were, claiming ownership
18 of this decision that the Obama administration had done nothing about Julian Assange, but
19 the administration had done something. Do you regard that as significant?

20 A. Yes. I do not want to be adding to the political detail because that is not important.
21 The Obama administration did nothing, the Trump administration reversed it, it was a very
22 common problem. Sarah Sanders published a book and the press secretary said "Obama did
23 nothing, we are the only ones who take this process seriously". Ironically, that was at the
24 same time that the President said he was looking very seriously into (inaudible), so there was
25 a lot of activity right here in this moment late on in early September 2020.

26 Q. Mr Lewis, I am now going to have to take you quite swiftly through some of your
27 other conclusions. In your first statement at paragraph 48, you deal with the question of the
28 sentence if Mr Assange is extradited and you say that, "If extradited to the United States and
29 convicted, it is my view that Mr Assange, who I am informed is 48 years of age, is likely to
30 be sentenced to imprisonment that will constitute effectively a life sentence. I mean, it will
31 go on for the rest of his life." Is that right?

32 A. That is my view, yes.

33 Q. And if we look at the – you then deal with it further in your fourth statement at
34 paragraphs 17 to 19, the question of sentence. What is your view as to the length of sentence

1 that he will receive? I mean, is it measured in many decades or is it, as Mr Kromberg
2 suggests, likely to be just between four and six years. What is your view?

3 A. I think we are not riding on (inaudible) year. We are riding on a slate with a lot of
4 data. (Inaudible) from one count to 18 counts is a significant (inaudible) for potential
5 jeopardy for Mr Assange. That superseding indictment, all of the disclosure could have been
6 pleaded in one count; they were not. The judge has a discretion to sentence consecutively or
7 concurrently, but beyond that, there are sentencing guidelines. Sentencing guidelines are no
8 longer mandatory, but they are authoritative and a judge must explain (inaudible).

9 Even under the guidelines, under the best case scenario, we are looking at a sentence
10 somewhere between around 20 years if everything goes brilliantly to a full 175 years which
11 the government could easily ask for under the (inaudible), so I think it is disingenuous to put
12 in those sentences for a single disclosure at one point given the way the government has
13 charged this case, given that Chelsea Manning was sentenced to 35 years and given the
14 second superseding indictment Chelsea Manning seems to fade into the background and Mr
15 Assange is brought to the foreground. The government asked for 60 years for Chelsea
16 Manning, but only got 35 from the judge. Now, with a military court there are some
17 differences.

18 Given that the government (inaudible) severe espionage (inaudible) and there are –
19 almost all of the most severe espionage cases have resulted in sentences, most of them have
20 been for life or multiple counts of life and even the ones at the lower end are in the 20 plus,
21 30 plus category, so I think the government could easily have said, “We will only ask for one
22 count. We will put a maximum.” They could have charged him very differently, but as
23 someone who has experienced looking at indictments and advising clients what the exposure
24 is here, best case/worst case, this indictment, and particularly the second superseding
25 indictments, all point to a very different approach to sentencing on the part of the
26 government. Obviously, the judge had a discretion, but there are all signs of (inaudible)
27 sentence (inaudible).

28 Q. Can I just then take you through some final matters? If he is extradited and is
29 detained in the US, is it your view, set out in the first statement at paragraphs 12 to 17, that he
30 will be detained in the Alexandria prison in Virginia

31 A. Certainly I think that is Mr Kromberg’s view as well.

32 Q. That there is a real risk that he will be put in under the regime of administrative
33 segregation, is that right?

1 A. Mr Kromberg says it is a risk. I think it is a certainty. This is a national security case
2 and national security defendants are almost always put into those - incarcerated under those
3 limitations. I would be very surprised, particularly in this case, if that did not happen.

4 Q. And, in addition, is it likely that the special administrative measures, SAMs, would be
5 applied to him?

6 A. Again, I think there's a high likelihood. Section 5.182 of the Code of Federal
7 Regulations specifically provides segregation provision for national security cases and I am
8 also referring to the government treating Mr Assange as having access to large amounts of
9 secret information and concern about disclosure and I would be (inaudible) if they did not use
10 SAMs given how they (inaudible).

11 Q. I am going to ask you just briefly about the conditions, but, first of all, if he is
12 sentenced, convicted and sentenced, you have dealt with the risk that he would be detained
13 under SAMs post-conviction. Is that risk a very real one?

14 A. Again, for the same reason, that the government takes a very harsh view of a threat to
15 national security defendants and I think it is quite likely he will have SAMs pre and post-
16 conviction.

17 Q. And that he would be detained, in fact, in ADX Florence, Colorado. Is that a very
18 real risk?

19 A. SAMs prisoners are generally incarcerated in ADX Colorado unless they are very
20 severely ill, in which case they might be in a medical centre, but in the normal run they are in
21 ADX Colorado and there are at least four Espionage Act national security prisoners that are
22 there now and they tend to be in a place called H block, which is international.

23 Q. I am so sorry, Mr Lewis, it is just because of pressure of time.

24 A. I apologise.

25 Q. If he is detained, either pretrial or post-trial under SAMs, will he be allowed to
26 associate with other prisoners?

27 A. Basically not for the same reason. They are worried about any disclosures and there
28 are (inaudible), they can talk through the ventilation system or through the toilet and basically
29 it is quite likely that he will be in isolation at least for a long time.

30 Q. And, if detained in those conditions, is it likely that he will be detained for some 22 to
31 23 hours in his cell and that when he is out of his cell, he will not be allowed to associate with
32 other prisoners?

33 A. That is right. He will come out for a shower or recreation or generally (inaudible) for
34 food. When he comes out for recreation, it is often at night when the other prisoners are

1 sleeping and you are shackled and led to where you are going through empty corridors. That
2 is the general, general proposition I have read about, but also that I have observed in
3 (inaudible).

4 Q. Just one final point. In your fifth statement, you deal with the International Criminal
5 Court and, if I can take you to that, at paragraph 13, you deal with the opening of a criminal
6 investigation in November 2017 by the International Criminal Court prosecutor into US war
7 crimes in Afghanistan. Is that right?

8 A. Yes.

9 Q. And at paragraph 16, you show how the WikiLeaks documents would be essential to
10 such a prosecution, is that correct?

11 A. Yes.

12 Q. And then in the succeeding particulars, from paragraph 17 onwards, you set out the
13 denunciations of the International Criminal Court and the threats to it that had been made by
14 President Trump and members of his administration including John Bolton and Mike
15 Pompeo, is that right?

16 A. Yes.

17 Q. And then finally, you refer to the fact that the visa of the prosecutor was cancelled so
18 that he could not investigate in America, that is at paragraph 20, is that correct?

19 A. Yes, correct.

20 Q. And then you finally refer at paragraph 28 to the executive order that was issued
21 providing for the blocking of assets of any non-nationals who even assist the International
22 Criminal Court in their investigations. Is that correct?

23 A. That is correct.

24 Q. And so, that could apply to obviously human rights activists but it could apply equally
25 to Mr Assange, is that right, if he were to assist the agency.

26 A. Yes. Yes, there are, for disclosure, the most important disclosures in my view have
27 been in relation to Afghanistan.

28 Q. Thank you.

29 A. And Iraq.

30 Q. Madam, I think I am just within the 30 minutes. I have not time to deal with the
31 second superseding indictment, but he did mention it as an aggravating factor in the sentence.

32 JUDGE BARAITSER: He did and it may be that you can re-examine on it if ---

33 MR FITZGERALD: If my learned friend challenges.

34 JUDGE BARAITSER: If it is challenged, exactly.

1 MR FITZGERALD: Mr Lewis, thank you very much. If you just wait there for my learned
2 friend's questions.

3 JUDGE BARAITSER: Just so that you know, Mr Lewis, at about 11.30, you certainly can
4 have an opportunity to have a break should you wish to have one.

5 WITNESS: I am happy to (inaudible).

6 JUDGE BARAITSER: Thank you.

7 WITNESS: (Inaudible).

8 MR FITZGERALD: Madam, it has been pointed out to me that it may be that if Mr Lewis,
9 Mr Eric Lewis, is a bit closer to the microphone, we – we are hearing it slightly distorted, Mr
10 Lewis. I do not know whether you can just try to speak a little bit into the microphone.

11 WITNESS: Is that a bit better, Mr Fitzgerald?

12 MR FITZGERALD: Yes, that is considerably better. I am sorry I did not correct that earlier.
13 Thank you very much, yes.

14 Cross-examined by Mr Lewis

15 MR LEWIS: Mr Lewis, we are namesakes. I am going to ask you a few questions on behalf
16 of the government and first, Mr Lewis, are you retained as a lawyer by Mr Assange in any
17 way?

18 A. No.

19 Q. So, there is no attorney client privilege that arises in any of the questions which I ask
20 you.

21 A. I'm retained as an expert only.

22 Q. And are you being paid for providing these statements?

23 A. I am being paid at, essentially at a rate equivalent to the legal aid rate.

24 Q. Well, just tell me, how much have you charged so far?

25 A. I do not have that information to hand.

26 Q. And are you being paid for giving evidence today, your appearance in court?

27 A. I have not discussed that, but I would assume – I think I have been paid at £100 an
28 hour, I just do not know how many hours I have done, which is ...

29 Q. So, £100 an hour but you have no idea how long you have spent.

30 JUDGE BARAITSER: Alright, just pause, Mr Lewis. I think we might have a problem with
31 the connection.

32 WITNESS: I can certainly find that out. Right. Certainly, ma'am.

33 MR LEWIS: Mr Lewis, you are familiar with Criminal Procedure Rule 19 about experts, is
34 that right?

1 A. Yes I am.

2 Q. And what does it say?

3 A. I do not have it in front of me, but I think the basic idea is that my duty is to the court
4 and to provide an opinion which reflects my own independent opinion of the issues that I
5 have been asked on which to opine.

6 JUDGE BARAITSER: Just pause a moment. Simon, you have turned the volume down, can
7 you turn it back up again, please. Well, it just needs to be loud enough so I can hear it.

8 Sorry, Mr Lewis. Yes.

9 MR LEWIS: But it goes a bit further than that, does it not ---

10 A. Thank you.

11 Q. --- Mr Lewis. It requires an unbiased and objective opinion, would you agree with
12 that?

13 A. Yes, I would.

14 Q. And, in fact, where there is a range of opinions from the other side, you are meant to
15 set out that range of opinions and give reasons why you disagree with that range?

16 A. Well, I do not know that I am required to set out Mr Kromberg's half dozen affidavits.
17 I think if there are issues on which I wish to comment, I comment on my view of them. I
18 know that I - otherwise my reports would be hundreds and hundreds more pages ---

19 Q. Mr Lewis, I am not going to spend much time on this. I am not going to spend much
20 time because we have got a lot to deal with. But you were aware of Rule 19.4(f) in the
21 Criminal Procedure Rules which says that you must do that?

22 A. Set out what the other - what Mr Kromberg has said or?

23 Q. No, no, I ---

24 A. I am trying to help with ---

25 Q. Mr Lewis, I need to get on. I need to get on, so I am not going to - I am going to ask
26 you some other things. Now ---

27 A. I certainly tried to engage, engage with all the (inaudible) expressed views, where if I
28 have views that could be useful.

29 Q. Now you have given public statements in support of Mr Assange and it is - and
30 against his extradition, to the media, have you not?

31 A. I believe that before I became involved in this case I wrote an op-ed for The
32 Independent with respect to Mr Assange.

33 Q. You also gave a ---

34 A. (inaudible).

1 Q. You also gave on 14 June a radio interview to RN Breakfast, Australian Broadcasting,
2 did you not?

3 A. I believe I spoke to them briefly on 14 June, of what year, did I, of '19?

4 Q. Yes. Now those ---

5 A. Yes, well, before I became - before I became an expert, I expressed my own views of
6 a political matter and of the policy matter with respect to what I thought of the Assange case.

7 Q. Now your views were that he should not have been prosecuted and that the UK should
8 refuse his extradition, were they not?

9 A. Those were my views and they are still my views, actually. If you want to discuss
10 them, I would be happy to explain why.

11 Q. Well, if - did you not think that created a conflict of interest when you were asked to
12 become an unbiased and objective expert?

13 A. I thought that I would be able to analyse the law and fact and put whatever personal
14 views aside and reach a view on the law and fact. I think it is done by - it is done all the time
15 in cases.

16 Q. Why did you not put those statements in your report as a disclosure of interest?

17 A. Mr Lewis, I am not an English lawyer. Those were matters of public record and
18 certainly if they should not have been in the bundle they should have been in the bundle and I
19 would - if I have not met the technical requirements, it is - certainly, I am ignorant of how
20 your process works in terms of your bundling, but I certainly had no desire to hide what
21 anyone could find out with a Google request in five seconds.

22 Q. Well, I do not think they were ever served on us. It would have been much handier if
23 you would have put them in your report rather than us have to ferret them out, would it not?

24 A. Well, again, I was asked to do a task and I have done the task.

25 Q. Right. Now let us look at your areas of expertise. You are a practising lawyer, so we
26 agree you can opine on American law. However, you also give expert opinion on - and I will
27 go through them in due course, but the first one is prison conditions, is that right?

28 A. I certainly address prison conditions in the United States as they pertain to this case.

29 Q. Are you an expert on prison conditions?

30 A. I am an expert to the extent that I spend more time than I care to in prisons, visiting
31 my clients, speaking to clients, observing where I can and I also, as you may know, I do hold
32 a degree in criminology and I - from the University of Cambridge, and I try to remain current
33 on issues of penology and I had taught - I taught criminal law for many years which also
34 required some expertise on prison conditions and sentencing, including (inaudible).

1 Q. Do you have any qualifications concerning the evaluation of prison conditions?

2 A. I think I, I think I ---

3 Q. I think the answer is no.

4 A. (Inaudible).

5 Q. Let me help you, Mr Lewis.

6 A. Well, I think, if you would let me conclude, I have taught criminal law which
7 involved prison conditions; I have knowledge of prison conditions; I have represented clients
8 and I have done a great deal of reading in prison conditions. But I am not by dint of
9 qualifications, I am not sure, I have never been, for example, a prison warden like Warden
10 Baird or Warden Hood. So, in that sense I can only ---

11 Q. Let us make it a ---

12 A. --- opine on - no.

13 MR LEWIS: Mr Lewis, again, you are giving very long answers and what we need to do is
14 concentrate on the questions I ask and please try not to make a speech. So we will get along a
15 lot more quickly if you concentrate on the questions. So I am going to ask the questions,
16 hopefully, succinctly.

17 MR FITZGERALD: Madam, I do object. He has given all the reasons why he has a degree
18 in criminology, why he has expertise in prison from experience and my learned friend is
19 saying, "You cannot explain why you know about prison conditions".

20 JUDGE BARAITSER: Mr Fitzgerald, I will make sure the witness has an opportunity to
21 answer the questions put to him. It is a matter for Mr Lewis about how he phrases that to
22 limit his - or the witness.

23 MR LEWIS: Mr Lewis, have you written any articles on prison conditions that have been
24 peer reviewed?

25 A. No.

26 Q. How many times have you visited the ADX in Florence, Colorado?

27 A. I have never visited the ADX in Colorado, although I have consulted with a high
28 profile prisoner there with respect to certain issues some years ago.

29 Q. Now we agree it is likely that Mr Assange is going to be held in Alexandria City Jail.
30 How many people have you represented who were held there on remand?

31 A. One.

32 Q. Who was that?

33 A. That was Ahmed Abu Khattala.

34 Q. And when was that?

1 A. I would have to give you an approximation. I would - he was held there for almost 20
2 years and I think it was probably in the range of 2014 or 15 to 2018 or so.

3 Q. Have you visited there since inside the prison?

4 A. I have not.

5 Q. So would it be fair to say, Mr Lewis, you do not really have an expertise in prison
6 visits but you have some factual evidence of what it was like for one client in Alexandria City
7 Jail?

8 A. Well, what I could say is that, since I spent a great deal of time in Alexandria City
9 Jail, I had the opportunity to observe the conditions at the jail more widely than simply seeing
10 my client.

11 Q. Now your client, Mr Abu Khattala, was acquitted of most of the charges against him, I
12 think that was 14 of the 18 charges, including four murder charges, that is right, is it not?

13 A. Yes, he was. I think that is in my statement, Mr Lewis.

14 Q. I do not think it is, actually, but we will just confirm that. And, just in passing, as the
15 judge has some other ECHR issues to decide other than the prison conditions, is it right, as I
16 have just indicated, that Abu Khattala, tried for very serious terrorism offences, was acquitted
17 of the 14 of 18 charges including the four murder charges by jurors from the same pool that
18 Mr Assange's jury would be drawn from if he were to be extradited?

19 A. No, that is incorrect.

20 Q. What is incorrect?

21 A. He was acquitted in the United States District Court in the District of Columbia not
22 the United States District Court the Eastern District of Virginia. They have very different
23 jury pools.

24 Q. Right. In that case with Abu Khattala, is it right that the prosecutors withdrew the
25 capital offences?

26 A. The prosecutors withdrew the capital offences after a presentation that was made by a
27 number of lawyers, including myself, as to why they should not (inaudible) charge, prove
28 that.

29 Q. And I think you said it was the correct but also a courageous decision by the
30 prosecutors?

31 A. In that case, yes.

32 Q. Now the sentence for Mr Abu Khattala, what was the maximum sentence he could
33 have got for the four offences of which he was convicted?

34 A. The Government had argued for a life sentence. I do not believe that was a

1 permissible sentence, but that is what the Government asked for even after the withdrawal of
2 the homicide charges. He was convicted on four counts of material assistance for terrorism
3 and he was sentenced to 22 years, a sentence which was harshly criticised.

4 Q. Would you describe his trial a complete denial of justice?

5 A. I would not. It was a very difficult trial for a lot of reasons but I would not call that a
6 complete denial of justice.

7 Q. Well, just sticking with your client, Mr Abu Khattala, for a moment ---

8 A. Yes.

9 Q. --- which is your only experience, personal experience of Alexandria City Jail, was he
10 subject to special administrative measures?

11 A. Yes.

12 Q. Did that prevent you spending many hours with him?

13 A. It created difficulties in spending hours with him. That was part of the reason why he
14 was held in remand over three years because he could not settle there because of FBI
15 attendance difficulties. There were very serious issues with classified information, so I did
16 spend - I and other lawyers on the team spent time with him, but it was - but it was neither
17 easy nor rapid.

18 Q. So I will just try that question again. Did the fact he was subject to SAMs prevent
19 you spending many hours with him?

20 A. It did not prevent me from spending many hours with him on the conditions that I
21 have mentioned.

22 Q. Did it prevent him going to trial?

23 A. No.

24 Q. Did it prevent his acquittal on all the homicide charges he faced?

25 A. Did the SAMs prevent his acquittal?

26 Q. Well ---

27 A. Is that ---

28 Q. Your ---

29 A. I am not sure what your question is.

30 Q. Did the fact that he was subject to SAMs have any impact on his acquittal on all the
31 domestic homicide charges he faced?

32 A. No, it did not.

33 Q. Were your meetings with him monitored?

34 A. Yes.

1 Q. Are you saying that your legal visits with him were monitored by the prosecution?

2 A. What I am saying is that all of our legal visits were recorded. We were told that there
3 was not (inaudible) but we were not certain of that. We certainly were careful. We were told
4 that the team that reviewed the visits were a different team from the prosecution team, but I
5 have seen too many cases where those assurances have not proved out.

6 Q. Well, I may come back to that after the short adjournment, but I will leave that at the
7 moment. Now, you also mentioned in your first statement a number of high profile persons
8 who had been held in the ADC. I just want to ask you about a couple of them, for instance,
9 Zacarias - I am going to pronounce it ---

10 MR FITZGERALD: Moussaoui.

11 MR LEWIS: Moussaoui, of course. And he was in fact convicted of being one of the
12 masterminds of the September 11 attacks. Prosecutors sought the dea ---

13 A. I do not think he was considered a mastermind, but he certainly was convicted of
14 being involved in planning the attacks.

15 Q. And which jury district was he tried in?

16 A. He was tried in – well, I believe he pleaded guilty. I could be wrong on that, but that
17 is – I am not familiar with the detail but I am reasonably confident that he pleaded guilty.

18 Q. But although the prosecutors sought the death penalty, the jurors rejected it. That is
19 right, is it not?

20 A. That is correct.

21 Q. And you also mentioned Maria Butina.

22 A. I believe he is serving life without parole.

23 Q. You mentioned ---

24 A. At ADX.

25 Q. You mentioned in your first statement Maria Butina. She was charged as acting as an
26 agent of the Russian Federation.

27 A. Yes.

28 Q. What sentence was she facing as a statutory maximum?

29 A. I do not know.

30 Q. Would you accept it from me? It was 20 years. It was two counts.

31 A I have no reason to doubt that. The Butina case, if we are going on to talk about it,
32 was a very unusual case. She was having a relationship with a government official and it had
33 to do with national – her (inaudible) from the national (inaudible) association from Russia
34 and she was believed to be coming from Russia to (inaudible) and fund NRA programmes

1 which were then used to contribute to (inaudible) supporting candidates. So we have an
2 unusual dimension.

3 Q. So, notwithstanding the maximum sentence, she in fact got 18 months. Is that right?

4 A. I thought she was – I would never assert she was – she did a plea, she was sentenced
5 to time served and she went back to Russia.

6 Q. Now, question 2 in your first statement, you were presumably asked about that and
7 you know you were asked about that because it goes to article 3 of the European Convention
8 on Human Rights.

9 A. I believe under question 2?

10 Q. I am sorry. Question 2, it begins at paragraph 12, just so you understand what it is.
11 Your question one: “Where is Mr Assange likely to be held pre-trial?” We have agreed on
12 that. It is the Alexandria Detention Centre.

13 A. Yes.

14 Q. That goes from paragraphs 8 to 11. Then we have question 2: “Under what regime
15 would Mr Assange be held on remand?” And then you have a number of questions which go
16 up to paragraph 12 to 23. You see that?

17 A. I do, indeed, yes. Which paragraph do you want to direct me to, Mr Lewis?

18 Q. First of all I just want to understand. Now, presumably you were asked about that and
19 you know you were asked about that because there is a submission that Mr Assange’s
20 extradition would offend article 3 of the European Convention on Human Rights. Are you
21 aware of that?

22 A. I do not see it in that question. Are we talking about the Ahmed point?

23 Q. We will. We will talk about the Ahmed point

24 JUDGE BARAITSER: Just pause a moment. Mr Fitzgerald ---

25 MR LEWIS: I mean the whole point of your evidence ---

26 JUDGE BARAITSER: Just pause for a moment, Mr Lewis, I think Mr Fitzgerald wants to
27 intervene.

28 MR FITZGERALD: Madam, as I think my learned friend Mr Lewis will well know, there
29 are two issues: article 3 and section 91 where pre-trial detention conditions ---

30 JUDGE BARAITSER: Yes.

31 MR FITZGERALD: --- whether it is oppressive ---

32 JUDGE BARAITSER: Yes.

1 MR FITZGERALD: --- given mental disorder, is also an issue, and prison conditions are
2 very much alive in relation to both those issues; so just to say it is article 3 is slightly
3 oversimplifying it.

4 JUDGE BARAITSER: Right.

5 MR LEWIS: Madam, our position is the legal test is coextensive, so we will get there in a
6 moment, but I just wanted to say ---

7 MR FITZGERALD: Madam, there is authority to say that that is completely wrong. Indeed,
8 that is what the Lord Chief Justice said in the *Love* case.

9 JUDGE BARAITSER: It may be that this is not necessary to discuss in relation to this
10 particular witness. What is your question of the witness?

11 MR LEWIS: I am setting the scene about article 3 because we are going to go to Ahmed,
12 which is the case which deals with all the points that Mr Lewis has brought ---

13 JUDGE BARAITSER: I think Mr Fitzgerald's only point is that this witness has not been
14 asked only about article 3, but he clearly has been asked about article 3 and that is all you
15 want to put to him.

16 MR LEWIS: That is all I want. That is where I am going.

17 WITNESS: At question number 2, if you can point or direct me, I am happy to deal with
18 that.

19 Q. We will come to it. You deal with it in your fourth statement when you deal with the
20 case of Ahmed. I am just dealing with it comprehensively, Mr Lewis. I want to ask you
21 about the case of Ahmed in a moment. Let us just set the scene. So in paragraph 13 you say,
22 "It is almost certain he would be subject to administrative segregation." Not just possible but
23 certain. That is your view, is it?

24 A. Yes.

25 Q. We are going to come back to that in a moment. So can we agree on the procedure
26 for administration segregation? The procedure.

27 A. Yes.

28 Q. Tell us what the procedure is before someone is subjected to administrative
29 segregation.

30 A. Well, the jailed persons will be assigned, presumably at the level of the ADC
31 (inaudible). An individual may be segregated for being a safety risk to other inmates, guards
32 or himself, concerns about how (inaudible) in jail, an extensive criminal history or a serious
33 charge and a national security charge, a concern about national security. In my knowledge
34 and experience with respect to Alexandria and generally the national security inmates are

1 placed in administrative segregation quite frequently. And that is why this is the kind of case
2 that an experienced practitioner before you (inaudible). So when you look at ---
3 Q. Mr Lewis, please. We are going to ---
4 A. (Inaudible)
5 Q. First of all, Mr Lewis, what are you reading from? What are you reading from there?
6 A. My statement.
7 Q. So what do you have open in front of you?
8 A. My statement.
9 Q. Thank you. Now, I want to go through this.
10 A. Paragraph 4/
11 Q. First of all ---
12 A. I am sorry.
13 Q. First of all ---
14 A. Can I not read my statement?
15 Q. I do not mind you reading your statement. I thought you were reading something
16 else. First of all, how many categories of housing are there in the ADC, Alexandria
17 Detention Centre? How many categories are there?
18 A. There is, my understanding is, there is the general, so inmate population, and there is
19 administrative segregation. There may also be other categories with respect to application,
20 disciplinary, disciplinary measures, but I have not committed that handbook to memory.
21 Q. Well, there is general population ---
22 A. (Inaudible)
23 Q. There is general population, administrative segregation, medical segregation,
24 protective custody, critical care and mental health unit and disciplinary segregation. You
25 agree with that?
26 A. Yes, in fact, I think that might be in one of my statements, but I am not sure where.
27 Q. Now, you also agree there is no solitary confinement in the ADC.
28 A. No, I do not. I think that is a semantic point. I would say that administrative
29 segregation, SAMs, is solitary confinement other than in the vernacular of the Bureau of
30 Prisons. Actually, it was in Mr Kromberg's statement as to the various categories. I believe
31 administrative segregation will be used for a national security offence, which I think Mr
32 Kromberg also accepts.

1 Q. You said it is solitary confinement other than in the vernacular of the Bureau of
2 Prisons. Would you also agree it is other than in the vernacular of the High Court of the
3 United Kingdom and the European Court of Human Justice?

4 A. I would not consider myself an expert on the High Court of England or the EC. Just
5 to check, I think they are (inaudible) with the (inaudible) case, and that is an old case, but I
6 would suggest that 22 hours a day in a 50 square foot with no contact with the rest of the
7 prison population, and it happens over a long period of time, causes people to deteriorate
8 markedly. So in my view, that is solitary confinement. As I said, there is what is in prison
9 manuals and there is what practitioners see and do and deal with every day, and I make a
10 distinction there.

11 Q. So, was your client, Abu Khatalla, held in solitary confinement?

12 A. Certainly I cannot tell and he cannot tell (inaudible).

13 Q. So the solitary confinement included unlimited visits by his lawyers. Is that right?

14 A. No. No, they were not unlimited visits. Theoretically one (inaudible) there was one
15 room and that had to be available. It had to be that room (inaudible).

16 JUDGE BARAITSER: Sorry. Just pause. I am now not able to follow this. We have just
17 lost the clarity of the sound for the moment. Is there a reason why suddenly I cannot hear so
18 clearly? And the distance from the microphone. I do not know if you have moved anything,
19 Mr Lewis, but suddenly you are not as distinct as you were. I did not catch that last sentence.

20 A. Again? Certainly. Is that any better?

21 JUDGE BARAITSER: Yes, that is much better, thank you. You were asked about whether
22 that included unlimited visits and you said theoretically it did and then what did you say after
23 that, please?

24 A. In reality it did not include unlimited visits because there were practical and logistical
25 obstacles which prevent unlimited visits. There was one room that could be used. If that
26 room was in use you could not visit. We needed to have translators set up. We needed to
27 have FBI people (inaudible). We needed to make sure that the prison was not having any
28 other issues. Right now, for example, there is Covid so there are no live visits. You could
29 schedule them at two hour intervals. Theoretically, visits are unrestricted, but they have to be
30 within the context of the constitution, and both there, and in other places, you need to plan it
31 in advance and you do not have the time or the logistical access that one would like to
32 prepare.

33 Q. We are examining your statement that he will be held until solitary confinement. That
34 is what you want you to concentrate on.

1 A. No, I do not ---

2 Q. Please just let me finish, Mr Lewis. I have not asked the question yet. You said “he
3 will be held in solitary confinement”. Is it right that prisoners, even subject to SAMs, receive
4 breaks according to an established break schedule?

5 A. OK. First, (inaudible) in solitary confinement, and that is at paragraph 18. There is a
6 break schedule, but my experience is, and my experience of other colonies, is that with
7 SAMs, because the break schedule requires that no other prisoners meet in the public areas of
8 the prison, those breaks are very typically in the middle of the night. Yes, there is a schedule,
9 but what I have found with Mr Abu Khattala, and this is consistent with what other
10 colleagues have said, nobody wants to go and walk around at 3 in the morning to get their
11 exercise break and secret showers in the middle of the night.

12 MR LEWIS: Madam, it is 11.30. I would like to raise something in the absence of the
13 witness.

14 JUDGE BARAITSER: Mr Lewis, it is 11.30. I was informed earlier that you would like a
15 break at around this time. I am therefore going to give you a break. In addition, Mr James
16 Lewis wishes to raise an issue in your absence so we will sever the link for 15 minutes. Can
17 you come back on to the link at 11.45?

18 A. Certainly, Madam.

19 JUDGE BARAITSER: Can I remind you that you are still under oath and must not discuss
20 the case with anybody else during this break?

21 A. I will not.

22 (In the absence of the witness)

23 MR LEWIS: Madam, I want to raise this issue of the guillotine. I feel as if I am under
24 intolerable pressure here because, one, I cannot control Mr Lewis, two, Madam, you are not
25 controlling Mr Lewis when he is answering the questions. He goes on for a long time. I ask
26 a simple question which permits usually a short answer and we get a speech. In those
27 circumstances I have done one and a quarter pages of my proposed cross-examination. At
28 this stage I will not certainly finish today, and I am feeling stressed because, if there is to be
29 imposition of a guillotine, I will not be able to do justice to my client to go through all of
30 these matters in the way that Mr Lewis is giving evidence. Madam, I wish to be released
31 from that position.

32 JUDGE BARAITSER: As you know, the Criminal Procedure Rules allow me to impose time
33 limits in order to properly carry out the management of a hearing. In my view, in view of the
34 number of witnesses, it is appropriate to impose such limits. I have asked you to offer your

1 view about the likely time that you are going to take with the witness, I have then asked the
2 defence if they wish to comment on the likely time, and thus far I have allowed you the time
3 that you will requested. It is not so much a guillotine as a case management exercise and I
4 intend to proceed in that way.

5 You have asked for four hours thus far, and you have used approximately
6 30 minutes, so we are from the end of the four hours that you have requested. I am sorry that
7 you feel stressed about that, but that is the situation that you find yourself in.

8 Can I say, in relation to controlling a witness, it is not the obligation of a court to
9 control a witness; my obligation is to ensure fairness. In this case, it is only fair that if you
10 ask a question, and in some cases you have asked open questions, to allow a witness to be
11 able to answer the question that you have asked. It is not really a matter of controlling a
12 witness, that is a matter for you, Mr Lewis.

13 MR LEWIS: In that case I will be much stricter with Mr Lewis because we are not going to
14 get on; it is impossible. Madam, you do not know where my cross-examination is going.
15 You do not know what topics I have got to deal with, or what length I have got to deal with
16 them, and at this rate it is unquestionably going to take well into tomorrow. I am just giving
17 a warning that that is my position. I cannot deal with my case properly and fairly from my
18 client unless I have adequate time; this is one of the main witnesses for the defence.

19 JUDGE BARAITSER: As I have said, you have asked for four hours and you have used
20 about 30 minutes. If you wish to amend your time estimate, you will have to explain why
21 you need more than the three and a half hours remaining to you for this witness, and I will
22 give the defence an opportunity to comment before I amend that time limit. There must be
23 limits in relation to the witnesses for the reasons that you have requested.

24 MR LEWIS: Madam, I disagree. I think the court will have to give cogent reasons to explain
25 why it thinks four hours is the right estimate given you do not know where my
26 cross-examination is going, given we do not know how Mr Lewis is going to answer these
27 questions, and given we have an enormous amount of topics. Therefore, I do not think it is
28 right to put the burden this way around. In those circumstances I am simply not prepared to
29 be under a circumstance where I will have to hurry through Mr Lewis who, if he is allowed to
30 give long rambling answers, and I am not allowed to stop him giving long rambling answers,
31 it is just not right.

32 JUDGE BARAITSER: I revisit two of the issues you have already raised. In relation to
33 “long rambling answers” that very much depends on how the question is phrased.

34 MR LEWIS: Of course it does not, Madam. That is simply not how cross-examination

1 works. I ask a question, “is it not” and “yes or no”, but if one does that, Mr Lewis is still
2 giving answers. The answers are all closed answers about various things and we still get a
3 speech. That just happens the way it does.

4 JUDGE BARAITSER: Mr Lewis, this is not an uncommon problem in relation to
5 cross-examination. As a matter of fairness, if you ask a question a witness is entitled to have
6 an opportunity to answer, so I am not going to prevent a witness answering the question that
7 you have answered.

8 In relation to a guillotine, I accept what you say, I do not know what areas of
9 questioning you are going to cover, but that is precisely why I have offered you at the outset
10 the opportunity to give an indication because you do know what topics you wish to cover as
11 to how long you think you will be so that the court can hold you to that. That is the position
12 that you find yourself in, Mr Lewis.

13 MR LEWIS: It is not like that, Madam, never before in my entire experience have I ever
14 been guillotined in a cross-examination; I have often been asked “how long do you expect to
15 be” or when issues have been crystallised, but I hesitate to say there is no judge in this
16 building, and no judge in extradition case I have ever done over the last 35 years, either as a
17 practitioner or sitting as a High Court judge have I ever known cross-examination to be
18 guillotined. One can do an estimate on this. I accept it is in your powers to do so, but if you
19 are going to exercise those powers, it must be part of the case management problem that he
20 answers the questions without going into rambling answers or else we are going to be in this
21 situation where I am not being given sufficient opportunity to properly put my case. I hope it
22 goes more quickly, and I hope Mr Lewis answers the questions more succinctly, but that has
23 not been the experience of him in examination in chief, and so far in cross-examination.

24 JUDGE BARAITSER: I am glad you have acknowledged Criminal Procedure Rule 3.11
25 which does give the court the power in order to ensure the efficient management of the
26 hearing. There are 39 witnesses in this case, and the court must impose limits in order to
27 efficiently move through the hearing. As I have said, as a matter of fairness, I have asked
28 your view as to how long you believe you will take with each of the witnesses, and you have
29 provided that estimate, and that is the basis upon which we will work. The word “guillotine”
30 comes entirely from you. I have not used the word “guillotine” in any sense. I have used the
31 words “time estimate”, you have provided it, and I will take that into account in how I
32 manage this hearing. That is really the end of the matter, Mr Lewis, as far as I am concerned.

33 MR LEWIS: So be it.

34 JUDGE BARAITSER: We will rise until 11.45 when the witness is coming back.

1 (Short adjournment)

2 (In the presence of the witness)

3 JUDGE BARAITSER: Thank you very much. Thank you, Mr Lewis. We have you back
4 and we are going to resume from where we left of. Mr James Lewis.

5 MR LEWIS: Madam, just before I begin, can I apologise if I used any intemperate language?

6 JUDGE BARAITSER: Thank you for your apology.

7 MR LEWIS: Mr Lewis, I just want to read this out from Mr Kromberg. It is his paragraph
8 85.

9 A. Which?

10 Q. Of his first statement, bundle page 130. I will just read it out to you, "It is possible" --

11 -

12 A. Sorry, Kromberg's first statement?

13 Q. There should be a bundle which was sent to you called the prosecution bundle which
14 was composed of about 336 pages.

15 A. Yes, I have certain documents in hard copy, but (inaudible).

16 Q. I would not worry about it. Mr Lewis, let me just read it out and see if you agree with
17 it.

18 A. What paragraph is it?

19 Q. 85 on page 130.

20 A. Right, okay, I think I have it.

21 Q. So, what Mr Kromberg says, "It is also possible that Mr Assange could be placed into
22 administrative segregation if, for example, he presents a safety risk to himself. For that to
23 happen, ADC would have to find one or more of the following factors: during a prior
24 incarceration, the inmate participated in the incident that posed a safety or security risk; the
25 inmate is a safety risk to others; the inmate is a security risk to the ADC; the ADC has
26 concerns about the inmate's adjustment to incarceration; the inmate has an extensive criminal
27 history or serious charge; the ADC does not have sufficient information about an inmate to
28 make an informed housing decision because, for example, the inmate does not cooperate in
29 the intake and admission process."

30 Do you agree that that is the procedure for deciding whether he would be placed in
31 administrative segregation or not?

32 A. With one qualification if I may. If the Attorney General ordered SAM under 501.2,
33 then he would be placed in ADC with SAM imposed. If the Attorney General does not
34 impose SAM under 501.2, then I do agree (inaudible).

1 Q. Thank you. We will come to that in a moment. Now, just reading from paragraph 36.
2 Well, in fact, just so you know, going back a page, 129, between the two perforations, Mr
3 Kromberg specifically says there is no solitary confinement in the ADC. As I understand it,
4 you disagree with that for the reasons you have already given.

5 A. Yes, I believe that is semantic and I believe that it is de facto (inaudible).

6 Q. Is it right that inmates in administrative segregation are able to attend three
7 programmes, including programmes with general population inmates, a week?

8 A. I think that would be right if they were not SAMs and if he were not, if he were
9 viewed as not being in danger to himself or the general population. If he is in danger of being
10 with the population, he would not be (inaudible).

11 Q. Because of those six factors, none are obviously applicable to Mr Assange, are they?

12 A. I am sorry, but are we talking about paragraph ---

13 Q. 85.

14 A. -- again.

15 Q. There are six bullet points: being in prison before, safety risk to other inmates, staff or
16 oneself, security risk, adjustment to incarceration, inmate has an extensive criminal history or
17 do not have sufficient information. Which of those criteria do you think would be used or are
18 applicable to Mr Assange?

19 A. Given the mental health issue that has been raised and the notoriety issue I would say
20 bullet point 2, bullet point 4 and bullet point 5. I think the others would not - would not
21 apply.

22 Q. So, can we agree, Mr Lewis, that there is, in fact, a clear procedure and it depends on
23 various factors being evaluated on the booking process as to whether you are placed in
24 administrative segregation?

25 A. There is a procedure but it is not one with a meaningful right to challenge.

26 Q. I will come to that in a moment, but your opinion is based on having one client at the
27 ADC, is that right?

28 A. It was based on ADC but there are, the procedures at the ADC are very similar to
29 other remand prisons that I have had other clients (inaudible).

30 Q. Now, if we look at your – I am just going to set the scene, Mr Lewis, because then I
31 am going to come back, we are going to look at the case of Ahmed in a moment, but first,
32 you say at paragraph 14 that the regime lacks any procedural rights. Do you see that? And at
33 15, tantamount to solitary confinement. At 16, it is used as a default solution. 18, you say
34 there is no difference between administrative segregation and SAMs, both are solitary

1 confinement and fifthly, at paragraph 20, you say that calls are monitored as are meetings
2 with lawyers. That is the last sentence.

3 Now, that was simply to set your position, Mr Lewis.

4 A. Paragraph 20 would have been SAMs only.

5 Q. Thank you. Now, have you read the European Court of Human Rights case of Ahmed
6 when you wrote this report in October 2019?

7 A. I have read the case. I cannot say for certain when I read the case.

8 Q. Because if you had read it, you would have mentioned it in your first report, would
9 you not?

10 A. I am really, I would think that European Court cases would be a subject for argument.
11 I do not do it myself (inaudible).

12 Q. What I am going to put to you, just so you understand where I am going, Mr Lewis, is
13 I am going to put to you that all the complaints that you have made in your paragraphs have
14 previously been made and rejected by the European Court of Human Rights and I want to go
15 to, first of all, to show you that, the admissibility decision in the case of Baba Ahmed. You
16 may have been sent this morning a supplemental bundle of materials. Madam, I think you
17 have it this morning.

18 JUDGE BARAITSER: I do have it.

19 MR LEWIS: And there should be some bold numbers in the bottom right-hand corner.

20 JUDGE BARAITSER: Yes.

21 MR LEWIS: Do you have that?

22 A. I received it a few minutes before we began so I cannot say that I have read it, but I
23 have tried to go through it.

24 Q. Well, you have obviously read it before because you mention it in your fifth statement
25 and you deal with it in your fourth statement. You deal with it and you try and distinguish it.

26 A. Yes, I certainly have read the case of Ahmed but I cannot say whether I – what
27 (inaudible).

28 Q. Well, let us just have a look at some of the things which were dealt with. I wonder,
29 the first case is an admissibility decision which means we---

30 A. Can I just find it?

31 Q. It is page 1.

32 A. Can I just find, I am just trying to find the bundle that you sent this morning. I
33 apologise. I assume I can still be seen. I hope this is the bundle which was sent this morning
34 that I am looking at. No, let me just (inaudible).

1 Q. I am sorry, you are still looking for it.

2 A. I think I got it this morning. Yes, I believe – the admissibility decision, yes. It is the
3 first one (inaudible). Yes, it would be helpful if you could let me have the page number in
4 the right-hand corner?

5 Q. Certainly. I will do that. So that you are not at a disadvantage, Mr Lewis, I will take
6 you through the case and then I will ask you some questions at various stages, so first of all --
7 -

8 A. I have – yes.

9 Q. It should say at the top, fourth section, partial decision as to admissibility and page 1
10 at the bottom right- hand corner. Do you have that?

11 A. I am very sorry but I have not – ah, yes, okay. Now I have it. Sorry about that. Yes,
12 I do have it now.

13 Q. And if we just go over to page 2, we can see that this is a familiar case to counsel in
14 this case because at paragraph 2 on page 2, we see that Ms Gareth Peirce, Mr Fitzgerald, Mr
15 Cooper were all representing the defendants.

16 A. Yes.

17 Q. If we go to page 6 to put it in context – well, first of all, just to show you, at bundle
18 page 5, it sets out the applicants extradition proceedings in the United Kingdom and it sets
19 out at paragraph 15 on page 6 that the reason for the application was there was a substantial
20 risk that he would be subjected to special administrative measures while in pretrial detention
21 in a federal prison. That is five or six lines down on paragraph 15. He argued these measures
22 could involve solitary confinement and restriction on communication with his legal
23 representatives in violation of articles 3 and 6 and we see that – I am going to go into a little
24 more detail in the actual arguments which were deployed in a moment. If we go to paragraph
25 18, on page 6 still, “In considering the first” ---

26 A. (Inaudible).

27 Q. I am just setting the scene for you.

28 A. I assume that is your highlighting.

29 Q. Yes, you have a coloured highlighted version. I do not know, madam, if the
30 electronic bundle is highlighted.

31 JUDGE BARAITSER: It does not matter, I can follow what you are saying.

32 MR LEWIS: Paragraph 18, “In considering the first applicant’s argument in relation to a risk
33 of special measures, the senior district judge noted the United States Government had not
34 attempted to deny that special administrative measures could be applied, but it argued there

1 was judicial control to see what communication passing between the defendant and his
 2 lawyers, although monitored, did not breach the prosecution. The senior district judge found
 3 the application of special administrative measures to be of the greatest ground for concern
 4 and concluded that a trial could still be properly and fairly conducted without a violation of
 5 Article 6”. And he sets out his ruling that none of the statutory bars apply. If we then go a
 6 little further into the bundle at page 10, bundle page 10, paragraph 30 - I am just going to -
 7 these are the extradition proceedings. I am sorry, madam, I have got the documents in a
 8 different place. And at paragraph 25 you will see that the - this is the procedural history.

9 A. Where ---

10 Q. The first and second, this is page 8 ---

11 A. (inaudible).

12 Q. Paragraph 25.

13 A. Page 8, OK.

14 Q. Paragraph 25, “the first and second applicants’ appeals were heard together. In the
 15 judgment of 30 November 2006 the High Court rejected their appeals”. And at paragraph 29
 16 on page 9, it sets out some of the evidence which was put forward, “Further evidence was
 17 before the High Court on the extent of special administrative measures. The evidence
 18 included an affidavit from Ms Maureen Killian”. And, then, dropping down, “In the affidavit
 19 Ms Killian stated that initially all applications for the imposition of special administrative
 20 measures had to be approved by the Attorney General. In rare cases, person held under
 21 special administrative measures might be subjected to monitoring of their attorney/client
 22 conversations, but only where the Attorney General had made a specific determination that it
 23 was likely the attorney/client communication would be used to convey improper messages
 24 and the information might reasonably lead to acts of violence or terrorism and various
 25 safeguards had to be put in to maintain”. That is the Chinese Wall on the attorney/client
 26 privilege.

27 A. (inaudible).

28 Q. And, at paragraph 30, “The High Court found that, according to the case law of this
 29 court, solitary confinement did not in itself constitute inhuman or degrading treatment.
 30 Applying that approach, the evidence did not begin to establish a concrete case under Article
 31 3. On the conformity of the measures which are Article 6 of the Convention, it found the
 32 imposition of such measures was subject to judicial scrutiny and the rights of the accused
 33 guaranteed by the Sixth Amendment to the Constitution of the United States provided
 34 sufficient safeguards to protect lawyer/client privilege. The Sixth Amendment was strikingly

1 similar to Article 6”. And then if we go over the page at 31, “The first and second applicants
2 applied for permission to appeal to the House of Lords and this was refused by the House of
3 Lords”. So that is why there is then an application on admissibility to the European Court of
4 Human Rights. And, now, if we look at what was before them, if we go to pages 31 - if we
5 go to page 31, paragraph 85.

6 A. (inaudible).

7 Q. At bundle page 31, paragraph 85, heading, “Special Administrative Measures. In the
8 context of proceedings before this court, the applicants produce six statements from
9 American attorneys on special administrative measures. The first from Mr Loughlin states it
10 was virtually certain that special administrative measures would be imposed on the applicants
11 from the moment they entered US custody until they completed any sentence they received”.
12 That, I think, is exactly what you say in your first statement, that it is virtually certain, is that
13 right?

14 A. I am - I do recognise those words, but I (inaudible) go to the statement.

15 Q. Well, just in general terms, Mr Lewis, I am not going to hold you to the precise
16 words, but that was the - that is the gist of your statement, is it not?

17 A. I think it is to highlight that the SAMs would be imposed based on everything I know
18 about this case.

19 Q. And at paragraph ---

20 A. (inaudible).

21 Q. There was a Mr Joshua Dratel, a New York attorney, paragraph 85, in the minion, in
22 the middle of that, he says, “It is my opinion that the SAMs interfere irreparably with a
23 defendant’s right to a fair trial and the right to prepare and assist in the defence and constitute
24 inhuman or degrading treatment, however those terms are defined.” Is that the gist of your
25 evidence before this court?

26 A. No, I think that we are - I think there are specific - SAMs make it difficult to prepare
27 for trial, where I think there are pretty particular issues of fairness when you are dealing with
28 a classified information national security case, which this one is. And, although I do not have
29 any deep familiarity with those facts, that was not a national security case. So I think each
30 case needs to be taken on its facts, but I think what is unique about Mr Assange’s case is we
31 are looking at a million classified documents which Mr Assange cannot see and that no one
32 can see without - without (inaudible). So you can go to meet with him when the room is
33 available and in SAMs and you cannot tell what you have seen and you cannot tell anyone
34 what he has said. So that presents unique difficulties. So I would say that is the difference

1 between the cases and I do not think that you can deal with one case looking at another case
2 and just think simply (inaudible).

3 Q. I am just trying to compare the evidence. So if we go over the page to page 32, first
4 full paragraph down beginning, “The third, fourth and fifth statements were provided Mr
5 Sean Meyer”. And he said ---

6 A. Yes.

7 Q. --- dropping a couple of lines down, “Mr Hashman had been subject to special
8 administrative measures, including solitary confinement for nearly 24 hours a day. He was
9 prohibited from contacting other inmates. His communication and visits have been severely
10 restricted. Only his mother and father have been cleared to visit him and only one visit by
11 one family member was permitted every two weeks. He was entitled to a minimum of one
12 telephone call per month with a member of his immediate family”. So do you think that Mr
13 Assange ---

14 A. Yes.

15 Q. Is the evidence - sorry, I will start that again. Is your position on Mr Assange similar
16 to that if he were to be subject to SAMs?

17 A. You have asked me two questions, one about preparing for trial and one about the
18 condition (inaudible).

19 Q. Well, let me make that clear - Mr Lewis, no, I am not. I am only dealing with at the
20 moment pre-trial because all of this ---

21 A. Right.

22 Q. --- Ahmed case, admissibility, only deals with pre-trial. We will come to post-trial
23 when we deal with the final decision. So I am only ---

24 A. Well (inaudible) ---

25 Q. Does that help?

26 A. Prepare - preparing for trial is obviously done for trial, so we had talked about that.
27 But now you are asking about the conditions of remand, correct?

28 Q. So ---

29 A. I am just trying - I am just trying to understand your question, Mr Lewis, and if you
30 could just help me on that.

31 Q. Let me just try and put it this way. If we go to paragraph 98, which is page 37 of the
32 bundle, when it talks about complaints, the complaints - and this is all pre-trial. Well, I am
33 going to deal with pre-trial, “There will be violations of Articles 2, 3, 5, 6, 8 and 14 of the
34 Convention if they were extradited to the United States”.

- 1 A. Yes, I see that.
- 2 Q. And if we come back to the conclusions, which begin at paragraph 120, which is page
3 49 in the bundle.
- 4 A. Yes.
- 5 Q. We have, “Pre-trial Detention SAMs.” Do you see that is the heading?
- 6 A. I see that, yes.
- 7 Q. The submissions are set out and I would say that these submissions in paragraph 121
8 are almost identical to the submissions which are made by you and the other experts in this
9 case on behalf of Mr Assange. Do you agree with that?
- 10 A. Can I read it through?
- 11 Q. Certainly.
- 12 A. I certainly have never seen --- I have never seen this decision. I have seen the
13 European Court decision. So if I can take a moment, if I may.
- 14 Q. Certainly.
- 15 A. OK, it refers us back to 85. Mr Assange, as far as I know, is not a Muslim so I do not
16 think that applies. So (inaudible) SAMs would be discriminatory in that way. So that is one
17 difference. Now I am just having a look back at 85 just to see what they are referring to. It is
18 true that his visits to parts were severely restricted. It is true that he was entitled to one
19 telephone call per month for 15 minutes. It does not say that there. It is - this is not - I do not
20 see a discussion here of any health issue, but I think that Mr Assange is particularly
21 vulnerable to the deprivations of SAM which makes it a somewhat different situation. Mr
22 Assange is also - anyone in SAMs is not allowed to have any access to the media, to the news
23 or anything other than what are approved material by the Bureau of Prisons.
- 24 Q. Right, Mr Lewis, let me just ---
- 25 A. So ---
- 26 Q. Let me just help you.
- 27 A. OK, but there are (inaudible) ---
- 28 Q. There are lots of passages ---
- 29 A. --- (inaudible).
- 30 Q. There are lots of passages dealing, this whole thing is about mental health. If we go to
31 paragraph 122, “The third applicant also emphasised the fact he had bipolar disorder and had
32 been diagnosed in June 2009 with Asperger’s. He produced two reports from a consultant
33 psychiatrist to that effect. The first report predicted a serious risk of suicide if the third
34 applicant were placed in solitary confinement for a long period. The report also stated that he

1 became severely depressed before trial. The third applicant would be unable to do justice to
2 himself at trial, to give instructions to his lawyers or actively participate in his defence. The
3 second report stated that the third applicant was suffering from a severe episode of depressive
4 disorder, feeling persistent thoughts of self-harm and suicide”.

5 A. Right.

6 Q. So the court is specifically ---

7 A. Well, the ---

8 Q. --- dealing with mental health issues as well, would you agree?

9 A. I do (inaudible) the court is (inaudible) compared. I know we can argue with its
10 conclusion, but I mean if the conclusions are correct and humane (inaudible).

11 Q. Because at paragraph 125, that is page 50 of the bundle, “The court notes, and it is not
12 in dispute, Evex”, which is not the same as this case, “special administrative measures would
13 be imposed on the applicants. The only question is whether such measures would be in
14 violation of Articles 3, 6 and 14. The court also makes the applicants could be subjected to
15 special administrative measures for the entire they are in the United States custody, that is
16 before and after trial. If convicted and given a custodial sentence, special administrative
17 measures could be imposed in conjunction with detention at a super max detention facility.
18 Therefore, the court considers it should examine the imposition of special administrative
19 measures in two stages, the first in pretrial phase, and the second in post-trial phase.” What
20 the court does is pretrial and post-trial. If we go to paragraph 130, bundle page 53, do you
21 agree with this finding: “As to the objective pursued by special administrative measures, the
22 court readily understands that, particularly in terrorist cases that prison authorities will find it
23 necessary to impose extraordinary security measures. In the present case the United States
24 authorities are best placed to assess the needs for such measures, and there is no evidence
25 they do lightly or capriciously. There is also no risk in the decision to impose special
26 administrative measures. The decision is made with reference to established criteria. It is
27 one that was made by the attorney general personally. He must make specific findings and
28 give reasons for his decision. The decision is subject to annual review and judicial
29 challenge.” Do you agree with that finding?

30 A. I do not. I agree with parts of it, and other parts not. This is not a terrorist case.
31 There may be cases where security measures are required. I believe that in this case, given its
32 politicisation and the fact that William Barr will be making a decision relying upon the views
33 with respect to national security under 501.2, and I can only see 501.2 (inaudible). As I say, I
34 have just seen the decision, that made by the attorney general on the record by Virginia

1 Haskell who ran (inaudible) before she became the head of IA. When you say (inaudible), I
2 cannot really agree with you. (Inaudible) the case of the United States (inaudible) come to
3 this case 2014 case, challenging SAMs at (inaudible). They were all held for (inaudible) with
4 conditions of confinement. I would also (inaudible) in which he said she had (inaudible) ever
5 never been overturned for an administrative process. For those reasons I would say I do not
6 agree on the Ahmed case.

7 Q. You said a moment ago that you had never read this decision before; that is what you
8 told the court?

9 A. I told the court that I did not read the English Court decision, I read the European
10 Court's decision.

11 Q. This is the European Court's decision.

12 A. If that is right then I am mistaken. I thought you were taking me through a High
13 Court decision. I thought it was an English Court decision.

14 Q. Just so you know, in your fourth statement, paragraph 26, you spend some time on the
15 Ahmed decision. At 27 you deal with the European Court; you spend a number of
16 paragraphs on this Ahmed decision, do you not?

17 A. I am aware of that. I thought you were showing me the High Court decision. If that
18 is wrong, then I was in error and this decision of the European Court, because I was looking
19 at a different decision, then this decision I have read, yes.

20 Q. Look at paragraph 133 which sets out some more reasoning. At the end of
21 paragraph 133 in the conclusions on page 55, "the court", the European Court of Human
22 Justice, "therefore considers that none of the applicant's head of claim, either taken
23 individually or cumulatively, points to a flagrant denial of justice". At 135: "For the
24 foregoing reasons, the applicant's complaints in respect of the imposition of special
25 administrative measures before trial must be rejected as manifestly ill founded. The
26 European Court comprehensively rejects the application that the imposition of SAMs pretrial
27 contravenes Article 3; do you see that?

28 A. I see that is the conclusion of the court.

29 Q. Let us move on a little bit because that was the admissibility. So you understand,
30 even though I thought you had read the decision, the European Court allows as admissible for
31 argument whether or not incarceration in the super max, the ADX Florence, was a real risk of
32 breach of article three. Pretrial, no. They are allowed to go forward for further argument,
33 post-trial specifically in the ADX; do you follow, Mr Lewis?

34 A. I do.

1 Q. Do you also agree with me that so far as pretrial custody on remand is concerned,
2 even when subject to the most extreme specialist administrative measures, the European
3 Court of Human Rights has rejected claims as manifestly ill founded?

4 A. They did in 2008. I think it is considered (inaudible) facts, but that is certainly the
5 whole of that case.

6 Q. I am going to go to the final decision of Ahmed in a moment, but before I do, just so I
7 can understand as we are in your first statement, could we turn to paragraph 29 of your first
8 statement, dated 18 October 2019. Please listen to the question carefully and please only
9 answer the question.

10 A. I have listened to every question carefully, Mr Lewis.

11 Q. We may disagree about that. At the end of the question: "Required by the defendant
12 to support his defence, the process will inevitably take an unprecedented period of time in
13 addition to making defence preparation extremely difficult, if not in some regards
14 impossible." What are the defence issues that Mr Assange is facing or going to raise at his
15 trial?

16 A. I cannot say for certain because I am not his lawyer, but there are a million documents
17 that were leaked, that the Government asserts are all national defence information that affect
18 the national security interests of the United States.

19 Q. If you do not what the issues are in the trial, the issues might be a very small narrow
20 issue; he may be dealing with various matters and accepting other matters. Unless you know
21 what the issues are, how can you possibly opine that it will make his defence impossible,
22 without knowing those issues?

23 A. Because I have read the indictment. If the Government is going to go to trial on this
24 indictment, although it was a different indictment at the time, but if the Government is going
25 to trial on this indictment, one of the elements of the defence of the espionage is part of the
26 national security of the United States. If they change the indictment (inaudible) would be
27 impossible. If the Government is trying to prove all 18 counts under the various categories of
28 documents in each of these documents on the United States and they are classified, that
29 would be a case which would border on the untriable. We do not know until the day of the
30 trial whether the Government has cut back on the indictment or whether there is going to be
31 (inaudible) evidence, but ---

32 Q. Again I am going to ask a simple question: has Mr Assange told would you his
33 defence is?

34 A. I have never spoken to Mr Assange.

1 Q. Have his lawyers told you what his defence is?

2 A. His lawyers have not. I have read the indictment that he needs to defend himself
3 against.

4 Q. You do not know what the issues at trial are going to be so far as his defence are
5 concerned, do you?

6 A. I could not predict that, other than he will defend the counts. I can look at the
7 indictment, understand what has been alleged and understand how one would meet those
8 counts.

9 Q. I promised to take you to Ahmed final, which is the decision of the European Court
10 2012. We have that in the bundle beginning at page 75. Presumably you have read this
11 judgment, Mr Lewis?

12 A. I have read this judgment. Yes, as I said before, I have read this judgment.

13 Q. Let us look at some of the things this judgment decides because this is dealing with
14 post trial, having rejected the pretrial position. If we could just go to page 134 in the bundle.
15 To orientate you, the facts are set out at paragraph 8 and following, and then if you go to
16 paragraph 81, bundle page 96 because we are dealing with the ADX at Florence. You have
17 told us that you have never visited there, is that right?

18 A. I have talked to people who are isolated there, but I have never visited.

19 Q. If we go to paragraph 89, page 99, Mr Christopher Sinsable, the Department of
20 Justice, sympathising attorney at FCC Florence said “the application of bureau’s special
21 administrative measures, these measures were rare. Of 210,307 federal inmates, 41 were
22 subjected to them. 27 of the 41 were in the ADX in Florence. Special administrative
23 measures to be challenged through the bureau’s administrative remedy programme.” Do you
24 see that?

25 A. I see it, yes.

26 Q. If we go to paragraph 98 on page 102, we then see the evidence submitted by the
27 applicants. “The applicants submitted general evidence as to the effect of solitary
28 confinement on prisoners and specific evidence as to the prison regime at ADX Florence.” I
29 will not take you all through these but at 101, and I think this is quoted in the defence case
30 somewhere on page ---

31 A. Can I just – we are looking at 98.

32 Q. I was looking at 98, but I have just taken you to 101 where the ADX ---

33 A. (Inaudible).

34 Q. --- was described as a clean version of hell by the applicant’s experts.

1 A. Yes, I think it was described similarly by the warden of ADX Florence. He called it
2 dehumanising, not fit for humanity, a fate worse than death, much worse than death. That is
3 the warden of Florence, not me, but yes, that is - yes, I do see that.

4 Q. So, this evidence was before the court. The court then deals with the 8th Amendment
5 and process of law and what we then come to at paragraph 82, the parties' submissions.

6 A. Sorry, which page number?

7 Q. Page 133, page 133, paragraph 82, merits.

8 A. Yes.

9 Q. And at 185, and this deals with your specific allegation or I understood it there was no
10 process or possibility of challenging SAMs, et cetera, so "A detailed examination of a federal
11 court's jurisdiction records consideration of the challenges brought by ADX inmates show
12 that the allegations made in respect of ADX were unfounded. The United States courts
13 supplied a legal analysis which was, in reality, no different from that applied by this court.
14 Moreover, these decisions showed the United States was both able and willing to protect the
15 interests of ADX inmates, assess their claims and uphold them where appropriate." Do you
16 accept that is a considered finding of the European Court?

17 A. It is certainly the finding of the European Court in 2012. I would suggest that things
18 have changed since 2012, some for the better and some for the worse, but in terms of the
19 European Court (inaudible) to seek remedies in a court. The case that I mentioned earlier,
20 (inaudible) which is the (inaudible) which govern Colorado, where Florence is located,
21 (inaudible) where the court says that there are no implemented due process rights to challenge
22 the conditions of confinement. I will commend that decision to the court. There was the
23 Cunningham case.

24 Q. Well, we will come to that in a moment. We have got a whole passage on
25 Cunningham, so we will come to that in a moment. I want you to answer these questions,
26 please, Mr Lewis. Paragraph 193.

27 A. The decision ---

28 Q. Page 136. "In this connection, the first, third and fifth applicants provided the
29 following information on mental health. The first applicant was diagnosed with post-
30 traumatic stress disorder. The third applicant was diagnosed with Asperger's syndrome and
31 dropping down to the bottom paragraph on the page, the fifth applicant had a recurrent
32 depressive disorder and had suffered several mental breakdowns while in detention in the
33 United Kingdom. The most recent psychiatric report assessed his current episode as
34 moderate to severe." So would you accept that the court took into account the mental state of

1 the people sought to be extradited when considering whether their incarceration in the ADX
2 met Article 3 standards.

3 A. I would accept that (inaudible) much more information and (inaudible) in 2012 with
4 respect to (inaudible) to the aggravation of mental illness. I would direct you to (inaudible)
5 affidavit as well and her view with respect to the mental health. It certainly said that in 2012,
6 but the law on (inaudible) dynamic and (inaudible).

7 Q. We are going to deal with Cunningham in a moment, but first of all, we will just
8 finish this. Page – bundle page 143, paragraph 218, at paragraph 220, “The court finds no
9 basis for the applicant’s submission that placement at the ADX would take place without any
10 procedural safeguards,” and then if we go over the page, we see detailed and cogent reasons
11 from the court and they conclude at the end of paragraph 222, “All these factors mean the
12 isolation experienced by ADX inmates is partial and relative.”

13 And it concludes at 22 ---

14 A. I am sorry, that is paragraph?

15 Q. I am sorry, 222. I am not going to read through it all because of time, but if we look
16 at 224, “Finally, to the extent that the first, third and fifth applicants rely on the fact they have
17 been diagnosed with various mental health problems, the court knows that those mental
18 health conditions have not prevented their being detained in high security prisons in the
19 United Kingdom. On the basis of Doctor Zohn’s declaration, it would not appear the
20 psychiatric services which are available at ADX would be unable to treat such conditions.
21 The court accordingly finds there would not be a violation of Article 3 in respect of these
22 applicants, in respect of their possible detention at ADX.” So, would you accept from me
23 that certainly so far as 2012 is concerned, there was the most thorough exposition and
24 detailed evidence, almost identical to that which has been raised in this case, which the
25 European Court of Human Rights did not find sufficient to prevent extradition?

26 A. I would accept that in 2012 that was their finding, but there has been far more details
27 with respect to their mental health condition at ADX than otherwise and also, I would say
28 that 501.2 puts it (inaudible) Attorney General (inaudible) quite different for (inaudible)
29 regime and challenging (inaudible). So, clearly, that (inaudible).

30 Q. I want to ask you about this. In your fourth witness statement, paragraph 20, that is
31 the witness statement – do you have that? That is the one dated 18 July.

32 A. I do have it, yes.

33 Q. Paragraph 20.

34 A. (Inaudible).

1 Q. It begins with this unequivocal statement, “Mr Assange will not receive adequate
2 mental health care in a US prison.” Are you a medical expert, Mr Lewis?

3 A. I am not a medical expert.

4 Q. Do you have any medical qualifications?

5 A. I do not.

6 Q. Do you have any psychological assessment or treatment qualifications?

7 A. I do not.

8 Q. So, I just want to examine that unequivocal statement that Mr Assange will not
9 receive adequate mental health care in a US prison and at you have based it upon.

10 A. Certainly.

11 Q. So, what – I’m sorry.

12 A. What do you want me to base it on?

13 Q. That is what we are going to test now, Mr Lewis. We are going to test it by me asking
14 you a few questions. So, first of all, what published statement guides the Bureau of Prisons
15 mental health services.

16 A. Well, I was relying primarily on the published statement by the Inspector General of
17 the Bureau of Prisons and the Yale law school study of super max and I have also reviewed
18 some other material (inaudible) but what drove that was the Bureau of Prisons’ conclusion
19 itself that it would not provide adequate mental health care, that the Bureau of Prisons’ chief
20 psychiatric estimated that 40 per cent of inmates had significant diagnosable mental illness,
21 but only three per cent were being treated, that there was a significant gap in the full
22 complement of mental health professionals, for instance, who was available, that the Bureau
23 of Prisons has (inaudible) shortage by (inaudible) 35 per cent to three per cent and since that
24 time, the Bureau of Prisons has been cut in the budget every year and the suicide and self-
25 harm has been up 18 per cent.

26 Q. Right, Mr Lewis, I am going to stop you there because you are going beyond what I
27 have asked in the question. I will ask in the question again. It is a precise question. What
28 published statement, and, please, give the name of it, guides BOP’s mental health services?

29 A. The Bureau – I do not, I do not know. I cannot give you a title. The Bureau of
30 Prisons relies on certain guidelines to follow procedure, but (inaudible) was not what they
31 had written down (inaudible). It is (inaudible) Bureau of Prisons’ (inaudible) investigated
32 how those mental health services were not provided (inaudible).

33 Q. Alright, so have you read the Treatment and Care of Inmates with Mental Illness,
34 paper 5310-16? Have you read that?

- 1 A. Yes.
- 2 Q. Why have you not ---
- 3 A. (Inaudible).
- 4 Q. Alright, well we are going to go through that in some detail.
- 5 JUDGE BARAITSER: Where can we find it?
- 6 WITNESS: I do not have it here.
- 7 MR LEWIS: You do not have it and it is not exhibited. It is in the main prosecution bundle,
- 8 madam.
- 9 JUDGE BARAITSER: Yes.
- 10 MR LEWIS: It is tab 12. It is the exhibit of Dr Lukeveld and it is just after her main
- 11 statement and it is Treatment and Care of Inmates with Mental Illness. Can you just give me
- 12 one moment, madam? I have misplaced one of my bundles which I just need to put my hand
- 13 on. Madam, I am going to ask questions on Dr Lukeveld's statement.
- 14 JUDGE BARAITSER: Yes, I have it. Does Mr Lewis have the statement?
- 15 MR LEWIS: He does not, madam, no.
- 16 JUDGE BARAITSER: He does not, alright?
- 17 WITNESS: I have the (inaudible) not in hard copy but I do have them – again, I do have
- 18 them electronically.
- 19 MR LEWIS: Madam, I am looking at paragraph 8 of the doctor's statement. When was the
- 20 policy, Treatment and Care of Inmates with Mental Health, updated?
- 21 A. Again, I think I would (inaudible).
- 22 Q. No, I am asking you. You purport to be an expert on mental health in prisons. I am
- 23 asking you about this report. When was it updated? Without looking it up, Mr Lewis. You
- 24 do not know, do you?
- 25 A. I think - would you let me speak, sir.
- 26 Q. Sorry?
- 27 A. OK, I think I have been - I have been courteous to you, I would ask that you be
- 28 courteous to me. I would like to refer to a bundle. I do not purport to be an expert
- 29 (inaudible) but have experience with understanding the way that the Bureau of Prisons runs
- 30 its operation with mentally ill inmates, including my client and other people's clients. So if
- 31 you can refer me to whatever documents that the Bureau of Prisons puts out for (inaudible),
- 32 what I can tell you is only what I know and the way it happens every day.
- 33 Q. But you ---
- 34 A. So if you want to refer me to a document, I will do that.

- 1 Q. But you have made an unequivocal ---
2 A. (inaudible).
3 Q. --- statement, Mr Lewis, at paragraph 20.
4 A. I do not think it is fair to deny me access to a document ---
5 JUDGE BARAITSER: All right.
6 A. to give me (inaudible).
7 Q. Mr ---
8 A. It does not really matter whether it is ---
9 Q. Mr Lewis ---
10 A. --- (Inaudible).
11 JUDGE BARAITSER: --- I appreciate what you are saying and I understand your frustration,
12 but the next question is a perfectly reasonable question. There is no need for you to have
13 access to any document. If I feel that there is a need then no doubt I will ensure you have it
14 but, if you just listen to the question, I am sure you will be able to answer it.
15 MR LEWIS: So ---
16 A. Thank you, your Honour.
17 Q. --- the policy required eight changes after 2014, can you name those eight changes?
18 A. Without reference to a document, I have looked at thousands and thousands of pages
19 and I do not have that sort of eidetic memory.
20 Q. Well, the thing is, Mr Lewis, you purport to be an expert. Are you giving expert
21 evidence on prisons and mental health care in US prisons or not?
22 A. I think you were – you might put that question to learned counsel. I am telling you,
23 you are trying to (inaudible) what I know about mental health (inaudible) and through
24 looking here through numerous peer reviewed documents. And I am also trying to underline
25 that while I am looking at what is written down on the page, and I do not remember anything
26 that is written down on the page, that there are reports from time to time but whether there is
27 an adequacy of peer review now in view of the Bureau of Prisons, no. They are the experts. I
28 can only read what I - review what I have reviewed.
29 Q. Because, Mr Lewis, what I am trying to get at is whether you are an expert in prison
30 conditions and mental health care in prisons, are you or are you not an expert in those areas?
31 A. I am the expert of what I put into my expert reports. I believe that I have practical
32 knowledge in there. If you are asking me am I a psychiatrist or a warden, I am not.
33 Q. Because you are being paid for giving this evidence and, if you are being paid for
34 giving ordinary testimony rather than expert testimony, it might have a material qualification

1 to the reliance the court will place on it?

2 A. I am paid to give expert testimony about the operation of the American prison system
3 in my capacity as an experienced practitioner, nothing more but nothing less.

4 Q. Well, I just want to see how detailed you know about the provision of mental health
5 services then. You - you cannot name - you cannot name any of the changes which were
6 implemented after 2014, is that right?

7 A. What I do know is that there were certain provisions at (inaudible) with the effect of
8 many mental health professionals there should be for each number of inmates. I know there
9 were certain other provisions that were implemented with respect to gaining access to mental
10 health care, but I have also seen (inaudible) that show that those provisions were not met. So
11 the number that sticks in my mind is that the goal was to have one mental health professional
12 for every 500 inmates. So that is what I can do for you, but if you have a client who is
13 suffering from a mental health problem and not getting treated (inaudible) is not that
14 important.

15 Q. Let us ask some simple questions. Are all inmates psychologically screened upon
16 arrival at prison?

17 A. Yes.

18 Q. How is that done?

19 A. My understanding is that there is a mental health professional who interviews them at
20 intake.

21 Q. Now the Bureau of Prisons has a mental health classification system, how many levels
22 are there in that classification system?

23 A. Again, I am not – I do not have it in my head but from memory I believe there are
24 four classifications.

25 Q. And what does mental health care level 1 mean? Mr Lewis, are you - what are you
26 reading from, Mr Lewis?

27 A. I was looking at my statement. Is there an issue there?

28 Q. No, you certainly ---

29 A. I mean (inaudible) - Mr Lewis, fair is fair, I have read thousands and thousands of
30 pages, so I have looked at your bundle but there is a classification system at intake where it is
31 classified from “not in need of mental health care” all the way to (inaudible) severe mental
32 health care”, so (inaudible) to more or less psychosis. So if you think it is useful to go
33 through F1, F2, F3, F4, we will do that.

34 Q. Well, let us just - before the short adjournment, let us just try a few more questions.

1 You may have read that Mr Assange - one of Mr Assange's doctors says there is a concern
2 about him having Asperger's syndrome, do you know that?

3 A. Yes, I do.

4 Q. Does the Bureau of Prisons have a specific residential programme to deal with autism
5 spectrum disorder?

6 A. It does, but I very much doubt that Mr Assange would be eligible for that programme.

7 Q. What is the name of that programme?

8 A. I believe it is something along the lines of - [Audio playing: "... has now charged
9 Julian Assange with conspiracy to hack into Defence Department computers. Here is what
10 the President said about WikiLeaks during the campaign and this ..."] ---

11 JUDGE BARAITSER: Right, I am going to rise now and I think I will come back at 1
12 o'clock just to make sure that I have properly adjourned the case. Can you just see what the
13 problem is.

14 (Short adjournment)

15 JUDGE BARAITSER: Can somebody please Mr Lewis what has happened and to inform
16 him can he please come back at 2 o'clock and also that he remains under oath and should not
17 speak to anyone in the interim and with the court's apologies. I do not know if we have got
18 to the bottom of what has occurred. Do we have any update or information? No. You are on
19 your feet, Mr Fitzgerald.

20 MR FITZGERALD: No, no. I understand you can bomb one of these things, but I do not
21 know whether that is what has happened.

22 JUDGE BARAITSER: We are going to make no assumptions for the time being. We will
23 resume at 2 o'clock and the expectation is that we will be in exactly the same position as we
24 were five minutes ago and we will continue with the evidence then. Thank you very much. 2
25 o'clock.

26 (Luncheon adjournment)

27 COURT CLERK: The judge does not intend coming in until it is up and running. Does
28 anyone want to raise any issues with her while we are waiting?

29 MS IVESON: No.

30 THE COURT CLERK: OK.

31 (Short adjournment)

32 (In the absence of the witness)

33 JUDGE BARAITSER: Yes, well, I do not think anyone yet knows what the problem is. I
34 am not yet going to abandon today's hearing. It may be that in the near future the problem

1 can be fixed and, if need be, subject to anything anyone wants to say we will sit late to try
2 and hear this witness. I am very happy, of course, for you to go and take instructions from
3 Mr Assange in the meantime. It is now quarter past three. In terms of the length of time until
4 we reconvene perhaps we can reconvene at quarter to four. If the system is not up and
5 running by then, we will have to review what best to do today, but you certainly have half an
6 hour with your client.

7 MR FITZGERALD: Thank you

8 JUDGE BARAITSER: We will come back at a quarter to four and see if we can resume.

9 Simon, any other information that you have now?

10 THE COURT CLERK: No.

11 JUDGE BARAITSER: Quarter to four. Something else, Mr Lewis?

12 MR LEWIS: Madam, may I just tell you where we have got to during the short adjournment
13 and the time which has been created by this technical difficulty?

14 Subject to your better views, we would propose there may be a shortened way of
15 going ahead with some witnesses. I have given my friend a list of six witnesses we do not
16 need to be called, which would reduce that amount, and there may be some others. However,
17 it really is on this basis and, madam, I just wanted to make sure it was acceptable to you, it
18 appears to be accepted to my learned friend, that many of the witnesses give repetitive
19 evidence. Now, of course, I have to put my case and I put it and I am putting it to Mr Lewis
20 in some detail, as I did with the other witnesses. Rather than simply repeat all that cross-
21 examination, it could either be taken as read that if my learned friend reads the statement, or
22 reads it into the record, that it is not accepted by the prosecution. It is simply in all the
23 circumstances not necessary to re-put our case to each and every witness in such detail and
24 therefore we could eliminate quite a lot of the potential cross-examination. We simply do
25 that with that caveat that it is not an acceptance of their evidence or that their evidence is
26 unchallenged, as it were. It is simply put in a shortened form and it may be that we can
27 actually eliminate a number of witnesses and cut down on those which my friend still wants
28 to call.

29 JUDGE BARAITSER: All right. Thank you. Mr Fitzgerald, your view?

30 MR FITZGERALD: Well, madam, I think there may be some difficulties about not putting
31 the case at all, but my learned friend's second alternative, the intermediate one where he just
32 puts it shortly, I think would be OK. There may be witnesses where my learned friend is
33 really saying, "I have nothing to challenge in this witness" where we could read them and if
34 he indicates that that is the case with some of our witnesses, then we could read them, but I

1 think that there is an authority on this very issue which we need to consult overnight about if
2 we, as it were, you cannot just say, “I am not going to ask the person any questions, but I
3 challenge everything they say.” So it either has to be a case is put shortly that, “I do not
4 accept this. What is your comment?” Or if there is no challenge at all to a witness that we
5 can just read them, but that may be the problem. We are going to look at the recent – is it
6 called Eason? But we obviously will try to find a way through with my learned friend if there
7 are witnesses where he really does not want to ask any questions at all, then ---

8 JUDGE BARAITSER: As you know, in the usual course of events, if he does not challenge
9 a witness, then there is no requirement for you to call them, so I am assuming that is not the
10 case for any of your witnesses. He must have a challenge for all the witnesses he has asked
11 to appear, in person.

12 MR FITZGERALD: That is what we understood to be the case, and if there is a challenge, of
13 course, then issues of credibility arise and we want the court to have the full benefit of
14 hearing from them both. Can we discuss it and see if we can find a way through?

15 JUDGE BARAITSER: Yes. All right. Anything else from you, Mr Lewis?

16 MR LEWIS: No, madam.

17 JUDGE BARAITSER: All right. Well, quarter to four then and I very much hope we will be
18 up and running. Thank you.

19 (Short adjournment)

20 JUDGE BARAITSER: As I am sure you know we are no further ahead than we were earlier.
21 We are now going to adjourn the case, we will resume in the morning. I am assured that IT
22 people from relatively high – well, with significant experience will come into court and try
23 and fix the problem, but we will resume at 10 o'clock in the morning and to carry on with Mr
24 Lewis. He is still available, is he, tomorrow? Mr Lewis still available tomorrow morning?

25 MR FITZGERALD: So far as I know. I think we will be able to, yes.

26 JUDGE BARAITSER: Thank you.

27 MR FITZGERALD: But could I just while we are waiting for confirmation that Mr Lewis,
28 Mr Eric Lewis will not have a problem, madam, I am aware of the limits of your jurisdiction
29 in respect of visits, but it would be wrong if I did not raise it. We sought to go down and see
30 him, only two of us were allowed in, we were only allowed in squatting by, as it were,
31 holding the wall to talk to him. We do obviously need, in the light of my learned friend's
32 suggestion that we may be able to shorten some of the witnesses, to be able to go down as a
33 team and talk to Mr Assange, as we have been able to earlier on in a room. Madam, I do not
34 know quite the limit of your jurisdiction, but if there is anything you can do to persuade those

1 down below to give us access, it obviously would enable us to try to shorten matters and at
2 least to get instructions with Mr Assange being able to talk to us properly.

3 JUDGE BARAITSER: I completely appreciate your concerns. All I would say is as far as I
4 am aware there are 20 category B prisoners in the cells today, so the Old Bailey is
5 particularly busy.

6 MR FITZGERALD: Yes.

7 JUDGE BARAITSER: The difficulty I have is that I do not know how they can make
8 adjustments to accommodate your request and therefore for me to impose requirements upon
9 them I think would be quite wrong.

10 MR FITZGERALD: Yes.

11 JUDGE BARAITSER: I can certainly say, and I do in open court, if Mr Assange's defence
12 team can be accommodated and, of course, I would be very grateful, but I cannot say any
13 more than that, I think.

14 MR FITZGERALD: We are grateful for that indication. We hope that will carry some
15 weight and if we are adjourning until tomorrow can we then go down and see him now before
16 they take him away?

17 JUDGE BARAITSER: I am not sure how you think I can affect that position. You certainly
18 do not need my position to do that.

19 MR FITZGERALD: No, no. Again, I think it is just a (inaudible) indication would be the
20 best, yes.

21 JUDGE BARAITSER: I hope you have heard Mr Fitzgerald, they would like to see their
22 client before he is taken back to Belmarsh.

23 PRISON OFFICER: Yes. If he goes down now there should not be a problem, madam.

24 JUDGE BARAITSER: There you go. You have that reassurance.

25 MR FITZGERALD: Thank you, madam.

26 JUDGE BARAITSER: 10 o'clock start then. I am going to assume we can start at 10
27 o'clock and I hope we can continue with Mr Lewis. Is there anyone else lined up apart from
28 Mr Lewis to give evidence tomorrow?

29 MR FITZGERALD: Well I think given the problems, it might be Mr Durkin in the
30 afternoon, subject to any accommodation by my learned friend, but it may be that what we
31 would do is we will call him and my learned friend's questions will be relatively brief. That
32 is just my suggestion.

1 JUDGE BARAITSER: All right. It might be an idea if it is at all possible to combine those
2 that attend remotely with those who are physically present in case we can use time usefully --
3 -
4 MR FITZGERALD: Yes.
5 JUDGE BARAITSER: --- to hear from those who are here.
6 MR FITZGERALD: You mean the English witnesses or London based witnesses? Yes.
7 JUDGE BARAITSER: Yes, to have ---
8 MR FITZGERALD: We have been trying to do that though.
9 JUDGE BARAITSER: I see. All right. So be it. 10 o'clock in the morning then. Thank
10 you very much. Mr Assange, as always, you remain in custody overnight, back in the
11 morning, please. Thank you,
12

ADJOURNED AT 15.55 UNTIL TUESDAY, 15th SEPTEMBER 2020

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.