

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

16th SEPTEMBER 2020, 10.00 – 16.13

REISSUE 1

1 JUDGE BARAITSER: Yes, good morning. No sign yet of Mr Assange and the public
2 gallery does not look as if it is open.

3 MR LEWIS: Good morning, madam. Madam, just on timings, as I indicated to the defence
4 yesterday, I have revised my timing for Mr Goetz and I will be relatively short so that it will
5 not be the two hours ---

6 JUDGE BARAITSER: Thank you.

7 MR LEWIS: --- in there but I think my learned friend will be able to usefully spend the time
8 with his client ---

9 JUDGE BARAITSER: All right.

10 MR LEWIS: --- if there is any extra time of course.

11 MR SUMMERS: Mr Goetz is the witness we have this morning, madam.

12 COURT USHER: Hello. Could you open the gallery for court 9 and 10 please?

13 JUDGE BARAITSER: It is now been opened, thank you. I can see.

14 COURT USHER: OK. Thank you.

15 MR SUMMERS: For good or bad, madam, he is the only witness we have lined up this
16 morning. If we are short with him then there is I think a statement or two we can read there.
17 We can certainly use the time to spend some time with Mr Assange.

18 JUDGE BARAITSER: Thank you very much. Good morning, Mr Assange. Everyone who
19 wishes to be in court, are they here? No one else expected from you, Mr Summers?

20 MR SUMMERS: Yes, I think Mr Fitzgerald is probably making his way up from the cells
21 but I suspect the ---

22 DOCK OFFICER: He is making his way up from the cells.

23 JUDGE BARAITSER: Thank you. Happy to start without.

24 MR SUMMERS: OK.

25 JUDGE BARAITSER: Good.

26 COURT USHER: Mr Goetz then please. Good morning, Mr Goetz, can you hear me?

27 WITNESS: Good morning, I can hear you.

28 COURT USHER: And you can see the court room on your laptop over there, yes?

29 WITNESS: Yes, I can.

30 MR GOETZ, Affirmed

31 A. There is a lot of noise on the microphone.

32 JUDGE BARAITSER: Simon, can you just ask the technician to come into the room to see if
33 we can deal with that? I appreciate there is some noise. Can you hear well enough for us to
34 make a start whilst we have a look at the problem?

1 WITNESS: Yes. I think someone is too close to the microphone. I hear you fine.

2 JUDGE BARAITSER: Thank you.

3 Examiné-in-chief by MR SUMMERS

4 Q. Can you hear me, Mr Goetz?

5 A. Yes, I can.

6 Q. Wonderful. Now, Mr Goetz, you are I understand an investigate journalist?

7 A. Yes.

8 Q. Yes. And for whom do you currently work?

9 A. I am the senior editor of investigations for NDR which is German poly television.

10 Q. Thank you very much. And when did you begin working for NDR?

11 A. I began actually in the early nineties and then I went to Der Spiegel and then I came
12 back to NDR in two thousand – in the Summer of 2011.

13 Q. All right. Now, I want if I may to ask you about your time with Der Spiegel. When
14 was that?

15 A. 2007 to 2011.

16 Q. And during your time at Der Spiegel, were you involved in ---

17 JUDGE BARAITSER: I am going to interrupt you, Mr Summers. We have a technician.

18 Can I just check with Mr Goetz that we do not need to make any adjustments at all? So, we
19 have a technician now in the room, Mr Goetz, has the problem been resolved or is there still
20 interference?

21 A. It is fine now, thank you.

22 JUDGE BARAITSER: All right. Thank you very much.

23 COURT USHER: Thank you.

24 Q. Now, during the period you worked for Der Spiegel, were you involved in
25 investigations that touched upon the war in Afghanistan?

26 A. Yes. I had done a series of stories about the war in Afghanistan. I had done a major
27 story on a bombing that ended up killing many civilians that was called by the German
28 Government and how an American pilot did not want to actually do the bombing but was
29 forced to. I did stories about the German KSK, this elite excuse me, military unit. I did
30 stories about Murat Kurnaz in Kandahar and many others.

31 Q. Well, the work that you did, did it win awards?

32 A. Sure. The story about the bombing in Kunduz won Germany's independent most
33 prestigious journalism award the Nannen prize.

34 Q. Now, you ---

1 A. And there was a parliamentary investigation. Among other things, it caused a
2 parliamentary investigation into the incident.

3 Q. In June of 2010, I think you were invited to represent Der Spiegel on a new project, is
4 that right?

5 A. Yes.

6 Q. And what was that project?

7 A. Well, I was asked to go to London because – and to meet with the Guardian and with
8 Julian Assange because there was some prospect of us working together on a project about
9 the Afghan – there were – at that point we did not know that there was a lot of material about
10 Afghanistan but because I had done stories about Afghanistan and I kind of knew the
11 American military jargon, which is difficult to read if you are not familiar with it, it was seen
12 as a good idea that I go over. Also, I am a native English speaker.

13 Q. And that was June 2010. Did you travel to London?

14 A. Yes. I went over and I was one of the participants in kind of the early meetings at the
15 bunker, as it was called, at the Guardian with Julian Assange, Arrowsmith and the New York
16 Times and other editors from the Guardian, David Leigh, Nick Davies, yeah.

17 Q. So, you ---

18 A. And as far as I remember that was the only time that all of the partners were in the
19 same room together.

20 Q. Now, you have mentioned “partners”. What was being proposed at that time by way
21 of partnership, please?

22 A. Well, what became very clear was that we discussed that we would all be part of this
23 in researching material but that each outlet would do its own stories about the Afghan files.

24 Q. So, we are concentrating for the moment on the Afghan files and journalistic
25 partnerships. Was that something that was common at the time?

26 A. No, it was not common that you work with a competing media outlet. It was very
27 unorthodox and it was difficult and kind of was fascinating because it – I mean, now it is far
28 more common but at the time it was very unique.

29 Q. And between you, I think you began working through the, what we know as the
30 Afghan war logs. Just give us please an overview of what those documents contained from
31 your perspective. Were they anodyne? Were they relevant?

32 A. No, they were a fascinating first-hand kind of eyewitness diary of what was
33 happening in Afghanistan during the war as it was happening. That does not – you know, so
34 that means that some things were also incorrect because people didn’t know or understand

1 what they'd seen. But it was fascinating and I ended up working together doing a piece on a
2 story about Task Force 373 which was a kind of assassination squad in Afghanistan and that
3 became then a cover story for Der Spiegel.

4 Q. All right. And the activities of Task Force 373 I think you relate in your witness
5 statement, but in summary what was interesting from Der Spiegel's point of view about the
6 activities of this American military unit?

7 A. Well, it revealed that there was something parallel to the Operation Phoenix that
8 existed in the Vietnam War about a team that went out and did assassinations, and the
9 fascinating thing was that in the documents you could follow their activities and that had not
10 been done, that was all new, and that is why it was a major story to people at that time.

11 Q. And the material that you were handling, what steps were taken to ensure that it was
12 kept secure?

13 A. Well, at that time I remember being very, very irritated by the constant unending
14 reminders by Assange that we needed to be secure, that we needed to encrypt things, that we
15 needed to use encrypted chats, and it was the first time in my life that I had ever seen or used
16 or touched Cryptothon. The amount of precautions around the safety of the material were
17 enormous and I felt at the time it was paranoid and crazy but later it became standard
18 journalistic practice, but at that point it was very new to me.

19 Q. And so far as the subject matter of the Afghan war logs was concerned, was it
20 recognised that there was sensitivity about publication about some of the names, for example,
21 in that material?

22 A. Yes, of course there was sensitivity and it was one of the things that was talked about
23 the entire time while I was in the bunker. You know, constantly, you know, time and time
24 again.

25 Q. And, in a sentence, please describe Mr Assange's approach to that sensitivity.

26 A. He was very concerned with the technical aspect of trying to figure out how to find
27 the names in this massive collection of documents. I mean you have to remember this is the
28 first time that anyone was dealing with this massive, you know - I mean, it was tens of
29 thousands of documents and I remember he and everyone were discussing how to find these
30 sensitive things and he was particularly thinking of technical ways of finding them.

31 Q. And was he concerned about finding sensitive names in these documents?

32 A. Well, yes, we could redact them so that they would not, you know, we could take
33 measures to make sure that they were not to be published so that no one would be harmed.

1 Q. And so far as the media partners were concerned, were they all on board with the
2 process of redaction and harm minimisation?

3 A. Yes, of course.

4 Q. Were there written agreements in relation to it?

5 A. No, but I remember we interviewed Julian Assange about the harm minimisation to
6 ensure that before the publication - we were down in the ground floor restaurant of the
7 Guardian, we interviewed him there about harm minimisation and we published the results
8 where he describes the harm minimisation process and how it was designed to protect the
9 innocents from being harmed.

10 Q. All right. Your witness statement deals with some of the steps that were taken to deal
11 with harm minimisation and involved contacting the White House in relation to the Afghan
12 war logs. Is that right?

13 A. Yes, it is, yes.

14 Q. And which of the media partners undertook that process?

15 A. Well, it was agreed that The New York Times because the team they were working
16 with were based in Washington. They also have connections, you know, they even had a
17 reach to White House and they sent a delegation to the White House to discuss their concerns
18 about the publication. We let them know what we were doing.

19 Q. And the result of that communication or discussion was what?

20 A. Well, I remember Eric Schmidt writing the email basically right (inaudible) of the
21 meeting saying that the White House was asking for redactions and they passed along the
22 message to the White House that WikiLeaks would redact 15,000 documents and was
23 offering, if possible, if there could be more technical assistance or ideas with names, or
24 anything like that, WikiLeaks would be open to receiving them.

25 Q. So following the discussions with the White House, 15,000 documents, you say, were
26 withheld from publication. Is that right?

27 A. 15,000 documents; it was communicated to the White House that 15,000 documents
28 would not be published because of the harm minimisation process and that is also what
29 happened.

30 Q. And eventually the Afghan war logs were published. Is that right?

31 A. Eventually, yes. The stories came out about the Afghan war logs and the Afghan war
32 logs were published, but not the 15,000.

33 Q. OK. And who published first out of interest?

1 A. There was a technical glitch, if I remember correctly, and as far as I know we
2 published first.

3 Q. “We” being who, Mr Goetz?

4 A. Der Spiegel. And WikiLeaks published later, so we were actually the first ones and I
5 am not exactly sure about the other two about The Guardian and The New York Times, but I
6 think WikiLeaks – I think we all published before WikiLeaks because they had some – I
7 think they were an hour and a half. I do not remember the exact times, I am sorry.

8 Q. All right. And just finally on the Afghan documents, it may be suggested to you that
9 the redaction process was not robust enough and names got through the net. To your
10 knowledge is that right or not?

11 A. I do not know if that is true. I have no knowledge of that. I have not seen an example
12 and, you know, I have not. I do not know about.

13 Q. Well, the materials are still publicly available. Is that right?

14 A. As far as I know it is publicly available.

15 Q. Are you aware of any sensitive name that got through the harm minimisation net that
16 was set up?

17 A. I am not aware of it, no.

18 Q. All right. The Iraq war diaries next then. Were you directly involved in that process?

19 A. No. I took a break. Family responsibilities that I needed time to take care of. I was
20 still in part of the email loop and was in contact with some people on the phone, but I was not
21 involved in the way that I was with Afghanistan and the way there with the cables.

22 Q. All right. Well, from your knowledge of the emails and the telephone conversations
23 that were passing, are you able to tell us whether the redaction, or the harm minimisation
24 process, changed or remained the same for the Iraq materials?

25 A. Well, again, I mean the Russian process developed over time because it was, again
26 this was the first time this type of thing was done, and with the Iraq war logs, WikiLeaks had
27 overshot and ended up redacting more things than even the defence department had done with
28 FOIA requests that had been filed previously from the same documents.

29 Q. Just say that again. The WikiLeaks ended up with redacting more than the defence
30 department themselves did?

31 A. I mean it turns out that there were documents that appeared in the Iraq war logs that
32 had already been FOIA'd which means there was a Freedom Of Information Act request and
33 more information was released by the DOD, department of defence FOIA than actually had
34 been in the WikiLeaks redaction process.

1 Q. Can I ---

2 A. But I do also remember this about the Iraq war logs. I got an email at that time from
3 David Leigh, who said that the publication was being delayed, and you must remember that
4 was important for me because I was hoping to get back involved as soon as I could get back
5 to work because WikiLeaks was taking so long to redact, as he called, "bad stuff."

6 Q. To redact, did you say? I do not think we quite caught the word.

7 JUDGE BARAITSER: "Taking so long."

8 A. Yes, to redact, to remove bad stuff.

9 MR SUMMERS: Again, staying in 2010 then and moving, please, to the subject of the State
10 Department cables. I want by way of introduction to take you to your second witness
11 statement, and, whilst I remember, just formalities, you have provided two witness statements
12 in this case.

13 A. Yes.

14 Q. The 1 February, the 12th of this year. Madam, your tab 31. And the second, 17 July.

15 A. Yes.

16 Q. Are they both accurate, Mr Goetz?

17 A. Yes.

18 Q. And do you adopt them as evidence in this case?

19 A. The one thing I said about Gaddafi's nurse, I think I said she was Bulgarian and I
20 think I have read in the meantime that she was Ukrainian. I got her nationality ---

21 Q. Right. I think we will probably come to that. That is your paragraph 24 in your first
22 report talking about the content of the cables, so we should ---

23 A. Right.

24 Q. Ukrainian not Bulgarian. OK. Otherwise, ---

25 A. She is probably Bulgarian but I was just reading, in preparing for this, I was reading
26 articles and I did read it was reported Ukrainian, so I obviously got that wrong.

27 Q. All right. That aside, are your witness statements to your knowledge correct?

28 A. Yes, they are.

29 Q. Do you adopt them as your evidence?

30 A. Yes, I do.

31 Q. Right. Your second witness statement deals primarily with your investigation into Mr
32 El-Masri's plight.

33 A. Yes.

34 Q. When did that investigation begin, please?

1 A. It began basically in 2005/2006, so significantly before, you know, the co-operation
2 with WikiLeaks, and at that time I was still working for German public television, NDR.

3 Q. All right. And just summarise for us in a sentence what Mr El-Masri was alleging had
4 happened to him.

5 A. Well, it is interesting because at that point very few people believed him that it was
6 true, but he was alleging that he had been kidnapped, tortured and disappeared for many
7 months and brought to what he thought was Afghanistan, then dumped in a forest in Albania
8 six months later and somehow managed to kind of make it back to Germany. He is a German
9 citizen. And, yes, so that was what he had alleged at the time.

10 Q. And who was he alleging was responsible for that kidnapping, rendition and torture?

11 A. Well, he says, I mean there was an article saying he was brought to an American
12 military base in Afghanistan, that it was clearly an American (inaudible) although he was
13 kidnapped in Macedonia.

14 Q. And your role in relation ---

15 A. What happened ---

16 Q. Sorry.

17 A. May I just point out that since then all of his allegations have been subsequently
18 proved and even the high European Court has confirmed that what he claimed to have
19 happened did happen to him, so.

20 Q. Yes.

21 A. But this is way back in 2005. In 2006 that was not known.

22 Q. And your investigation into what he was then alleging revealed what? And I want to
23 take us up to the point where you come into possession of the diplomatic cables. So up until
24 that point what had you managed to uncover?

25 A. Well, I had managed to find the kidnappers through a very long and complicated
26 process, the CIA kidnappers, the people who had forced him onto the aeroplane and there
27 sodomised him and then eventually delivered him to Afghanistan to an American military
28 prison. Through a long series of complicated research having to do with rendition, planes,
29 hotel records we were able to find the names and then eventually I went to different places,
30 including where he lived in North Carolina and then actually we asked them about the
31 kidnapping of Khalid El-Masri.

32 Q. And the result of your investigation led to what?

33 A. Well, the Munich state prosecutor then did issue a warrant for the 13 CIA kidnappers
34 after we broadcast our story.

1 Q. Sorry. I think we lost a couple of words. What did the Munich state prosecutor do?

2 A. Yes, the Munich state prosecutor issued a warrant to arrest the 13 CIA people who
3 had kidnapped and mistreated Khaled El-Masri. Yes, they issued an arrest warrant which ---

4 Q. Third time lucky.

5 A. Which was highly unusual. It's the first time in Germany that something like that had
6 been done.

7 Q. Yes. So your investigation leads to arrest warrants issued in Germany and
8 presumably then the perpetrators of this war crime were brought to justice.

9 A. That was the fascinating thing. That is what we expected, but what was fascinating
10 about the arrest warrant was that it was never issued in the United States where, of course,
11 everyone knew where the perpetrators of the crime lived, and I never really understood that.
12 It was something that I reported on and while, of course, when I finally saw the cables, the
13 diplomatic cables, one of the first things, of course, typed in was "Khaled El-Masri" and I
14 was I was fascinated to see the pressure that the United States had placed on the German
15 Government not to issue the arrest warrant in the United States, to make it solely an arrest
16 warrant for a jurisdiction where the perpetrators did not live. That was fascinating because
17 we were always wondering how could it be that the arrest warrant was not delivered to the
18 United States. It did not make any sense and it was only through looking at that cable that we
19 finally understood it.

20 Q. And what kind of pressure are we talking about that the cables revealed America had
21 exerted?

22 A. I do not have the exact quote in my head but it is something like there would be
23 serious repercussions for German/American relations if this gets out.

24 Q. Now, that has taken us to the middle of 2010 and your receipt of the diplomatic
25 cables. Were you involved in the process of working through those cables for Der Spiegel.

26 A. Yes, I was.

27 Q. And analysing them and I think you have already told us about your discoveries about
28 Gaddafi's Bulgarian nurse.

29 A. Right. Right.

30 Q. And the process of publication, was it different or the same to that which had
31 followed the war diaries?

32 A. Well, there are two phases with the diplomatic cables. There were the initial partners
33 that had access to everything and then, afterwards, WikiLeaks had developed country specific
34 relationships with media partners, who would through and redact the material and find

1 stories because, you know, not everyone knows about what is interesting in a different
2 country, Tunisia or whatever. You know, you also needed people who knew (inaudible) of
3 their own countries and part of their job in the later rollout was, of course, to redact. But in
4 our phase, we had access to the entire data set and, yes, went through looking for stories.

5 Q. Alright. A number of questions from that answer. Firstly, are you indicating that the
6 media partners expanded to include local media partners? Is that what you told us?

7 A. Well, after we published, yes.

8 Q. And the process of keeping the materials secure. How did that work for the cables?

9 A. That was a very - you know, an important part of the work with WikiLeaks was also
10 always keeping the material very secure using secure methods (inaudible) and, again, I felt it
11 might be exaggerated but probably by the time of the diplomatic cables we were working
12 with I had more understanding for that.

13 Q. Alright, and the process of redaction, do you regard it as – how robust would you
14 describe it, please?

15 A. I do not know of any case of anyone having harm from the publication of the
16 diplomatic cables.

17 Q. Let us take that in stages. Up to September 2011, so the first year during which you
18 and the other media partners were working on it, was there a process of redaction in place?

19 A. Yes, of course. Each media partner would flag documents and, of course, pass them
20 on to WikiLeaks. I think, yes, of course, yes. There was a redaction process.

21 Q. And your paragraph 22 deals with the involvement of the State Department in that
22 process. Can you just tell us briefly what happened there?

23 A. Well, we had a phone call from the State Department. It was kind of a conference call
24 including DJ Khaled and there were a number of people on it and they had expressed in the
25 phone call, they began to give us numbers of documents that they were concerned about, and
26 of course, we were writing down document numbers and also, during the phone calls, we also
27 had a conference call and they were also quickly looking them up because we had the
28 numbers and we were in many ways quite (inaudible) which stories that they were concerned
29 about because it interested us what they were concerned about. You know, because possibly,
30 there was a story that we were interested in. Of course, we especially looked at those
31 documents for names or whatever, if there was anything specific that needed to be, you know,
32 a name that needed to be redacted or something like that.

33 Q. And in relation to the documents that the State Department drew to your specific
34 attention, was there redaction or not?

1 A. Yes, of course there was, yes. We had sometimes – the thing is that in the middle of
2 the call with the State Department, we were very happy to get these numbers and there was
3 kind of a pause in the conversation and then they decided not to continue doing that with us
4 because it was clear that they had more but they realised they were also kind of giving us an
5 index to possibly some of the more interesting stories and did not want do that.

6 Q. Alright.

7 A. You should just know, they cannot – go ahead.

8 Q. No, go ahead, please finish.

9 A. They were not pointing out names. They were pointing out things that were
10 politically sensitive and that they, you know – that was the issue.

11 Q. Now, fast forward a year, please, to September or the end of August 2011.

12 JUDGE BARAITSER: Keep an eye on the time, Mr Summers.

13 MR SUMMERS: Yes, thank you. Your witness statement, paragraphs 30 to 32 deals with
14 events that you witnessed happening at that time so far as the State Department and cables
15 were concerned.

16 A. Correct.

17 Q. Are you able to answer questions about the process by which unredacted cables came
18 into the public domain, if anybody wants to ask you?

19 A. Yes. I mean, from what I know, I can say right now.

20 Q. Thank you. Well, I am sure you will be asked questions about it if anybody
21 challenges what you say about the reasons why that happened. And lastly this, at the heart of
22 those events are, or is a book published by two Guardian media partners. Are you aware ---

23 MR LEWIS: I am sorry, this is not in a witness statement.

24 MR SUMMERS: Yes it is, it is 30 and 31. The unforeseeable events.

25 MR LEWIS: Well, that is nothing to do with ---

26 MR SUMMERS: Publication of a code word by a central media partner journalist, spreading
27 awareness of access to the hidden files could be achieved.

28 JUDGE BARAITSER: Alright, thank you, yes.

29 MR LEWIS: I am sorry.

30 JUDGE BARAITSER: That is alright. Yes, your question.

31 MR LEWIS: The central media partner journalist who published the code word to the
32 unredacted bank of cables, are you aware – well, who are we talking about?

33 A. Well, we are talking about David Leigh and Luke Harding who published a book
34 where that really gets mentioned.

1 Q. And in short form, the media partner group that you have previously described, did it
2 stay intact as a cohesive group for the duration of the period that we are talking about or were
3 there problems?

4 A. No, no, no. There were significant divisions and conflict around about the end of
5 Afghanistan, but through various means, the coalition stayed together.

6 Q. Are you able to answer questions, if asked, about the breakdown in the relationship
7 between the Guardian, media partners and the rest?

8 A. Yes, to the extent, of course, that I know it.

9 Q. And finally this. You may be asked about passages in David Leigh's book ---

10 MR LEWIS: Madam, I do not think it is fair to deal with tis. This certainly is not in the
11 witness statement and he will have to wait until whether I raise it in cross-examination.

12 JUDGE BARAITSER: Mr Summers, it does sound like re-examination again, territory, if it
13 is raised.

14 MR SUMMERS: Well, can I ask, I just want to make it clear that this is a witness who is in a
15 position to assist this court with the Morrow conversation that Mr Lewis has put to other
16 witnesses. I do not intend to ask any questions about it, but simply to put the court on notice
17 that if there is questions on that, this is the right witness to put it to.

18 JUDGE BARAITSER: Well, thank you, Mr Summers. If it is not in his statement, clearly
19 you will need to ask him examination in chief questions and if it is not raised by Mr Lewis,
20 then I think you are going to be in difficulties in getting that evidence before the court from
21 this witness.

22 MR SUMMERS: Can I have permission to ask that question in chief in order that it is in
23 evidence and so that Mr Lewis can deal with it?

24 JUDGE BARAITSER: Well, it depends if it causes difficulties for Mr Lewis.

25 MR SUMMERS: I doubt it because he has put ---

26 JUDGE BARAITSER: Because it is new information.

27 MR SUMMERS: He has put the question to other witnesses who were not at the meeting.

28 JUDGE BARAITSER: Let me ask his view on it.

29 MR LEWIS: Madam, I do object. This is one of the things I said might happen. If they
30 adopt their witness statements, we do not go into areas which are not in there. I do not know
31 what is going to be said. It should be dealt with in a proper form. If my learned friend was
32 going to do this, he should have prepared a supplemental witness statement. That is the way
33 it is done.

1 JUDGE BARAITSER: Yes. Well, Mr Summers, you have heard those, it does put him in
2 difficulties and it is not in his statement and therefore, you are limited and you have reached
3 the end of your time.

4 MR SUMMERS: Thank you.

5 Cross-examined by MR LEWIS

6 MR LEWIS: Mr Goetz, I am going to ask you a few questions on behalf of the Government.
7 Would I be right in saying that your evidence is that during the period of collaboration
8 between the Guardian, the New York Times and Der Spiegel and WikiLeaks, there were
9 responsible methods for redaction to ensure no harm was caused to informants or sources
10 being known.

11 A. Yes.

12 Q. But do you accept at different times in late August and early September 2001,
13 unredacted material ---

14 JUDGE BARAITSER: Sorry, 2011? You said 2001. Late August, early September 2011.
15 Yes.

16 MR LEWIS: I am sorry, Mr Goetz, I just got confused. The learned judge is absolutely
17 right, but do you accept at different times in late August and early September 2011,
18 unredacted materials were published on the internet by WikiLeaks?

19 A. Well, there was kind of a series of events that happened, I mean, it even started in
20 February 2011 and documents were published on the internet before WikiLeaks, so in that
21 sense, we published what was already (inaudible).

22 Q. Well, let us just test that a little bit because unredacted cables, some of which were
23 marked, 'strictly protect' were published around the 25th of August 2011 by WikiLeaks on
24 the internet, were they not? That is 13 ---

25 A. I do not think you have the dates right. I think what happened is that there was a
26 series of events that basically began with the publication of the password and then there was
27 kind of – and I can explain it, they were kind of mirroring websites that had access to the
28 encrypted file where there was a discussion about whether that password was the actual
29 password to encrypt the material and then a number of websites published some material, you
30 know, primarily Cryptome, which is a well-known kind of leak website, published the
31 unredacted diplomatic cables first and then, yes.

32 Q. Perhaps I could just help you with the chronology because it is the Government's case
33 that before Cryptome published, many unredacted cables themselves were published by

1 WikiLeaks. There should be, you should have had a prosecution bundle sent to you which is
2 paginated.

3 A. Yes. I do, yes.

4 Q. Could I ask you to turn to page 211 at paragraph 38? It is just to the bottom of the
5 page, Mr Goetz. It begins, “Publicly available information”, do you have that yet? It should
6 have ---

7 A. Yes.

8 Q. --- page 211?

9 A. Yes, I have it.

10 Q. Thank you.

11 A. I have it in front of me.

12 Q. Thank you very much. Let me just read it to you, “Publicly available information
13 would rather suggest that Assange’s defence theory is materially incomplete. On or about
14 August the 29th 2011, WikiLeaks posted a statement on its website announcing: Over the
15 past week WikiLeaks has released 133,887 US diplomatic cables from around the world,
16 more than half of the entire cable-gate material”. And the statement noted, “The decision to
17 publish 133,877 cables was taken in accordance with WikiLeaks’s commitment to
18 maximising input and making information available to all”. So that is a week or so before
19 Cryptome published on 1 September, do you see that, chronologically?

20 A. Yes.

21 DEFENDANT: I am sorry, but I did not hear.

22 JUDGE BARAITSER: That was a week before.

23 DEFENDANT: That was maximising what?

24 JUDGE BARAITSER: That was a week before Cryptome published on 1 September.

25 DEFENDANT: Sorry, I did not hear.

26 JUDGE BARAITSER: Sorry ---

27 MR LEWIS: You did not see it.

28 DEFENDANT: Maximising what, he read his statement from ---

29 JUDGE BARAITSER: Just pause for a moment. I wonder if someone from the team can go
30 and find out what the problem is and dealt with.

31 MR FITZGERALD: Yes, I think I heard it. My learned friend said “maximising input” but,
32 in fact, the words are “maximising impact”.

33 JUDGE BARAITSER: Maximising impact, I see.

34 MR LEWIS: Oh, I am sorry, yes.

1 MR FITZGERALD: Yes, just my learned friend has misread.

2 JUDGE BARAITSER: Thank you.

3 MR LEWIS: I am sorry, I apologise ---

4 JUDGE BARAITSER: Thank you very much.

5 MR LEWIS: --- if I have read that wrongly.

6 DEFENDANT: I think it was more political as well.

7 JUDGE BARAITSER: All right. Well, no doubt if there is an issue with the way Mr Lewis
8 is putting a question, someone from the defence team will address the court. Mr Lewis.

9 MR LEWIS: I will just read it again so there is no mistake and correct me if I have not read
10 it as it is written, "The decision to publish 133,877 cables was taken in accordance with
11 WikiLeaks' commitment to maximising impact and making information available to all.
12 Soon thereafter, a number of major news outlets expressed alarm that these cables revealed
13 the names of sources". So prior to Cryptome's release, predicated upon the password in Mr
14 Leigh's book, do you accept that WikiLeaks itself had published some of the unredacted table
15 - cables containing names of sources?

16 A. Well, what I think if you read the statement, the statement says that they - that they
17 expressed alarm that these cables - I do not know if things were revealed. Do you have a
18 specific example?

19 Q. Well, the specific example I will put to you on instructions is that some of those
20 cables were unredacted and had the comment "Strictly Protect" on them.

21 A. That does not ---

22 Q. It is not mentioned there.

23 A. That is (inaudible).

24 Q. It is not mentioned there but, I am putting to you, do you know that? If you do not
25 know, Mr Goetz, you cannot help the court?

26 A. I do not know, no.

27 Q. Now what - so we are talking about this, your paragraph 30, "Unforeseeable event",
28 given that the cables have been published before Cryptome published on 1 September, what
29 other unforeseeable event are you talking about that caused the publication of the unredacted
30 cables by WikiLeaks?

31 A. I make it plain, the cables were not published before. There was a selection of cables
32 that were published before with The Guardian, The New York Times and Der Spiegel and
33 then there was another selection that you just referred to, but - but we are talking about the
34 entire collection. Those are different.

1 Q. So there is no avoidance of doubt, Mr Goetz, I am not talking about any cables or
2 documents which were published during the period of collaboration between The Guardian,
3 The New York Times and Der Spiegel and WikiLeaks before late August and early
4 September 2011, do you see that? So one period ---

5 A. OK.

6 Q. --- is when there was the collaboration and redactions and, then, after that, late August
7 2011, early September, the Government's case is that the entirety of the material was, and I
8 will use the word colloquially, dumped on the internet?

9 A. Oh, OK. Well, I am a real live witness to some of that. I mean, I have the WikiLeaks,
10 because I was kind of frustrated by it, to tell you the truth, WikiLeaks had invested a lot of
11 time, money, effort and personnel and staff into another year of rollout of these documents.
12 They were going to do every country on earth and they were going to basically concentrate
13 their resources on this rollout for another year, which meant that kind of other stories that I
14 was more interested in then, you know, you know, I wanted - I just wanted something that
15 was interesting, some of the more local stories that, of course, other countries would be
16 interested in, but it - in no way is that actually what I observed. What I observed was that the
17 organisation had a major effort to continue the rollout and continue, of course, to have control
18 over the documents for at least another year and plan to, basically, kind of rip from that and
19 to go country by country. And I was in contact with the person mostly responsible for the
20 media partnerships at the time, so I know that she was spending her time doing that as
21 opposed to working with the original media partner on what for me were newer stories,
22 because for us the diplomatic cables were over.

23 Q. Thank you, Mr Goetz.

24 A. (Inaudible).

25 Q. So I just want to show you one other newspaper article, bundle page 349 in that same
26 bundle.

27 A. Yes.

28 Q. Because, Mr Goetz, whatever the intention may have been, we know that by Friday 2
29 September the full cache of unredacted cables had, in fact, been published by WikiLeaks, do
30 we not?

31 A. Well, we have the date we published what was on Cryptome.

32 Q. Well, let us just have a look ---

33 A. It says there in the article.

34 Q. Was ---

- 1 A. WikiLeaks, it says in the article that it was published first by Cryptome.
- 2 Q. Well, let us just have a look at the article. At page 349, “WikiLeaks has published its
3 full archive of 251,000 secret US diplomatic cables without redactions, potentially exposing
4 thousands of individuals named in the documents to detention, harm or putting their lives in
5 danger. The move has been strongly condemned by five previous media partners, The
6 Guardian, New York Times, El Pais, Der Spiegel and La Monde, who have worked with
7 WikiLeaks publishing carefully selected and redacted documents. ‘We deplore the decisions
8 of WikiLeaks to publish the unredacted State Department cables which may put sources at
9 risk’, the organisation said in a joint statement”. So am I right in thinking that Der Spiegel
10 deplored the decision of WikiLeaks to publish the unredacted State Department cables?
- 11 A. I am sure Der Spiegel signed on to that statement, yes, certainly.
- 12 Q. Thank you. And just one of the things you mentioned ---
- 13 A. I would like to - I would like to adjust one thing, if I may. I was not working at Der
14 Spiegel at that time. I had left in the summer of 2011 and moved to NDR and, as far as I
15 know, what actually led to republication of the cables was not known on September 2 when
16 that statement was issued. In fact, the whole chain of events starting with the password in the
17 Luke Harding/David Leigh book actually and slowly came out in the recent months that
18 followed. So that statement was actually published at a stage before the chain of events was
19 actually known.
- 20 Q. OK. I just want to ask you about something you mentioned earlier when you were
21 asked about the 15,000 documents. It is your paragraph 15, which the White House asked
22 WikiLeaks to redact. You mention it at your paragraph 15, Mr Goetz.
- 23 A. Yes, yeah.
- 24 Q. Do you know - did you go through any of those reports to do with actions?
- 25 A. Did I go through any of the 15,000 documents? I am sorry ---
- 26 Q. I am sorry.
- 27 A. --- I do not understand.
- 28 Q. It is probably my inelegant way of putting it. You were sent an email that the White
29 House had requested WikiLeaks redact 15,000 documents?
- 30 A. Right. I am not (inaudible)---
- 31 Q. I am just ---
- 32 A. --- who was The New York Times, the person who from The New York Times was in
33 the bunker with The Guardian and he was kind of our main contact for the co-operation and
34 he - and, again, they went to the White House. There was a kind of delegation of New York

1 Times people that went to the White House and this email was the report that we got right
2 after they came back. So it was, you know, whenever, it was - it was immediate.

3 Q. Do you know if those names were redacted or not in accordance with the White
4 House?

5 A. Well, yes, in fact – because as Eric Schmidt writes in the email, they had (inaudible)
6 the information to the White House that WikiLeaks would redact 15,000 documents, you
7 know, which he calls “docs” and they would, as Eric Schmidt writes, entertain suggestions
8 from ISAP, you know, the military in Afghanistan, for further names and they also requested
9 technical assistance.

10 Q. Do ---

11 A. Now I remember at the time Eric Schmidt telling me on the phone that that was kind
12 of viewed with derision.

13 Q. It is right though, is it not, that eventually certainly by 2 September 2011, WikiLeaks
14 had, in fact, published those 15,000 documents unredacted?

15 A. We are in - this is about Afghanistan.

16 Q. Yes, but by 2 September the WikiLeaks had published all the unredacted documents,
17 the entire ---

18 A. No, no, this ---

19 MR FITZGERALD: I think there is a little misunderstanding.

20 A. May I say something?

21 JUDGE BARAITSER: Well, let us see if it can be clarified and then you can assist in a
22 moment.

23 MR FITZGERALD: Yes, I would like to know where this information comes from.

24 JUDGE BARAITSER: Well ---

25 MR FITZGERALD: Because I think 2 September date is the cables.

26 JUDGE BARAITSER: Let us see if the witness can help Mr Lewis.

27 MR LEWIS: It may be right, I might be wrong.

28 JUDGE BARAITSER: All right.

29 MR LEWIS: I might be ---

30 A. May I say this email refers to the redactions of the Afghan documents. September 2
31 and the diplomatic cables are two entirely different processes.

32 Q. So have WikiLeaks ever ---

33 A. Because the State Department would - I am sorry, yes.

34 Q. Forget the date of 2 September, have WikiLeaks ever released these 15,000

1 documents in an unredacted form onto the internet?

2 A. Not that I know of, not that I know of. I think, actually, there were kind of people
3 who left the organisation and there were kind of internal conflicts. I do not know if any of
4 them would have published it, but I do not know that - I actually spoke to a colleague as well,
5 I do not know that they have ever been published. Do you - I do not know, I do not - I do not
6 think they have been, but I am not again (inaudible).

7 Q. I am just going to turn to a slightly different topic now, Mr Goetz.

8 A. Fine.

9 Q. There is evidence from others that they found Julian Assange thoughtful, humorous,
10 and energetic. Would you agree with that?

11 A. Yes.

12 Q. And his mother has described her son as having a wonderful sense of humour. Would
13 you agree with that?

14 A. Um, yes, I guess, sure, I do not know, I never thought that much about his sense of
15 humour but sure, yes, that would be, yes, I mean, sure. Yes.

16 Q. And his mother has described him as funny, witty, adventurous, mischievous, and an
17 extraordinarily selfless father. Again, would you agree with that?

18 A. What, I am sorry, could you say it again please?

19 Q. His mother has described him as funny, witty, adventurous, mischievous, and an
20 extraordinarily selfless father. Would you agree with that?

21 A. I have never seen his interactions with any children so I do not have the ability to
22 comment on that.

23 Q. That is fine. Thank you very much. That is all I ask.

24 MR SUMMERS: The witness had previously asked for a break after an hour just because of
25 the exhausting nature of doing this.

26 JUDGE BARAITSER: He can have a break save that how long are you going to be in re-
27 examination?

28 MR SUMMERS: I suspect I will be about five or 10 minutes but it would certainly enable
29 me to take instructions ---

30 JUDGE BARAITSER: Ah.

31 MR SUMMERS: --- at this point ---

32 JUDGE BARAITSER: All right. Fair enough.

33 MR SUMMERS: --- which would be of assistance to me as well.

1 JUDGE BARAITSER: Are you following, Mr Goetz? Mr Summers would just like to speak
2 to his client before he considers whether to ask you any more questions so we are going to
3 take a 10 minute break. It is 11 o'clock now. Can you come back on the link at 10 past 11
4 please?

5 A. 10 past 11. I will, yes.

6 JUDGE BARAITSER: Thank you very much.

7 A. You are welcome.

8 (Short adjournment)

9 JUDGE BARAITSER: Thank you very much, Mr Goetz, for coming back in good time. Mr
10 Summers, your re-examination.

11 MR SUMMERS: Thank you.

12 Re-examined by MR SUMMERS

13 Q. Mr Goetz, can you hear me?

14 A. Yes, I can.

15 Q. Wonderful. Can I ask you please about the period 2010 up to August 2011 when the
16 cables were being published in redacted form?

17 A. OK.

18 Q. Are you aware of any cables getting into the public domain containing sensitive
19 names despite that redaction process?

20 A. No. As far as – it was a very rigorous redaction process and, as far as I know, no
21 names came out of that period.

22 Q. And the rigorous redaction process, did it involve discussions with Mr Assange?

23 A. Yes.

24 Q. At which you were present?

25 A. Yes.

26 Q. At which Mr Leigh was also present?

27 A. Yes. Now, we are talking about all of the kind of Afghanistan (inaudible).

28 Q. Thank you.

29 A. In general though.

30 Q. Yes. But then focusing down on to the cables, the process of redacted publication,
31 was that still ongoing in August 2011 or had it petered out?

32 A. No, as I mentioned before, I think I had another year of going country by country with
33 the rest of the diplomatic cables, that was a big WikiLeaks project. You know, I do not know
34 how many countries they ended up getting through but they have a lot more to go and they,

1 that was their plan for the next year. I mean, as far as I understood it. Again, I mentioned I
2 found it kind of frustrating because it meant that as a media partner, you know, from my
3 personal interest it meant that they were as occupied with things that were not stories for me
4 so that was not, you understand what I mean?

5 Q. Now, help us specifically with the cables. Were they all classified or was there some
6 of them that were unclassified?

7 A. No. I, no, there were some that were not classified.

8 Q. All right. And you have been told that some of them contained the heading “Strictly
9 Protect”. What generally speaking did that imply when you saw it on a cable?

10 A. Well, that it meant that it was of particular importance that that stayed secure. It was
11 not necessarily about names, it was more about the political content.

12 Q. All right. So, if ---

13 MR LEWIS: Madam, I do not want there to be a bad point but my junior, and if I did not put
14 it correctly, just so Mr Summers and the witness knows, it is the names which were marked
15 “Strictly Protect”.

16 JUDGE BARAITSER: Thank you.

17 MR LEWIS: Not simply the cable.

18 MR SUMMERS: Right. Let us examine that.

19 Q. Were names marked “Strictly Protect” in these cables?

20 A. I would have to review it. I do not remember exactly.

21 Q. Or did you ever come across names marked “Strictly Protect” or is it a marking that
22 applied to a cable?

23 A. OK. My memory is that it was, referred to the cable and I am thinking about one case
24 of a young German who was (inaudible) at the Embassy and I do not believe that it said
25 “Strictly Protect” in front of his name but I would have to double check, I am sorry. I do not
26 remember.

27 Q. All right.

28 A. It was 10 years ago.

29 Q. And amongst the cables that were published throughout 2010/2011, did they include
30 ones marked “Strictly Protect”?

31 A. Yes. As far as I know. It was “Strictly Protect”, again, I do not remember very well,
32 I am sorry to say.

1 Q. Now, you were asked by reference to Mr Kromberg's affidavit at page 211 about
2 133,000 cables released by WikiLeaks the week before the whole batch was took. Do you
3 remember that?

4 A. Yes.

5 Q. I think it was suggested that it happened on 25 August, I am not sure where that date
6 comes from but paragraph 38 is certainly talking about the last week of August.

7 A. Right.

8 Q. Are you aware of whether those were classified or unclassified cables that were
9 released at that time by WikiLeaks?

10 A. As far as I understand it was unclassified material that was released then.

11 Q. Thank you.

12 MR SUMMERS: We have evidence on this issue, madam, and I am ---

13 MR LEWIS: So do we.

14 MR SUMMERS: --- not going to take the witness further on that.

15 Q. But just so far as it was suggested to you from this paragraph that Ken Dilanian from
16 the LA Times had been critical of that release in the last week of August, do you know who
17 he is?

18 A. I do know who Ken, I mean, I only know of him, I do not know him personally.

19 Q. Is he a reputable journalist?

20 A. I believe he was fired from the Los Angeles Times for having discussed his stories
21 with the CIA in advance but I do not know, I mean, I just kind of, media reports, I do not
22 know the specifics but that is what I understand ---

23 Q. All right.

24 A. --- has been reported.

25 Q. Well, it may not be terribly fair to ask you to comment on media reports, especially
26 where Mr Kromberg himself says three lines from the bottom that he cannot vouch for their
27 accuracy. Are you in a position to vouch for the accuracy of these media reports that
28 suggested that that release of cables contained sensitive names?

29 A. Well, I mean, as far as I know this question of harm was the central issue in the
30 Chelsea Manning trial, and as far as I know there is, I have never known of any case of any
31 specific incident where harm has been shown from the release of the documents.

32 Q. And on the accuracy or otherwise of these media articles cited by Mr Kromberg, are
33 you able to assist us where Mr Kromberg cannot on their accuracy?

1 A. Well, I do not - I mean, I think the articles look like they are expressing fear of what
2 may happen and so in that sense, you know, maybe, you know there may have been fear
3 about something that may happen but what they were worried about did not happen.

4 Q. All right. And just remind me, this batch of 133,000 cables released in the last week
5 of August as far as you were aware classified or unclassified?

6 A. It was unclassified.

7 Q. Thank you. Now, move forward a week to 2 September and the emergence into the
8 public domain of what everybody agrees included classified, unredacted cables. When you
9 were asked about that, you repeatedly told Mr Lewis that that was the republishing of what
10 had already been published by Cryptome. Is that something about which you are aware?

11 A. Yes. Cryptome, for an investigative journalist, is a pretty important website because
12 it, you know, they publish a lot of things and (inaudible). Of course, Cryptome published the
13 unredacted cables first and WikiLeaks followed up.

14 Q. Was Cryptome the only one who published first?

15 A. Cryptome was the one that I remember. Cryptome was – I think there were others but
16 not as significant, but I do not – what I remember is specifically very much Cryptome.

17 Q. And you were lastly taken to the Guardian's article on the 2nd of September, page 349
18 of the clip of materials that you have.

19 A. Yes.

20 Q. Following WikiLeaks' republication and you make the point that this article itself tells
21 us that Cryptome had already published those materials. Can I just take you back to the
22 article, so 349, at the bottom – at page 350, the penultimate paragraph deals with the
23 redaction process that you have told us about.

24 A. Yes.

25 Q. Carefully selected cables and before publication, removed any information which
26 could lead to sensitive sources being identified, is that consistent or inconsistent with your
27 knowledge of the process that was adopted?

28 A. Which paragraph?

29 Q. The penultimate paragraph, the last one from the bottom, page 350.

30 A. Yes, yes.

31 Q. So that is the process that had been in place up until 2 September.

32 A. Yes.

33 Q. And is that an accurate or inaccurate description of what you witnessed first-hand?

1 A. Carefully selected cables before publication removed any information which could
2 lead to sensitive sources being identified, yes, that is what happened, yes.

3 Q. Then, the remainder of this article is devoted to the process by which or the events by
4 which the unredacted bank of cables came into the public domain and it begins at the bottom
5 of page 350 with the Guardian holding the password of Enz, the middle of page 351. You see
6 mine is highlighted, so the two paragraphs above are highlighted, the passage in page 351, so
7 paragraphs 3 and 4 on 351.

8 A. Yes.

9 Q. Der Freitag published a story.

10 A. Yes.

11 Q. And then, paragraph 4, “A small group of internet users managed to find the files,
12 publish them, difficult to access format requiring significant technical skill on rival leak site
13 Cryptome.” Is that what you were trying to direct Mr Lewis’ attention to when you said that
14 even this article recognised that Cryptome had published first?

15 A. Yes. Cryptome published the unredacted cables first. I do not think there is any
16 dispute about that, so what WikiLeaks did was republish.

17 Q. Thank you very much. And that remains your evidence, does it?

18 A. Yes.

19 Q. Thank you. Madam, that is all I ask of Mr Goetz.

20 A. But I also –excuse me?

21 Q. No, no. If you have something to add, Mr Goetz, please do.

22 A. Well, I also know, I mean I knew the various people who were involved at the time. I
23 know Holder Stark who was visiting Julian Assange in the UK at that time. I know David
24 Leigh and I knew (inaudible) and I have spoken with them all about this. I know that Holder
25 Stark was an eye witness to Assange trying to get the Freitag article not to appear. They
26 made great efforts to stop this from happening and I mean, yes, you know, I understand that
27 that is what happened.

28 Q. Thank you very much.

29 JUDGE BARAITSER: Thank you very much indeed, Mr Goetz, for your attendance at court
30 and giving up your time to give evidence. Your involvement in this case is now concluded
31 and you are very welcome to sever this link. Thank you very much. Anything else that we
32 can usefully do before lunch?

33 (Witness withdrew)

1 MR SUMMERS: Madam, I think naturally, now would be a good time to read into the
2 record the agreed evidence of Mr El-Masri, given this witness' detailed reference to it.

3 JUDGE BARAITSER: Yes.

4 MR SUMMERS: It would certainly work so far as enabling people to follow this aspect of
5 the case.

6 JUDGE BARAITSER: But, Mr Summers, are you going to read verbatim the statement?

7 MR SUMMERS: Yes.

8 JUDGE BARAITSER: Is there any need to do so?

9 MR SUMMERS Well, the Criminal Procedure Rules would require me to ---

10 JUDGE BARAITSER: You say read into the record, but of course, it is a publicly available
11 document which I have in front of me. Is there any purpose in you reading it out?

12 MR SUMMERS: The purpose is twofold, madam. Firstly, the Criminal Procedure Rules
13 require us to and secondly, the public need to follow. I appreciate, of course, madam that you
14 have read these materials and they are familiar to you, but ---

15 JUDGE BARAITSER: Can you point me in the Criminal Procedure Rules where it requires
16 that the statement is read out where it is going to be publicly available for everyone so that I
17 can see.

18 MR FITZGERALD: May we just make a brief comment on this? We do not think it is at all
19 necessary to read it out. Given that you are hearing this matter de bene esse, we do not
20 accept it is admissible, and so, we would have to have an admissibility argument at the
21 beginning, so if my learned friend is saying, "I am reading this out, I am reading it into
22 evidence," he is not. You are looking at all of this de bene esse and therefore, if it needs to
23 go in, because why my learned friend wants to read it out is because he thinks it is
24 prejudicial. That is the real reason. It has got nothing to do with this case because Mr El-
25 Masri has got nothing to do with the charges in relation to publication that Mr Assange faces
26 on the indictment, but he wishes to get the prejudice in and just by reading out. It is not a
27 proper use of the court time and if we have to argue admissibility, we will.

28 JUDGE BARAITSER: Well, the de bene esse point perhaps does not arise quite yet because
29 it is going to come before me by agreement in effect at this stage, but I do wonder whether
30 there is any purpose in using court time to that effect.

31 MR SUMMERS: I understand. The admissibility issue is a different one, of course. The
32 evidence has been served and the US have elected not to challenge the evidence. It is
33 therefore admitted as evidence of a written statement of a witness. Rule 50.15(2)(a) require
34 each relevant part of the statement must be read or summarised aloud or the court must read

1 the statement and its gist must be summarised aloud, so, madam, we are rather constrained by
2 the process.

3 MR LEWIS: Madam, I want to make it abundantly – it is not the position. We have not
4 agreed this evidence. We have not agreed that it can be read section 9 in those forms that we
5 do not contest it. We say it is not relevant and, therefore, before my learned friend can get it
6 in, we are going to have to have a relevance argument on that point, whichever way you look
7 at it. We have taken a rather laissez faire approach that it can all be dealt with de bene esse
8 but if my learned friend is going to rely on the Criminal Procedure Rules so it is actual
9 evidence before you, we say it is not because it is not relevant.

10 JUDGE BARAITSER: How is it different to the evidence I have been hearing thus far, much
11 of which you also consider de bene esse?

12 MR LEWIS: It is not because we have not accepted in our written arguments, in our oral
13 arguments, that on the admissibility point that because, madam, you decided to go down the
14 route where we did not have the Tollman hearing at the beginning, we have taken the view
15 that it would take as long to argue about admissibility as it would to hear it de bene esse, it is
16 paragraph 15 of our recent skeleton argument and we took the pragmatic approach.

17 What I do not want my learned friend to throw back at me, because you have said it
18 can be read and you do not want to cross-examine, it is automatically evidence. It is not. We
19 reserve our position on admissibility on all witnesses.

20 JUDGE BARAITSER: You do, but it has to come before the court albeit in a de bene esse
21 form and therefore, the only discussion we are having at the moment is how it comes before
22 the court, not whether it is formally admitted at the end of the day, but how the court receives
23 it.

24 MR LEWIS: Madam, it is up to you. If you want to waste half – if we want to waste half an
25 hour reading it into the evidence, so be it, but that is our position.

26 JUDGE BARAITSER: Well, I am just having a look at the Criminal Procedure Rules
27 because what Mr Summers read out, and I do not have it in front of me, did you say 50.15?

28 MR SUMMERS: Rule 50, paragraph 15(2) is the – and of course, there is law surrounding
29 this. The court recently in *Eason* deprecated any process by which unagreed evidence is in
30 the court's record. There cannot be a position, according to Lord Leger in *Eason* whereby ---

31 JUDGE BARAITSER: Well.

32 MR SUMMERS: Mr Lewis elects not to cross-examine because that is what has happened in
33 this case and then nonetheless ---

1 JUDGE BARAITSER: Can we just deal with that point? Mr Lewis, do you appreciate that
2 you run the risk that if at the end of the day, I am against you in relation to relevance, by not
3 challenging this witness, their evidence then is accepted by the Government?

4 MR LEWIS: We are comfortable it is not – the admissibility has not yet been decided. That
5 is absolutely certain.

6 JUDGE BARAITSER: Do you appreciate what I have just said?

7 MR LEWIS: I do.

8 JUDGE BARAITSER: If I do find against you, then you have not challenged this witness
9 and then, it becomes unchallenged evidence before the court.

10 MR LEWIS: Well, madam, if we are going to take that, we will want him called. We want
11 him called in those circumstances.

12 JUDGE BARAITSER: Do you want to take a moment just to think about what you are going
13 to do because initially, you thought you did not and now you think you do. Just have a think
14 for a moment about whether you actually need to challenge him about the content of his
15 statement. It is a risky path to assume that I am going to find his evidence irrelevant at the
16 end of the day. It is a path you are welcome to take, but just bear in mind the consequences.

17 Do you want to take a minute, Mr Lewis, or not?

18 MR LEWIS: We could probably edit some of the bits out where he makes comments which
19 we would not accept and therefore, we would require him on that.

20 JUDGE BARAITSER: Well, I am very happy to give you the opportunity to do that.

21 MR LEWIS: So we can edit the statement if it needs to be read.

22 JUDGE BARAITSER: Why do you not do that? Now, Mr Summers, one way or the other,
23 the rules clearly allow the gist to be summarised aloud so it does not have to be read
24 verbatim.

25 MR SUMMERS: No, no, I hope I made that clear.

26 JUDGE BARAITSER: I would hope that you would not go down that path. In any event,
27 perhaps agreement can be reached in relation to edits and if it cannot, then it does seem to be
28 a situation where the witness will have to be called.

29 MR SUMMERS: Yes, I mean, there are practical implications for that because, of course, we
30 served our evidence and we have constructed this four week hearing based on the list of
31 witnesses that the US indicated they wished to challenge. I have absolutely no idea whether
32 Mr El-Masri or then ten other witnesses that were not on that list are even available to give
33 evidence before you, must less how they could be slotted in to what is already a packed
34 timetable.

1 JUDGE BARAITSER: Perhaps the discussion can involve all those witnesses which are for
2 the time being agreed on the basis that we have already discussed. Perhaps with edits if need
3 be. One way or the other, when I come back, if there is agreement, it will be the gist of the
4 statement and of course, gist is a term perhaps of art rather than of science, Mr Summers, but
5 I am going to rely on your good sense to summarise in short order the content, knowing that I
6 have read the statement and I have it before me.

7 Now, it is 25 to 12. Shall I give you until half past 12 to see what progress you can
8 make in relation to agreement and come back and hear what evidence I can before lunch?
9 12.30 then please.

10 (Short adjournment)

11 JUDGE BARAITSER: Yes. Perhaps, Mr Summers, are you going to go first?

12 MR SUMMERS: No.

13 JUDGE BARAITSER: Is there an application from someone?

14 MR LEWIS: Madam, what I want to understand because the situation is somewhat more
15 complicated because there are two sets of issues which are currently engaged before the
16 court. There is the abuse of process and there are the bars to extradition, and the approach to
17 the two is different. So far as abuse of process is concerned, relying on the cases of *Tollman*,
18 where that evidence is relied upon the court has to look at the written statement and
19 determine whether it is capable of amounting to an abuse before asking the Government to
20 take any position on it, so the Government does not take a position on it beforehand when it
21 comes to abuse.

22 However, because in this case it is said that the evidence also goes to a bar to
23 extradition, we have understood the court to take the practical approach and therefore say
24 they will hear all the evidence de bene esse. Now, if the evidence is going to an abuse, or the
25 issue of abuse, then the approach that the court has just indicated prior to the short
26 adjournment, is saying that it may stand as unchallenged evidence if the court finds it to be
27 relevant, we respectfully say is wrong. If it goes to a bar to extradition, the defence need to
28 explain how the evidence is relevant to the particular bar and why before the Government can
29 make an informed decision on whether it should be challenged.

30 Now, we respectfully submit the court must be very clear about the way in which it
31 treats the evidence because it has taken this pragmatic approach. It is a principle that the
32 requesting state does not have to reply to allegations or matters such as torture that are not
33 relevant to a decision. However, the present approach of the court is that if we do not
34 challenge evidence, it stands in a category which the court can take as true, and we

1 respectfully say that fundamentally undermines the principle that the Government does not
2 have to respond to allegations that are not relevant.

3 Can I just bring that to life? If we look at the El-Masri statement. Madam, I think
4 you have got it there somewhere. I had it a moment ago. But effectively ---

5 JUDGE BARAITSER: Let me just find it.

6 MR LEWIS: --- if we look at this.

7 JUDGE BARAITSER: Let me just find it for a moment. Tab, please, from somebody?

8 MR LEWIS: It is tab 6 in bundle O, I think, madam.

9 JUDGE BARAITSER: Thank you.

10 MR LEWIS: It was in the last set of statements which were served I think after the skeleton
11 argument, or along with.

12 JUDGE BARAITSER: I have it. Yes.

13 MR LEWIS: Just about the same time, I think.

14 JUDGE BARAITSER: Yes.

15 MR LEWIS: It was July. I am wrong. If we look at that, this identifies that he was tortured,
16 he alleges, by the American Government. Now, madam, simply by saying, "Well, if we do
17 not challenge that, it would have to be accepted that his evidence is true that he was tortured",
18 puts the Government in an invidious position if we are adopting the present pragmatic
19 approach. Until we know precisely why that statement is being adduced, the relevance,
20 because we do not see the immediate relevance of it, to simply say, "Well, if we do not
21 challenge it, it will be taken as read that we accept he was tortured by the American
22 Government", makes the matter very difficult for us. So what we will need to do in those
23 circumstances is, first of all, understand, and the court should understand, precisely how this
24 statement goes to an abuse, the process. Or, if it does not go to an abuse, in which case the
25 court then has to make a decision on whether it requires the Government to answer it. If, on
26 the alternative, it goes to a bar to extradition, it needs to be identified as the bar and the court
27 would then have to hear arguments as to why it can possibly go to a bar to extradition and the
28 fact that Mr El-Masri alleges he was tortured by the American Government.

29 So, madam, it is a little bit more complex and nuanced and we respectfully say that if
30 the court is going to take the approach that if we do not challenge a witness the evidence will
31 stand as effectively true, if you were against us on relevance, it makes it unworkable for us.
32 We cannot deal with that without a prior ruling on relevance because if you were to say,
33 "Well, it is relevance", we have to know whether Mr El-Masri was tortured or not. We will
34 have to then deal with that, but, madam, I hope I have made that clear. It may be our fault,

1 we may have misunderstood the position, but once we get into that area where we simply say
2 it has moved away from being de bene esse and then a decision is subsequently made it is
3 relevant and we have failed to challenge it, it becomes accepted, that would cause us severe
4 difficulties.

5 JUDGE BARAITSER: Yes. I have been sent a note. The difficulty with a statement like
6 Mr El-Masri is it is obvious that the reason it is being adduced goes to the issue regarding the
7 importance of the release of the information, not, of course, whether or not this particular
8 individual was or was not tortured, but I understand the way that you put this. I am going to
9 hear Mr Summers' response, perhaps the practical way forward.

10 MR SUMMERS: As a matter of record we have served Mr El-Masri's evidence, are
11 prepared to call him, intended to call him until we received Mr Lewis's list of cross-
12 examination estimates, had planned to do so. His evidence, madam, is manifestly relevant.

13 JUDGE BARAITSER: Let us not deal with the relevance at this stage.

14 MR SUMMERS: So be it.

15 JUDGE BARAITSER: Can you respond to Mr Lewis? I would like, if I can avoid it, not to
16 go through each statement and determine its relevance, and the reason I would like to avoid
17 that is because I have already received an outline of the defence submissions in this case
18 which runs to 200 pages.

19 MR SUMMERS: Yes.

20 JUDGE BARAITSER: The reason I approached this case in the way that I did, and with the
21 agreement of the parties from the very outset, was to avoid making that kind of determination
22 early on in the case. My view was it was more appropriate to hear the evidence and listen to
23 the novel and detailed arguments which I know are being and will be advanced before I
24 should make a decision about which statement went to which submission and the relevance of
25 the statements. So that was how I approached this and I did so, on my understanding, with
26 the agreement of both sides.

27 What we have here is a practical difficulty, I hope I am correct in identifying, but it is
28 not whether this witness, Mr El-Masri, was or was not abused or tortured by the government.
29 The issue is the importance of the cables to his case. Is that a fair understanding?

30 MR SUMMERS: Absolutely, that is.

31 JUDGE BARAITSER: In that case ---

32 MR SUMMERS: Firstly, your approach is right, and, secondly, your understanding of the
33 importance of evidence is also right.

1 JUDGE BARAITSER: In that case I am going to ask you to try and meet Mr Lewis's
2 understandable concern, which is that by accepting the statement he is accepting the fact that
3 this witness was abused and tortured.

4 DEFENDANT: Madam, can you ---

5 JUDGE BARAITSER: Just wait for a moment, please. I am so sorry, Mr Assange, you have
6 had this conversation before. You are well represented. If you have an issue, you must speak
7 through your lawyers, I am afraid.

8 DEFENDANT: Yes. I would like a break to do so.

9 JUDGE BARAITSER: OK.

10 MR SUMMERS: I think there is an issue with the press being unable to see and hear.

11 COURT USHER: No, that has been rectified.

12 JUDGE BARAITSER: I see. In any event, before you reply, Mr Summers, your client
13 clearly wants to give you some instructions and that is perfectly acceptable. I would like to
14 deal with this before lunch, if I can, in order to avoid delay of Mr Hellerson. Can we come
15 back in five or so minutes to see if you can resolve the issues that I have raised?

16 MR FITZGERALD: Madam, I can tell you that there may be problems with Mr Ellsberg this
17 afternoon in any event.

18 JUDGE BARAITSER: Ah, Ellsberg. Thank you for correcting me.

19 MR FITZGERALD: Yes.

20 JUDGE BARAITSER: Ah.

21 MR FITZGERALD: So it may be that we do have time to resolve this and other issues in any
22 event.

23 JUDGE BARAITSER: Well, we may have time, but, of course, I am very concerned if the
24 time is not being sensibly used to hear evidence, so we will need to find out why there may
25 be problems at some point.

26 MR FITZGERALD: OK.

27 JUDGE BARAITSER: And hope that there are none.

28 MR FITZGERALD: Well, madam, I just thought it was right to let you know that there
29 could be problems.

30 JUDGE BARAITSER: All right. Five minutes then so you can take some instructions and
31 then I will hear what you have to say.

32 (Short adjournment)

33 JUDGE BARAITSER: Would you mind asking those that are appearing on behalf to come in
34 and the same with you, please, prosecution.

1 MR LEWIS: Sorry, madam.

2 JUDGE BARAITSER: Oh, there you are, Mr Summers.

3 MR SUMMERS: Oh, sorry, madam, I did not realise you were there. It is almost five to one.
4 There are wide-ranging issues that need to be discussed in relation to my answer to this. May
5 I ask that we return to this at 2 o'clock and I have a little further time to speak with my client,
6 please.

7 JUDGE BARAITSER: It will be helpful to me to understand the nature of the issues before I
8 come back into court, if that is possible, whether you communicate through my clerk or in
9 some other way.

10 MR SUMMERS: Yes, the nature of the issues are, we believe, squarely set out in our draft
11 submissions and I do not intend to take up any time, or your court time, in taking you through
12 them because I know you have read them. But the issue here is whether it is necessary,
13 madam, for you to make a finding in due course that Mr El-Masri was or was not tortured.
14 That is Mr Lewis's concern. Before I answer that, I think there is a straightforward way
15 through this but, before I answer it, I do need to talk through some issues with my client,
16 please.

17 JUDGE BARAITSER: All right. I am hoping that on your return you will produce agreed
18 evidence in relation to these contentious witnesses such that is acceptable to both sides that
19 the court can receive so that this case is not side-tracked by issues that have been raised this
20 morning.

21 MR SUMMERS: Us too.

22 JUDGE BARAITSER: So I hope that a practical solution to the problem raised by Mr Lewis
23 can be found and presented.

24 MR SUMMERS: Indeed.

25 JUDGE BARAITSER: In short order.

26 MR SUMMERS: Thank you.

27 JUDGE BARAITSER: Now perhaps I should know right now what the problems are with
28 this afternoon's witness, Mr Fitzgerald.

29 MR FITZGERALD: Yes.

30 JUDGE BARAITSER: Because it causes me real concern if we cannot make progress.

31 MR FITZGERALD: Madam, if his evidence could start at, let us say, 3.15, which will be
32 7.15 in California, he is a man of 89 years of age and he has been served a lot of stuff. I do
33 not know whether my learned friend is going to take him through any of it, but there is a
34 bundle that has been received. We would like the opportunity to, at 6.30 in the morning his

1 time, at least have some time with him to see whether he has been able to absorb that
2 material.

3 Madam, there are difficulties. You will appreciate we have been working to
4 accommodate a number of witnesses abroad and in different jurisdictions and, also, we have
5 had very little time to take instructions from Mr Assange. That is the nature of the problems.
6 One of our witnesses last week we could not call and then needed to have treatment. If he
7 had been called when we were planning to call him, that would not have been a problem. So
8 there have been problems caused by the delays to our timetable.

9 We would be very grateful if you would give us until 3.15 and then we can indicate to
10 you whether we can definitely go ahead with that witness. There is the problem. He is a man
11 of 89. It is 6.30 in the morning his time if we start at 2.30 and we would need to ensure that
12 he has seen certain materials.

13 JUDGE BARAITSER: I think the best way to proceed is, between 2.00 and 2.30, we can, I
14 hope, resolve the issue that has been raised this morning.

15 MR FITZGERALD: This one, yes, I see.

16 JUDGE BARAITSER: At 2.30 we can start Mr Ellsberg's evidence. If he runs into
17 difficulties because he has not read documents that have been sent to him, we can deal with it
18 as arises.

19 MR FITZGERALD: Well, madam, I am asking the court if we can have until 3.15 in order to
20 discuss his evidence before he gives it.

21 JUDGE BARAITSER: I know that is what you are asking for. He was scheduled to start at 2
22 o'clock. I am going to ---

23 MR FITZGERALD: Well, scheduled ---

24 JUDGE BARAITSER: Well ---

25 MR FITZGERALD: Sorry.

26 JUDGE BARAITSER: I am going to start at 2.30 in the hope that his evidence can be given.
27 I cannot see any reason, and I have not been told any reason, why that should not be possible.
28 That is the decision I have made. 2.30, please, to start his evidence.

29 MR FITZGERALD: Well ---

30 JUDGE BARAITSER: If we run into difficulties ---

31 MR FITZGERALD: --- madam, I may ---

32 JUDGE BARAITSER: --- in the course of his evidence, well, then, I will consider it then.

33 MR FITZGERALD: Well, madam, I may have to ask that his evidence be postponed in those
34 circumstances. Madam, we have been hastily trying to see if there is a way in which we can

1 get round this problem and call other evidence and we have been consulting with the
2 prosecution about that. Obviously, we do not want to waste time for the court, if at all
3 possible, but I may have to make an application, madam. I am just ---

4 JUDGE BARAITSER: If there is no other evidence available, I would like to start his
5 evidence at 2.30 but, clearly, if there is other evidence I can hear this afternoon ---

6 MR FITZGERALD: Yes.

7 JUDGE BARAITSER: --- well, then I take a different view. But we have wasted significant
8 amount of time for reasons beyond the control of both parties and the court.

9 MR FITZGERALD: Yes.

10 JUDGE BARAITSER: And our time at the Old Bailey is limited and I would like, if I can, to
11 hear evidence in a timely fashion.

12 MR FITZGERALD: No, madam, I can assure you I would not be making the application if
13 there was not a good reason for it.

14 JUDGE BARAITSER: Well, 2.30 is the expectation. 2 o'clock, obviously, to try and
15 conclude this morning's issue, but 2.30 for his evidence, please. Thank you.

16 (Luncheon adjournment)

17 COURT USHER: I think the indication was to come back at 2 o'clock.

18 JUDGE BARAITSER: Yes. You were expecting to start at 2 o'clock? Yes. So was I.

19 COURT USHER: And half past 2 for the first witness, that was my expectation ---

20 JUDGE BARAITSER: Yes.

21 COURT USHER: --- of what was meant to happen.

22 JUDGE BARAITSER: Well, let us have Mr Assange into court. Ah. Oh, can we revise it.
23 Ah. I have got an email from Ms Iveson.

24 COURT USHER: Could we have Mr Assange in court number 10 please. OK?

25 JUDGE BARAITSER: I have got an email, the Judge has seen now from Ms Iveson saying
26 can we resume at 2.15 but I did not see that until now.

27 COURT USHER: Right.

28 JUDGE BARAITSER: Mr Fitzgerald, is there a problem resuming now?

29 MR FITZGERALD: I think there is the question of taking some instructions on the legal
30 issue that is being discussed and then in terms of Mr Daniel Ellsberg, we are ready to go
31 ahead, I just need to take instructions on one point.

32 JUDGE BARAITSER: In that case, perhaps we should deal with his evidence since we can
33 and we can re-visit the issue from this morning at any point.

1 MR FITZGERALD: Well, if I can just have one moment to take instructions before Mr
2 Ellsberg is called?
3 JUDGE BARAITSER: How are you going to? In the cells or from the dock?
4 MR FITZGERALD: I think, well, it looks like I will have to do it from ---
5 JUDGE BARAITSER: Lovely.
6 MR FITZGERALD: I think what has been happening, madam, is that instructions have been
7 taken in relation to the legal issue that has arisen ---
8 JUDGE BARAITSER: I see, yes.
9 MR FITZGERALD: --- and my learned friend, Mr Summers, is consulting on that.
10 JUDGE BARAITSER: All right.
11 MR FITZGERALD: I would like a few minutes just to explain to him the position ---
12 JUDGE BARAITSER: Yes.
13 MR FITZGERALD: --- and that we are going ahead, well, I do not know if ---
14 JUDGE BARAITSER: Perhaps he can come into the dock and I can give you a few minutes
15 in the dock ---
16 MR FITZGERALD: Yes.
17 JUDGE BARAITSER: --- and then we can start the ---
18 MR FITZGERALD: Hopefully, yes.
19 JUDGE BARAITSER: --- witness.
20 MR FITZGERALD: Yes, yes, yes.
21 JUDGE BARAITSER: So, is he on his way up? Do we know that?
22 COURT USHER: Yes he is, yes.
23 JUDGE BARAITSER: Lovely.
24 MR FITZGERALD: Yes, that is fine.
25 JUDGE BARAITSER: I will just wait until he comes into court and then I will rise and give
26 you a few minutes.
27 MR FITZGERALD: I would be very grateful. Thank you. Thank you, madam.
28 JUDGE BARAITSER: You are very welcome. Sit down of course. No need for you to
29 stand.
30 MR FITZGERALD: Thank you, madam.
31 (Judge Baraitser conferred with the Court Usher)
32 MR FITZGERALD: I think he is anticipating coming on at 2.30 now.
33 JUDGE BARAITSER: Oh I see.
34 MR FITZGERALD: I think that is the message that ---

1 JUDGE BARAITSER: It was the message I passed to Simon.

2 MR FITZGERALD: Yes. It may have been that we ---

3 JUDGE BARAITSER: Can Ms Iveson contact him to see if he can come on a little earlier or
4 would you rather 2.30?

5 MR FITZGERALD: If you would not mind, madam.

6 JUDGE BARAITSER: 2.30. All right. OK. In that case, is there anything I am going to be
7 doing between 10 past 2 and 2.30? Is Mr Summers coming back with a conclusion to his
8 discussions?

9 MR FITZGERALD: I would imagine that is the case.

10 JUDGE BARAITSER: We will wait for him then.

11 MR FITZGERALD: Yes.

12 COURT USHER: Madam, they are on their way from the legal room.

13 JUDGE BARAITSER: Thank you very much. That is helpful. Mr Summers will come back
14 and explain to me the practical way of the evidence being adduced. Mr Summers, I am
15 hoping that you have come back into court with a practical solution to the issues of this
16 morning?

17 MR SUMMERS: Yes, madam.

18 JUDGE BARAITSER: Are you able to help me with that?

19 MR SUMMERS: Give me just one moment. We do not believe the admission of Mr El-
20 Masri's statement is going to require you to make any credited findings about that which he
21 alleges happened to him.

22 As it happens, you have the Strasbourg Court's decision on it, that is rather by-the-by,
23 the relevance so far as his evidence is concerned lies primarily in the unchallenged and
24 unchallengeable fact that he was making those allegations, making them publicly, that they
25 were as you just heard from Mr Goetz the subject of ongoing investigation and indeed
26 prosecution.

27 And that is the context and the relevance of the evidence that he gives so far as Mr
28 Assange's subsequent obtaining and receiving publication of evidence in his possession that
29 corroborated what helped establish the accuracy or otherwise of those allegations concerned.
30 We say, for the reasons we set out in our skeleton argument, if all of that evidence is right, it
31 becomes relevant to the article 10 analysis, that the substance of the material obtained by Mr
32 Assange went to the extant allegation of criminality just as, as you heard from Mr Goetz
33 today, the substance of the cables went to ongoing issues surrounding avoidance of judicial
34 oversight of those issues.

1 The evidence goes further and permeates a number of other issues not least of all the
2 ICC point but we hope, putting it that way, that makes clear that it is the existence of the
3 allegation that could be agreed through reading or established through calling Mr El-Masri,
4 not the accuracy or otherwise of it although as we have said the Strasbourg Court has had
5 occasion to examine it. I hope that does satisfy Mr Lewis' concerns and provide a practical
6 way through the adducing of this evidence.

7 MR LEWIS: I regret to say it is not for our part sufficiently precise for these reasons. Mr
8 Summers used the words "arises primarily for the fact he has made these allegations" and
9 "the evidence permeates a number of issues". Madam, can I just ask you to look at so we all
10 understand why there must be some precision, the defence skeleton argument, the one which
11 runs to 200 pages. Because the El-Masri evidence is relied upon in a number of submissions
12 in a number of different ways, some of which do go to the truth, the context.

13 So, for instance, it is relied upon on the dual criminality argument and that, if one
14 goes to paragraph 147 in the defence skeleton argument, this is under submission 4 which is
15 dual criminality. And there are two parts to that, they say it shows that a crime was revealed
16 and that somehow, you know, well, we will not go into the legal argument but the defence
17 say that goes to dual criminality.

18 And secondly, they say there is a right to truth. That is paragraph 147 and that
19 somehow goes to dual criminality. If it goes to a right to truth it must be that the facts were
20 true. So, it is not simply that the allegation was made.

21 Thirdly – that is 147, madam – if you just glance at that you will see that the
22 importance of the cables in revealing a crime is evident. That is what they say. And they
23 deal with it further in paragraphs 148 and 149, all of which goes to the truth of the torture
24 allegations. It is then relied on for submission 6. Madam, that is headed "Public Interest and
25 Article 10". And if we go to paragraph 205 it talks about the public interest value. But the
26 public interest value is predicated upon behind the scenes bullying by the United States of
27 Germany. One picks that up at the bottom of 205 where they say, "What WikiLeaks
28 disclosed was the behind the scenes intrastate bullying and pressure to which the US has
29 engaged to prevent its officials, the CIA in particular, being brought to justice for their
30 crimes.". El-Masri.

31 So, they are relying on the fact that the US has bullied Germany. That is not an
32 allegation. Madam, that is notwithstanding. It then goes on to paragraph 206, El-Masri's
33 case, before we deal with *Shayler*. Now, of course, madam, there is a legal issue that we do

1 not understand there to be any doubt about that there is no public interest offence in English
2 law under the Official Secrets Act 1989 or 1911, but, in any event, even if there was, this
3 does not arise on the facts and therefore the facts are important.

4 The next submission is the ICCC where the submission relying on El-Masri is the
5 United States is subverting the public order, whatever that actually means in international
6 law, so, madam, if we want to go to that, it is paragraph 220 and 231. Paragraph 220, fit in
7 with the ICCC and this prosecution and it says relying on El-Masri, “The US managed to
8 subvert the international legal order to secure impunity,” and at 241, as is clear from the
9 judgment in El-Masri, it sets out the opposite is true and then, it is dealing with part of, what
10 it says is to be part of a longstanding effort to preserve the immunity of state officials.

11 Madam, none of those issues as outlined in their written argument, which Mr
12 Summers relies upon, are limited by the way he has now put the matter which is simply the
13 mere fact the allegation was made. We could probably live with that, but if these other
14 allegations which are factual allegations are now being put, dual criminality, Article 10 and
15 the ICC, madam, you identified that you thought it went to the public interest, but it is much,
16 much wider than that in their written arguments and the way in which they are relying on it,
17 so it needs to be – the relevance needs to be identified with more specificity. It needs to be
18 dealt with with great precision so that we do not get into a tangle further along the line.

19 JUDGE BARAITSER: Well, this is what I was hoping the discussions over lunch would
20 involve because surely, neither the defence nor the government are going to ask for a
21 determination from me in relation to whether Mr El-Masri was or was not rendered
22 kidnapped and tortured as alleged because it would obviously be impossible for this court to
23 reach a decision about that, so if you are suggesting that the reason they are relying on this
24 statement, or even one of the reasons, is for me to make that determination, well, that cannot
25 be right.

26 MR LEWIS: Well, if that is made pellucidly clear, madam, because we obviously agree you
27 cannot make that decision and you should not be asked to make it, but if their submissions go
28 wider than just a mere allegation which it appears in writing they do, we should know about
29 it. If it is going to be limited to the mere allegation so that you cannot make that finding, that
30 is fine.

31 JUDGE BARAITSER: Obviously, I am a tryer of fact and law and I am not a lay tribunal
32 and I am quite able to perform mental gymnastics in relation to evidence I receive. My hope
33 over the lunch adjournment was that the two of you could agree the evidence I receive. Not
34 even to the level of detail of to what it goes to. I did not necessarily expect you to agree that,

1 but surely, I can receive the evidence today in court and I can draw the obvious conclusions
2 to which it goes.

3 As you quite rightly said, the defence are not going to ask me to make these
4 conclusions that you are suggesting is open to them so there must be a common sense way of
5 me receiving this evidence without having to draw those conclusions.

6 MR LEWIS: Well, if Mr Summers tells us he limits his relevance to the evidence and
7 reliance on the evidence simply to, “That was the allegation made by Mr El-Masri, we do not
8 have a problem,” but when he uses language such as, ‘primarily,’ and, ‘permeates a number
9 of issues,’ it leads us to believe that those other issues are still extant.

10 JUDGE BARAITSER: Are you expecting the court to go through each of the statements that
11 you have previously agreed and make decisions like that in relation to each one or can the
12 two of you manage to agree that amongst yourselves?

13 MR LEWIS: We would hope we can agree it, madam. I would seriously hope that leading
14 counsel in this case can assist the court to best extent, but it does – I hope I am not being
15 pedantic, but it does require some precision in this case that we both know what we are
16 dealing with. We did not have a long opportunity to speak because Mr Summers had to take
17 instructions.

18 JUDGE BARAITSER: Alright.

19 MR LEWIS: And, therefore, it may be with a further opportunity, we can come to a written
20 formulation which we can then put before you which will not then trespass on the court’s
21 time.

22 JUDGE BARAITSER: Alright, so the best way forward is for me to hear the next witness,
23 Mr Ellsberg, and after the court has risen the two of you can perhaps speak about the content
24 of those statements that you have thus far agreed.

25 MR LEWIS: Thank you, madam.

26 JUDGE BARAITSER: Good. Are we able to make a connection, then, with Mr Ellsberg?
27 Simon, is that in hand? I need a solution to the problem. The technician that is in the
28 building, they cannot concern themselves with the CVP. What support are you receiving?

29 COURT USHER: I have looked at (inaudible).

30 MR FITZGERALD: Madam, it is tab 55, the Daniel Ellsberg statement. It is not signed but I
31 will invite him to adopt it.

32 JUDGE BARAITSER: Is there any issue with the statement not being signed, Mr Lewis?
33 Mr Ellsberg’s statement is not signed. Is there any issue taken with that?

34 MR LEWIS: None at all, none at all.

1 JUDGE BARAITSER: He is not waiting in the lobby. Ms Iveson, can you just ask Mr
2 Ellsberg to wait in the lobby, please? Still no connection, Simon? Still no connection.

3 COURT USHER: Madam, what sometimes happens with the witness is they are asked to do
4 a test, a CVP test.

5 MR FITZGERALD: Is it working?

6 JUDGE BARAITSER: Simon is making sure that your witness is not sitting in the test CVP
7 suite.

8 MR FITZGERALD: I see. I am so sorry.

9 JUDGE BARAITSER: Again, is that something we can ask the witness to move locations,
10 Simon, or not?

11 COURT USHER: It is taking a while to sort the video link out.

12 JUDGE BARAITSER: Can you do that now. If you need any help communicating with the
13 witness, I am sure the defence can give you some assistance, Simon. So let me try and
14 understand what is happening. The witness is still not in the lobby that you were expecting
15 him to be in, is that correct?

16 COURT USHER: Yes.

17 JUDGE BARAITSER: So the CVP is working but he is not in the correct lobby, is that
18 right?

19 COURT USHER: No, CVP working is properly.

20 MR FITZGERALD: So it is a problem at our end, is it?

21 COURT USHER: Yes.

22 JUDGE BARAITSER: A combination, CVP is working - although not terribly well but it is
23 working. He is in a lobby, but it seems to be he is in the wrong lobby. So if you would come
24 round and speak to Simon, he will give you the correct address and you can convey that to
25 your witness.

26 COURT USHER: We have him now in the lobby.

27 JUDGE BARAITSER: Oh, we have him, super. Good. Perfect. We just need to make it a
28 little bigger, please.

29 COURT USHER: Can you hear me, Mr Ellsberg?

30 WITNESS: Yes, I can.

31 JUDGE BARAITSER: I think we will start as we are. Simon, if we need a technician to
32 help, please go and get one.

33 COURT USHER: OK.

34 DANIEL ELLSBERG, Affirmed

1 JUDGE BARAITSER: I am just going to ask you to pause there for a moment. Simon,
2 please get the technician to come and sort out the screen. Thank you very much, Mr Ellsberg,
3 for joining the court. I understand it is very early in the morning where you are and,
4 therefore, we are particularly grateful that you have accommodated us. I am going to hand
5 you over now to Mr Fitzgerald who represents Mr Assange. Thank you.

6 Examined in-chief by MR FITZGERALD

7 Q. Are you Daniel Ellsberg?

8 A. I am sorry, I did not hear that.

9 Q. Sorry,

10 A. My hearing - I am hearing your voices, but my hearing is such that if people speak a
11 little slower than is normal for them it will be helpful for me.

12 Q. OK. Are you Daniel Ellsberg?

13 A. Yes, I am.

14 Q. And, Mr Ellsberg, have you prepared a statement which is 33 paragraphs long for the
15 court?

16 A. Yes, I have.

17 Q. And do you have that statement with you now?

18 A. I have it here, yes.

19 MR FITZGERALD: Yes. And can you confirm for the court that the contents of that
20 statement ---

21 MR ELLSBERG JR: I am going to bring your volume up here.

22 MR FITZGERALD: Oh, OK.

23 A. Can you hear me well enough?

24 Q. Yes, we can hear you very well now, Mr Ellsberg. So ---

25 A. OK, I have the statement here now.

26 Q. Yes. So you have the statement there and are the statement - are the contents of that
27 statement true?

28 A. I am sorry?

29 Q. Are the contents of your statement true? Is your statement true?

30 A. Yes, yes, correct.

31 Q. Yes. Now, Mr Ellsberg, I am just going to take you through your biography, although
32 it is well-known, I am sure, to the court. Is this right, that you were born in Chicago in 1931?

33 A. Yes. Do you want me to go and say "yes" at each point?

34 Q. Yes, please, yes, if you would, please. Is that right?

- 1 A. Yes, correct.
- 2 Q. And is it right that you were educated then at Harvard and then at Cambridge
3 University here, is that right?
- 4 A. Yes, correct.
- 5 Q. You then served in the Marines between 1954 and 1957, is that right?
- 6 A. Correct.
- 7 Q. And, then, from 1964 to 1965, you were a Special Assistant to the Assistant Secretary
8 of Defence with the grading of GS-18, is that right?
- 9 A. That is right.
- 10 Q. Then you served in the Embassy in Saigon between 1965 and 1967, is that correct?
- 11 A. Correct.
- 12 Q. And you helped to produce a top secret, 47 volume study, a history of decision-
13 making in Vietnam and that was as part of the McNamara Task Force, is that right?
- 14 A. That is right.
- 15 Q. And, then, looking at your paragraph 9, is it right that you made several copies of that
16 report which were described as the Pentagon Papers at the time, is that correct?
- 17 A. Yes.
- 18 Q. And you made those copies, you say, because you believed that they demonstrated
19 that the conduct of the war in Vietnam had over more than administration been started and
20 continued by the Government in the knowledge that it could not be won and that President
21 Johnson and his administration had lied to Congress and to the public in relation to its origins,
22 costs and prospects, is that - is that correct?
- 23 A. Unfortunately, exactly right.
- 24 Q. And is it right that then in 1971 you provided copies to The New York Times, The
25 Washington Post and that those newspapers published excerpts of what was described as the
26 Pentagon Papers?
- 27 A. Correct.
- 28 Q. Then there was the litigation with which this court is familiar, the case of *New York*
29 *Times v United States*, about the right of prior restraint of publications protected by the First
30 Amendment, is that right?
- 31 A. That is right.
- 32 Q. And then you yourself were prosecuted in 1971 by the Nixon administration under the
33 Espionage Act, is that correct?
- 34 A. That is correct.

1 Q. And you faced, in the end, 12 counts with a possible sentence of 115 years, is that
2 right?

3 A. Correct.

4 Q. And is this also right, that those charges were dismissed with prejudice because of
5 governmental misconduct towards yourself?

6 A. That is right.

7 Q. Now can I go on, Mr Ellsberg, to paragraph 23 of your report and invite you to help us
8 with your comments there. You there deal with the WikiLeaks revelations and you comment
9 on the extraordinary breadth and depth of those revelations and the significance of those
10 revelations. Could you just comment for the court on what you see as the significance and
11 the importance of the WikiLeaks revelations?

12 A. It was clear to me that these revelations, like the Pentagon Papers, had the capability
13 of - is there a feedback here? I am getting a little.

14 Q. We can hear you fine.

15 A. OK.

16 Q. We can hear you fine.

17 A. OK. That these papers had the capability of informing the public that they had been
18 seriously misled about the nature of the war, the progress in the war, the likelihood that it
19 would be ended successfully or at all, and this was information which was of the highest
20 importance to the American public in pursuit of that war and had the possibility of changing
21 the Government policy toward negotiations and toward ending our involvement in the war. I
22 saw for the first time in virtually 40 years, really 39 years since the Pentagon Papers, the
23 release of a sufficient quantity of documentation as to make varied patterns of decision-
24 making very evident to show that there were policies at work and not merely outward
25 incidents without high authority. And I was very impressed by the news, in fact, that the
26 source, the original source of these papers, Chelsea Manning, had been willing to face life
27 imprisonment or even death in order to get this information to the public. I had to reflect that
28 is the first time that I have heard anyone say that since I felt that, so I felt a very great
29 identification with both the source and with the process of publication.

30 Q. I am grateful for that. Now I want you to move on to paragraph 24 where you
31 comment on the question of whether Mr Assange has political opinions that are of relevance
32 to the intended prosecution. In your view, does he have political opinions that are of
33 relevance to the fact that he is being prosecuted?

34 A. Well, I heard that challenge and I find it, actually, extraordinary and absurd that there

1 should be a challenge to the notion that Julian Assange has political opinions, just as I would
2 find it rather wild to imagine that I have no political opinions. In my discussions with him
3 and in his public statements and in his actions, I recognise very comparable political
4 opinions, namely - do you want me to go through them?

5 Q. Yes, if you could just try to focus on how you would characterise the political
6 opinions.

7 A. Yes.

8 Q. Yes.

9 A. In both - in both cases here for him and me, and we had a great affinity on this when I
10 met with him in London, our opinion was that - can you hear me?

11 Q. Yes, we can hear you fine.

12 A. Our opinion was left - our opinion was that, one, we were sure there was a great
13 disagreement with that of not only the current administration but of all recent past
14 administrations in American Government, namely that there was a great lack of - there was
15 such a great lack of transparency in Government decision-making and in, really, all of its
16 declarations to the public. So many of them were untrue as to the nature of the conflict, the
17 prospects for any kind of success, what was actually being done in our name, that there was
18 really no effective democracy. Each of us believed in open government and democracy and
19 felt that it was essentially impossible, not merely limited but impossible, in questioning
20 foreign affairs or military affairs with so little true information being shared with the public
21 and so much false information being levied on the public.

22 Q. Right, just can I pause you there? I am very grateful for that. And as to his stance as
23 a critic of the Afghan and Iraq wars and the way in which they were being waged, what was
24 the view you formed as to his political opinions there?

25 A. Yes, the Iraq war was clearly recognisable, even to a layman, as a crime against the
26 peace as an aggressive war, much more clearly I would say in a legal sense than either the
27 Vietnam war which I covered very closely. We thought both of those were wrongful wars in
28 their inception and their pursuit, but the Iraq war was very clearly a war of aggression in the
29 sense of the UN documents, the UN agreements.

30 Q. Yes. And you have commented also on your observation of his responsible conduct
31 in relation to this matter, but I want you to come on to where you deal with WikiLeaks'
32 publication of the Afghan war logs. Do you see a paragraph under the heading, "WikiLeaks'
33 publication of the Afghan war logs"? You deal with that at paragraphs 26 to 28.

1 A. The Afghan war logs consisted of low level reports of a kind that I, myself, had
 2 written in Vietnam and, indeed, to anyone I think who had been in the Vietnam war, the
 3 Afghan war was immediately recognisable as what might be called Vietnamistan. It was a re-
 4 run of the Vietnam war, despite the great differences in terrain, in religion, in language,
 5 obvious differences, and yet the basic nature of the war and basically an occupation and
 6 invasion of a foreign country against the wishes of most of its inhabitants was the same and
 7 that meant that the prospects were essentially the same, which were an endless stalemate,
 8 which we have now experienced in Vietnam - in Afghanistan for 19 years. It might have
 9 gone on that long in Vietnam had not truths that the government was trying to withhold made
 10 public.

11 Q. Just pausing you there, you comment on the fact at paragraph 27 in your third
 12 sentence that the Afghan documents are lower level field reports. Is that a correct
 13 characterisation? Lower level field reports?

14 A. That is correct. That is a difference from the Pentagon Papers which were a high
 15 level decision papers. The Afghan war logs and the Iraq war logs were essentially field level,
 16 which, by the way, meant that they did expose a very serious pattern of actual war crimes,
 17 which, as I said, was inferable but not as clear in the Vietnam case, but in the Afghan case the
 18 reports of torture and assassination and death squads were clearly describing war crimes. I
 19 would, by the way, be astonished to see such reports in secret level communications in 1971
 20 or in 1964 in the Pentagon. They would have been much higher in classification. What these
 21 reports reveal was that in the intervening years of the Iraq war and the Afghan war, torture
 22 had become so normalised and death squads and assassination that reports of them could be
 23 entrusted to a network at the secret level available to a hundred thousand people with low
 24 level clearances. In other words, it had become normalised. That is a shocking fact of the
 25 very low classification which would not have been true 40 years earlier.

26 Q. Yes, and you are drawing the distinction between secret and top secret. These were
 27 not top secret. That is one of the points you are making. Is that right?

28 A. All of my pages that I released were top secret. None of these were top secret and, in
 29 fact, when secret documents were referred to in the Pentagon Papers they almost always had
 30 the restrictive category of EXDIS, executive distribution, restricting their distribution,
 31 limited distribution, LIMDIS, or NODIS, meaning no distribution beyond the addressee.
 32 What I learned from the press in the course of the Afghan war logs was that Chelsea Manning
 33 had got all of her material from the intelligence network that excluded EXDIS, LIMDIS and
 34 NODIS. In other words, these were documents that I really in '64 and '65 as an official had

1 no time to read in a 10 or 12 hour day. I deliberately asked if nothing but EXDIS, LIMDIS or
2 NODIS things at the secret level be delivered to me, or top secret. Most of the top secret,
3 higher than top secret, had to be handled separately. So I knew that nothing that was
4 regarded as genuinely sensitive could occur in those papers. As I say, it was startling to
5 discover that torture and death squads and corruption were no longer regarded as sensitive.

6 Q. Going on to paragraph 28, you refer there to the Collateral Murder video, the Apache
7 helicopter assault, and you deal with the moral consequences of that. I just want you to focus
8 on your last sentence there about the importance of knowledge of that kind of conduct being
9 provided to the American public. Can you help us as to whether that, in your view, is
10 something important that the American public should know about conduct of that sort?

11 A. Yes, and I was also caught by the title that Julian Assange named this release because
12 it was very controversial and problematic in the eyes of many people that that title was
13 “Collateral Murder.” People thought that that was provocative. On the contrary, this was, in
14 fact, known to my experience before the Pentagon when I was an operations officer of the
15 Third Battalion, Second Marines in the Marine Corps when I had fought (inaudible) war.
16 There was no question to me that was I was witnessing on that video, the longer video,
17 included murder. In fact, the problematic word was “collateral” which implies inadvertent or
18 unintended death. On the contrary, we were watching somebody pursue with his machine
19 gun an unarmed man wounded, crawling for safety and deliberately shooting him down when
20 there were troops in the vicinity capable of capturing that person.

21 Q. We know ---

22 A. This is what I have talked about adding this murder and a war crime, and so I was
23 very glad that the American public was confronted with this reality of our war.

24 Q. We know that one of the documents that is the subject of the indictment is the rules of
25 engagement. Do you see those as relevant to the interpretation of conduct of that sort, the
26 murder video you have just described?

27 A. I am sorry, I did not hear that.

28 Q. The rules of engagement, the disclosure of the rules of engagement.

29 A. Oh yes, yes.

30 Q. Is that relevant?

31 JUDGE BARAITSER: Just before you ask that question, is that in a statement somewhere?

32 MR FITZGERALD: No, it is not.

33 JUDGE BARAITSER: In that case are you really entitled to ask that question,

34 Mr Fitzgerald?

1 MR FITZGERALD: Well, I do ask it, with your leave.

2 JUDGE BARAITSER: Well, I think Mr Lewis is likely to make the same objections as he
3 has on previous occasions. Do you object, Mr Lewis?

4 MR LEWIS: On this occasion, madam, with this witness I am happy if Mr ---

5 JUDGE BARAITSER: If there is no objection, then you are very welcome to ask the
6 question.

7 MR FITZGERALD: I am obliged, madam.

8 Q. Do you see it as relevant to consider the rules of engagement in connection with that
9 video of the murder of civilians?

10 A. Yes, in particular, even more shocking to me and newsworthy is information needed
11 by the American public was the context of that video. Had we been told by the government
12 that that was an abhorrent incident which had led to the punishment and change in behaviour
13 of the people involved who were laughing at the possibility, or when they discovered,
14 particularly when they discovered that they had wounded children whose father was trying to
15 rescue those people, as a murder that was clearly in violation of the rules of engagement
16 which should have led to change and even the punishment of these people, that would be, if
17 anything, reassuring that the laws of war were being adequately observed. In fact, what we
18 were told in the press was that there had been no punishment because the rules of engagement
19 had not been violated. To say that is to say that the rules of engagement permitted murder
20 and must be changed and were inadequate, and that would be evident even if we did not yet
21 know the rules of engagement, just know that they had not been violated, but actually when
22 they were revealed, as they should have been, they were open for possible change and I
23 believe at various times, various commanders over there have properly changed them and in
24 some cases seen them changed back.

25 Q. Just pausing there. There is one final matter that you deal with in your report. You
26 deal with the question of your trial and your prosecution at paragraphs 30 to 33. At your trial
27 were you permitted under US law to put forward your intention to serve the public interest by
28 your revelations, or were you precluded from bringing that forward?

29 A. I am sorry, sir, again there was ---

30 Q. I am sorry. Were you able to put forward the question of your intention at your trial?

31 A. Oh yes. No, absolutely not. I was hoping – I withheld nearly two years since the
32 Pentagon Papers had been made public, I withheld a good deal of discussion of exactly what
33 led me to do that in the expectation that I would be able to testify to that under oath in a
34 courtroom with sufficient solemnity there and credibility, and I was startled when my lawyer

1 then proceeded on direct examination to ask me the simple question, “Why did you copy the
 2 Pentagon Papers?”, which I accepted that I had done, by the way, and immediately the
 3 prosecution objected and said, “Irrelevant.” My lawyer then tried in several other ways to get
 4 that question through by re-wording it. Each case was blocked and upheld by the judge with
 5 the objection that that was not an element of the case. My lawyers, finally my lawyer,
 6 intervened and said in amazement to the judge, “Your Honour, Matthew Byrne, I have never
 7 heard of a case in which the defendant was not permitted to tell the jury why he had done
 8 what he had done.” And Judge Matthew Byrne then said to him, “Well, you are hearing one
 9 now.” It turns out that every single case since then, two before President Obama, nine under
 10 President Obama, has been subject to this exact same interpretation of the Espionage Act as a
 11 strict liability act law in which the notion of motive or context or extenuating anything is
 12 irrelevant in a legal case. An absurd situation fairly appropriate to a true espionage situation
 13 where one has no good reason for giving documents secretly to a foreign power in time of
 14 war, but absolutely inappropriate for use against whistleblowing where the very purpose or
 15 the context of the act is to inform the public for the good of the party, for the good of the
 16 republic. And that motive is not allowed to be even considered; the meaning of which is I did
 17 not get a fair trial. Despite a very intelligent and conscientious judge, I did not get a fair trial.
 18 No one since me has had a fair trial under those charges. Julian Assange could not get a
 19 remotely fair trial for what he has done under those charges in the United States, and that
 20 remains true today, including cases that are being argued at this moment in court.

21 MR FITZGERALD: I am very grateful. Thank you, Mr Ellsberg. We only have half an
 22 hour. Those are the questions that I am able to ask you. I am very grateful. My learned
 23 friend may ask you some further questions.

24 Cross-examined by MR LEWIS

25 Q. Good afternoon, Mr Ellsberg. I am going to ask you a few questions on behalf of the
 26 government. Can you hear me clearly?

27 A. Yes.

28 Q. It is right, is it not, that you copied the Vietnam papers while you were working for
 29 the RAND Corporation at the Pentagon?

30 A. Correct.

31 Q. And you released them firstly there as US senators then subsequently to the New
 32 York Times and 17 other newspapers?

33 A. 17 in all including the New York Times and the Washington Post.

1 Q. You have been asked at length about the Collateral Murder video and it features in
2 your statement, but do you know that Mr Assange is not being prosecuted for publishing on
3 the internet the Collateral Murder video?

4 A. I am aware of that but the connection with the rules of engagement which is charged
5 bring that directly into play because his release of that demonstrated that the rules of
6 engagement are entirely inadequate to assure supporting the laws of war.

7 Q. Are you aware that he is not being prosecuted on the internet for publishing the rules
8 of engagement?

9 A. Yes, I would say that I would accept, and I have not talked with his defence or
10 himself on this subject, I would expect that he would want to bring up the Collateral Murder
11 case to demonstrate the need for releasing the rules of engagement which were held to
12 correspond to what would be on the Collateral Murder case. So, the two are – go together as
13 an important revelation to the public and to the Government.

14 Q. But, Mr Ellsberg, he is not being prosecuted for publishing on the internet the rules of
15 engagement.

16 A. Say that again please? I did not hear.

17 Q. I will put it another way round. He is only being prosecuted for publishing on the
18 internet the relatively small number of documents where the unredacted names of sources or
19 informants were put in grave danger. It is a very limited publication.

20 A. But there is a superseding indictment that seems to be quite misleading because I have
21 seen the indictment, he is being charged with publishing those limited number of documents
22 but there are also charges that involve holding, retaining other documents as well, so I do not
23 have an understanding that it is leaking, but only for leaked documents that were unredacted.

24 Q. No, no. So there is no dispute between us. He is being prosecuted for all the
25 documents where he conspired with Chelsea Manning to obtain them and to receive them.

26 MR FITZGERALD: Yes.

27 A. Yes.

28 MR LEWIS: But insofar as publishing on the internet he is only charged with three counts,
29 15, 16, and 17, which is limited to where the name, the unredacted names of informants, was
30 published putting them in grave danger.

31 A. Pardon me, sir, it is my understanding that he is not only charged with 15, 16, and 17,
32 there are you know, 15 or 20 other counts. So, I am not clear what point you are making. I
33 am – I do understand about those points, those particular points, but that is not always
34 charged with.

1 Q. Well, that is what is the government's case and what the government have said in
2 evidence and in open court, let me just take you to – there was a bundle sent to you which
3 was called “The Prosecution Materials”. It is simply a paginated bundle of materials which
4 were previously served and it was paginated for ease of reference. Do you have that bundle,
5 Mr Ellsberg?

6 A. I am sorry. Yes, I will get it for you. Pardon me. My son has better hearing here.

7 Q. That is fine.

8 A. He may ---

9 Q. That is fine.

10 A. --- yes.

11 MR ELLSBERG JR: They want you to look at the documents that they sent, just give me a
12 moment.

13 A. Oh the supplementary ---

14 MR ELLSBERG JR: Yes. Yes. It is – let me – let me just say there, bear with me for a
15 moment here. OK. Open.

16 A. Do you want this one?

17 MR ELLSBERG JR: No.

18 JUDGE BARAITSER: Just going forward, Mr Lewis, it may not be necessary for him to
19 turn up the documents that you were referring to.

20 MR LEWIS: No, it may not.

21 JUDGE BARAITSER: Sometimes it is of course but not always.

22 A. The supplementary.

23 MR LEWIS: Mr Ellsberg, let me just read it out to you. Let me just read it out to you.

24 MR ELLSBERG JR: They are going to read it for you. OK. They are going to read it.

25 A. Yes. Can I get the screener?

26 MR ELLSBERG JR: They are going to read it to you.

27 A. On this?

28 MR ELLSBERG JR: Oh yes. Sorry.

29 A. Thank you. Sorry about this.

30 MR ELLSBERG JR: There you go.

31 A. Yes. OK. Pardon me. Go ahead.

32 MR LEWIS: So, I will read it to you in any event.

33 A. Yes, thank you.

1 Q. 20, this is page 104. The declaration of Gordon Kromberg. “The only instances in
2 which the superseding indictment charges Mr Assange with the distribution of national
3 security information and the public are explicitly limited to his distribution of documents
4 classified up to the secret level containing the names of individuals in Afghanistan, Iraq, and
5 elsewhere around the world who risk their safety and freedom by providing information to
6 the United States and our allies.”. And I am going to move on to paragraph 21 because it
7 deals with the collateral murder video, and at 21, page 105, “In short, Mr Assange was
8 charged for publishing specified classified documents that contained the unredacted names of
9 innocent people who risk their safety and freedom to provide information to the United States
10 and its allies. He was not, for example, charged for publishing the so-called collateral murder
11 video that WikiLeaks disclosed in April 2010. In addition, none of the charges allege that Mr
12 Assange violated the law by obtaining and releasing that video. And the superseding
13 indictment does not even mention it.” So, I just want you to be absolutely clear, Mr Ellsberg,
14 offences for the collateral murder video, it plays no part in these proceedings. Do you
15 understand?

16 A. Yes, I do understand that.

17 Q. And it is right, is it not, that in fact when you published the Pentagon papers, you
18 were very careful in what you provided to the media?

19 A. I did withhold three volumes of the 47 volume study from the media having given
20 them only to the Senate.

21 Q. That is right. And in fact I was told it was four. Could it have been four volumes?
22 Four of the 47?

23 A. Was it three? Perhaps it was four volumes? Yes, four volumes. I think you are right,
24 thank you.

25 Q. And the reason you withheld them is because you said “I did not want to get in the
26 way of diplomacy”, because you thought disclosing those four volumes might damage the
27 interests of the United States.

28 A. Actually, sir, I may have said that which was part of the – which was true as far as it
29 goes. I do remember that my major concern was that the negotiations were not succeeding, I
30 knew that was because we were making no concessions that could possibly lead to a
31 revelation but I was afraid that if I released documents of the actual negotiations, the
32 government might use that revelation as an excuse for the failure of success of the
33 negotiations and even as an excuse for terminating them. I wanted the negotiations to
34 continue although up until then they had been totally fruitless. I wanted them to continue and

1 I remember saying at the time I want to get in the way of the war, I do not want to get in the
2 way of negotiations.

3 Q. Yes.

4 A. That is a little more full description of my mood.

5 Q. Thank you. Can I ask you, were there names of persons published in the Pentagon
6 Papers that caused a risk to them of personal harm?

7 A. In one case, yes.

8 Q. But in general you were very careful in what you provided to the media?

9 A. I was very concerned that there be no suggestion that I had edited or truncated the
10 papers because the major message that I wanted to convey was a negative one. I wanted to
11 demonstrate (inaudible). And that is ---

12 Q. Now, Mr ---

13 A. Should I wait? I am sorry.

14 Q. Sorry, Mr Ellsberg, just before ---

15 A. May I say?

16 JUDGE BARAITSER: Yes, just finish what you were saying.

17 A. Shall I repeat that answer?

18 JUDGE BARAITSER: No, we have the answer. You ended with "I wanted to demonstrate"
19 and then you were cut off.

20 A. I did not hear that.

21 MR LEWIS: If you have anything ---

22 A. I am sorry?

23 Q. --- else to say in answer please do say it, Mr Ellsberg.

24 A. Yes, please. Thank you. Thank you. I could not hear. I wanted above all to
25 demonstrate a negative which is difficult because nowhere in the 4,000 pages that I was
26 releasing to the public or the 3,008 to the Senate in addition, in nowhere was there an
27 adequate justification for the killing that we were doing, no real reason. There were reasons
28 but not adequate reasons, and I was afraid that if I redacted or took out anything at all it
29 would be inferred that I had left out the reason for pursuing the war that actually existed
30 there. Therefore, when I confronted one name as I just told you, Lucien Conein, a friend of
31 mine as it happened, but a clandestine CIA agent and officer, who had been involved in the
32 assassination of President Ngo Dinh Diem. Now, that will – there was no law at that point
33 about the intelligence, if any, needs protection but I did know that it could be charged that I
34 was putting him in danger by putting that out. I did not want to do that. On the other hand, I

1 knew that his indemnity was well known in South Vietnam, he made no secret of it, it was
2 well – and he had identified (inaudible) book. This still under the very means of the
3 Protection Act would not have excused him from putting it out even though we would not
4 have known otherwise. But I really did worry about that but when I finally decided to meet
5 him I chose to show that I had not redacted a single word of these 4,000 pages, and therefore
6 he could make no inferences on what was missing. And in that case then, I chose not to
7 redact precisely because I wanted it to be shown that I was not editing what was being put
8 out.

9 Q. Thank you. Mr Ellsberg, we asked for it to be sent through to you, it is just a small
10 document called, “Why WikiLeaks is unlike the Pentagon Papers”. Have you had a chance
11 to look at that or have you read it before? You have probably read it ---

12 A. No, I do not think I have read it but I have read things like that by Floyd Abrams
13 before and by other people as well.

14 MR ELLSBERG JR: You did read it.

15 MR LEWIS: That is fine. OK. So, it is by Mr Floyd Abrams and let me just understand,
16 Floyd Abrams was in fact - he represented the New York Times in the Pentagon Papers case,
17 did he not?

18 A. Floyd Abrams was critical in the civil case involving the injunction, the prior restraint
19 in court. He was very important, he is a very important lawyer, very good lawyer, and he was
20 very capable in that. He played no role at all in the unprecedented criminal prosecution of me
21 and Anthony Russo in the next two years. How much of the Pentagon Papers he has actually
22 read, I do not know, but he did not to my knowledge ever look at it through the perspective of
23 a criminal defendant like me or the prosecution.

24 Q. Yes. I am fully with you on that, Mr Ellsberg, he had nothing to do with the criminal
25 trial but the case we always refer to as the Pentagon Papers case about the First Amendment
26 injunction ---

27 A. Yes.

28 Q. --- he acted for the New York Times. We see that actually at page 3 of this report.
29 He is now a senior partner in the firm of Cahill, Gordon and Reindle and he represented the
30 New York Times in the Pentagon Papers case. And he was the person who argued for the
31 New York Times in the Pentagon Papers case, is that right?

32 A. Yes, he did. And as I repeat, that was often known as the Pentagon Papers case ---

33 Q. Yes.

1 A. --- it was rarely realised by the Press that there were two Pentagon Papers cases, mine
2 being the criminal prosecution which was entirely separate.

3 Q. But ---

4 A. Although equally unprecedented. Equally unprecedented.

5 Q. I just want to put his view to you to see whether you agree. What he says, and I will
6 just read two paragraphs, “In 1971, Daniel Ellsberg decided to make available to the New
7 York Times and then to other newspapers 43 volumes of the Pentagon Papers” and explains
8 what they were, “but he made another critical decision as well, that was to keep confidential
9 the remaining four volumes of the Study describing the diplomatic effects of the United
10 States to resolve the war.” Dropping down another paragraph, “The diplomatic volumes
11 were not published, even in part, for another dozen years. Mr Ellsberg later explained his
12 decision to keep them secret, according to Sandford Ungar’s 1972 book, the Papers, by
13 saying, ‘I didn’t want to get in the way of diplomacy.’ Julian Assange sure does. Can
14 anyone doubt that he would have made those four volumes public on WikiLeaks regardless of
15 their sensitivity or that he would have paid not even the slightest heed for possibility that they
16 might seriously compromise efforts to bring a speedier end outline the war. Mr Ellsberg
17 himself has recently denounced the myth of a good Pentagon Papers as opposed to a bad
18 WikiLeaks. The real myth is that the two disclosures are the same.” So, in short, Mr
19 Abrams is saying there is a complete difference between WikiLeaks’ publication and your
20 publication of the Pentagon Papers and that is why the article is, ‘Why WikiLeaks is unlike
21 the Pentagon Papers.’ Do you agree with that?

22 A. No. I do not agree at all. With all respect to Mr Abrams, who is a very prominent
23 and respected lawyer, I believe he is mistaken on that point. He never in his course of
24 defending in front of the Supreme Court had one minute of discussion with me. Actually, my
25 wife and myself were removing the FBI during the entire period of his involvement because
26 we were putting out other copies of the Pentagon Papers, so I did not discuss it with them or
27 ever again, even many years since. I remember the last time I saw him, we were both getting
28 an award for the ACLU but we never have discussed that case. I would say he does not
29 understand my motives very well and I believe his position, which is likely held by people
30 who want to criticise either Edward Snowden or Chelsea Manning or Julian Assange, they do
31 not seem to warrant, I am happy to say, to criticise me after four years had shown no damage
32 to the United States from what I put out, but they do want to criticise these others, but they
33 made a distinction which, in my view, is inherently misleading. He does not understand my
34 motives or I would say Julian’s motives and by the way, when he says that Julian – he gives a

1 very common misconception that Julian simply believes in putting out everything secret
 2 without discrimination, and the same is said about Chelsea Manning, that she simply dumped
 3 out everything available to her. That is bluntly false and easily demonstrable. Julian
 4 withheld 15,000 files from the very first release of the Afghan papers on the grounds that
 5 they might be (inaudible) to people and also, that to a very heavy prospect of redaction. My
 6 understanding is that he also urged by a request because he was concerned there what China
 7 would share, he requested help from the State Department and the Defence Department on
 8 redacting names and they refused to redact a single one, even though in their efforts to warn
 9 people, they were not able to find a number of them. Others they could not communicate
 10 with (inaudible) brief declaration could not get to them because it was dangerous or because
 11 it might show their relation to the US government.

12 All of those names could have been kept from publication had the State Department
 13 and Defence Department simply responded to the request of the newspapers and of Julian,
 14 which is often made, to identify particularly sensitive parts so that they could be removed. I
 15 think there is no, I have no doubt that Julian would have removed those names. He had no
 16 interest in revealing names, as he has said, and took every effort to my knowledge to remove
 17 them all and did not succeed at every point, not having the cooperation on that point.

18 I can only infer that the State Department and Defence Department, who could have
 19 prevented those names from being published so that nothing could get through to them in the
 20 way of harm, but they chose rather to preserve the possibility of charging Mr Assange with
 21 precisely the charges you have identified, 15, 16 and 17 eventually, rather than take these
 22 steps to protect them. It seems to me they did not lift a finger which puts in great question
 23 their assertion that these people were in 'grave danger.' The fact that ten years since then,
 24 they have not been able to identify a single person that kept the requirement that the State
 25 Department mentioned of a person at risk, namely risk of death, physical harm or
 26 incarceration, the fact is that not a single one of those did which indicates either that the risk
 27 was very much underrated or rather overrated by them or it is they did not care. It seems to
 28 me it is their responsibility for having refused to do this. I am actually rather shocked when I
 29 read it, when I read it (inaudible) declaration and realised that since he did not acknowledge
 30 that they have had that chance to do that, that they would prolong that chance despite the fact
 31 that their adversaries were ruthless.

32 Q. So, this is all the fault of the American Government for letting him publish it, is it? Is
 33 that right?

1 A. Yes, it seems to me that they bear heavy responsibility. Fortunately, the risk was not
2 as great as they claimed since no one was harmed. The same was true in the Pentagon
3 Papers. I was told, as they all would say, blood would be on my hands. They were wrong.

4 Q. Well, let us just examine that a little bit. If we have that same bundle you had and I
5 will read out the headings on it, but we are going to start at page 106 in the declaration of Mr
6 Kromberg. It is heading B. “Many individuals outed by Mr Assange were placed at grave
7 risk and suffered harm.” Now, have you read paragraphs 25 to 65 in Mr Kromberg’s
8 declaration?

9 A. I read it all last night. I do not have it in front of me because it was so large, I did not
10 print it out.

11 Q. In order to do this as economically from a – well, and as timeously as possible, I am
12 going to read some of the passages and then, at the end, I am going to give you the
13 opportunity to say whether or not you still agree that no one was put in harm. Do you
14 understand, Mr Ellsberg, so let me just read some out.

15 A. I do. Thank you.

16 Q. So, paragraph 25, “Many individuals outed by Assange were placed at grave risk and
17 suffered grave harm. The WikiLeaks activity reports of Afghanistan and Iraq was that
18 WikiLeaks published, included the names of local Afghans and Iraqis who had provided
19 information to US coalition forces. The State Department cables that WikiLeaks published
20 included the names of persons throughout the world who provided information to the US
21 government in circumstances where they could reasonably expect their identities would be
22 kept confidential. These sources included journalists, religious leaders, human rights
23 advocates, political dissidents living in repressive regimes who at great risk to their own
24 safety reported to the United States for political commissions.”

25 Now, if we go over to paragraph 27, we have the fact – I will not go through this – the
26 fact that the United States identified and attempted to notify people put in harm’s way and
27 then, at paragraph 29, “Not all sources could be notified. Some people deemed at risk could
28 not be located.”

29 Paragraph 31 on page 108, “All the individuals who had to flee their homelands
30 because they were identified by WikiLeaks in State Department cables suffered actual harm
31 attributable to Assange. Some of these harms are quantifiable such as losing employment or
32 having assets frozen by the autocratic regimes from which they fled.

33 Other harm suffered by the sources forced to flee are not easily quantifiable but are,
34 nonetheless, very real. The United States also is aware of individuals whose unredacted

1 names or other identifying information but contained in classified documents, published by
2 WikiLeaks who subsequently have disappeared. Although the United States cannot prove at
3 this point that their disappearance was the result of being outed by WikiLeaks.

4 The United States is also aware of individuals who were investigated or arrested
5 because they were named in the State Department cables. For example, according to the
6 Committee to Protect Journalists and Media Reports, an Ethiopian journalist was forced to
7 flee Ethiopia after he was interrogated and threatened by Ethiopian authorities regarding the
8 contents of a cable published by WikiLeaks. According to the WikiLeaks cable, the
9 Ethiopian journalist had told US diplomats in 2009 that an Ethiopian government source had
10 told him of a plot to arrest the editors of an Ethiopian publication that had been critical of the
11 Government. According to the information that journalists reportedly told the Committee to
12 Protect Journalists and the BBC, Ethiopian police interrogated him after WikiLeaks published
13 this cable, threatened to jail him if he did not reveal his Government source and, rather than
14 reveal his source, the journalist reportedly fled the country”.

15 Paragraph 35, “People named by WikiLeaks as having provided information to the
16 State Department also reported faced threats and harassment by non-state actors. According
17 to Canada’s Globe and Mail, some of China’s top academics and human rights activists are
18 being attacked as rats and spies after their names were revealed as US Embassy sources in the
19 unredacted WikiLeaks cables that have now been posted online. Witch hunt for Chinese rats.
20 The Globe and Mail further reported WikiLeaks’s release of the previously protected names
21 that sparked an online witch hunt by Chinese nationalist groups with some advocating
22 violence against those now known to have met the US Embassy staff. ‘When the time comes
23 they should be arrested and killed’ reads one typical posting on a prominent neo-
24 Maoistwebsite. One Chinese national who was named in the WikiLeaks’s cables and
25 consequently fled to the United States reported experienced harassment from non-state
26 actors.” And then we have got, “Terrorist groups and criminal organisations having gained
27 from WikiLeaks”. That involves Osama bin Laden who had WikiLeaks’ material when the
28 compound where he was shot was opened by American forces.

29 If we look at page 111, paragraph 39, “Assange endangered Afghans and Iraqis who
30 provided information to US coalition forces”. 39, “The US Department of Defence identified
31 hundreds of Iraqis and Afghans whose lives and freedoms were endangered by Assange’s
32 publication of the unredacted significant activity reports discussed here. The superseding
33 indictment reflects a sample of these significant activity reports. 1. Classified document C1
34 contained the name of a local human source who reported the planned attack; classified

1 document C2, a human source who reported information about weapons; classified document
2 D1, a human source who provided information on an improvised explosive device attack in
3 Iraq”.

4 Going over the page and picking it up halfway through paragraph 41, there are num -
5 this is about Afghanistan and the Taliban, “There are numerous reports of summary justice by
6 the Taliban, resulting in extrajudicial executions. Media reports and first-hand accounts
7 accuse the Taliban of employing torture in interrogation of persons they accused of
8 supporting coalition forces and the central government. The Taliban contacted the
9 newspapers and television stations in several states claiming responsibility”. And it says,
10 “The Taliban killed various people. Moreover, as noted above, the Taliban openly stated in
11 2010 that it was reviewing WikiLeaks’s publications in order to identify spies who they could
12 punish”. If we then go ---

13 A. Sir, pardon me but will I have time to comment on your - or not, are we running out of
14 time?

15 Q. No, we will have time. I am just - I am going to go - I will do it quickly then.

16 A. OK, OK, I appreciate that.

17 Q. 44, this is State Department’s persons at risk of people in Iran and then we have got it
18 explains why people in Iran who were identified and outed. 45, “Assange placed in extreme
19 danger the above referenced individuals”, so that is two individuals specifically identified,
20 “along with many other people located in Iran who regularly travelled to Iran whom Assange
21 named as having provided information to US diplomats. According to State Department
22 personnel with expertise in Iran, the Iranian regime in 2011, and continuing to the present, is
23 repressive. Iranians who spoke to the United States without authorisation faced reprisals”. I
24 am just going to go past Iran to quickly just pick it up with China. We have got Chinese
25 nationals at Item 6, paragraph 49 and following who were put in danger. Page 117, paragraph
26 55, section 7, “Assange endangered many Syrians by outing them. The State Department’s
27 persons at risk class were also identified, mainly individuals in Syria whose lives and
28 freedoms were endangered by Assange’s publication of the unredacted State Department
29 cables described above. The superseding indictment describes two such cables as follows”
30 and those are there set out about human sources’ information with Syria. Assange ---

31 A. Sir, I have read all these ---

32 Q. You have read these.

33 A. --- documents (inaudible).

34 Q. So how can you possibly say, honestly and in an unbiased way, that there is no

1 evidence that Mr Assange's publication of WikiLeaks put anyone in danger; that is just pure
2 nonsense, is it not, Mr Ellsberg?

3 A. No, sir, I find the document that you have just read there entirely cynical and I will
4 describe why, but I have to - you can correct me on the following things. I heard - I read all
5 of those passages last night and I was struck by them and I was struck by the fact, tell me if I
6 am incorrect, it is my understanding that with all these people who felt they were in danger,
7 with reason, in many cases asking to be removed from the country, which the US helped do
8 in many cases where they could, which of course is inconvenient for them and
9 uncomfortable, am I right in believing that not one of those who were subject to threats or
10 interrogation by these brutal and ruthless regimes actually suffered physical harm? Were any
11 of the threats carried out, even one, were any of them abducted to what the State Department
12 called death (inaudible) time or incarceration? When I look at that I would simply answer no
13 and I am saying not one of them actually suffered the carrying out of these threats.

14 Q. Mr Ellsberg, the rules are you do not get to ask questions. I do. So I am going to ask,
15 and you are available ---

16 A. OK, remind me again.

17 Q. Go to 21, page ---

18 A. Let me answer it.

19 Q. Well, wait a minute, Mr Ellsberg, I am going to ask another question. Page 21 ---

20 A. Yes, have I not already answered your first question first?

21 JUDGE BARAITSER: Well, your answer rather ended up being a question to Mr Lewis.

22 A. I withdraw my question.

23 JUDGE BARAITSER: So, in that sense, it is answered but, as I have said to other witnesses,
24 I have no doubt that if there is anything you have missed out, Mr Fitzgerald will have an
25 opportunity to allow you to say anything else that you wish to relevant to this cross-
26 examination.

27 DEFENDANT: Ma'am ---

28 A. I am sorry but I cannot hear that, sorry.

29 DEFENDANT: --- through rhetorical sleight of hand.

30 JUDGE BARAITSER: No, sorry. As before Mr Assange, you have lawyers to represent you
31 and you speak through them.

32 DEFENDANT: It is the federal report all over this ---

33 JUDGE BARAITSER: So ---

34 DEFENDANT: --- (inaudible) guilt.

1 JUDGE BARAITSER: I am going to ---

2 DEFENDANT: If you look at his rhetorical sleight of hand.

3 JUDGE BARAITSER: Mr Assange, we have had this conversation before. Please do not put
4 me in a position where I am forced ---

5 DEFENDANT: There will be worldwide headlines and I can never get rid of them ---

6 JUDGE BARAITSER: Mr Assange.

7 DEFENDANT: --- they are going to affect my reputation and needs to be corrected
8 immediately.

9 JUDGE BARAITSER: Mr Assange, please do not put me in a position where I am forced to
10 remove you so that the witness can give his account. Really, as I have indicated in the past, I
11 have no desire to do this.

12 DEFENDANT: The harm to me will be irreversible.

13 JUDGE BARAITSER: But this witness has to have an opportunity to speak without your
14 interrupting him.

15 DEFENDANT: He does, only ---

16 JUDGE BARAITSER: You are well represented and you can speak through your lawyers
17 and you have done on a number of occasions, but you cannot shout out from the dock during
18 the course of evidence. It is unacceptable and it is not allowed by the rules of this court. So,
19 please, remain silent. Mr Lewis.

20 MR LEWIS: So if we could look at page 21 in that same bundle, paragraph 44. There is a
21 heading, G, "Mr Assange knew the dissemination of the names and sources endangered those
22 individuals. In a recorded interview given at the Frontline Club in London in August 2010,
23 Assange called it regrettable that sources disclosed by WikiLeaks may face some threat as a
24 result but, at the same interview, Assange insisted 'We are not obligated to protect other
25 people's sources, military sources or spy organisations' sources, except from unjust
26 retribution. Only in general or in numerous cases where people sell information or frame
27 others or are engaged in generally traitorous behaviour and actually that is something for the
28 public to know'. Assange also knew his publication of the State Department cables
29 endangered sources who he named as having provided information to the State Department
30 because in a letter dated 27 of November 2010 from the State Department's legal advisers to
31 Assange's counsel, Assange was informed, amongst other things, publication from the State
32 Departments would place at risk the lives of countless innocent individuals". So we say, I am
33 going to ask you again, Mr Ellsberg, is your position that there was absolutely no danger
34 caused by publishing the unredacted names of these informants?

1 A. That is your question, I am sorry?

2 Q. Yes.

3 A. All right.

4 Q. No, that is my question.

5 A. It seems to be - I presume, I presume that Mr Assange is not being charged here for
6 comments that he had made - may have made to press, to the frontline press as to his actions.
7 The actions, as I understand them, are answerably antithetical to the notion that he
8 purposefully revealed such names since he took major important actions to redact and request
9 some help from the Government. That may have come through, but the grave danger - had
10 we been hearing now and had I read in your document or Mr Kromberg's document that
11 hundreds - documents of at least a hundred of threats have been carried out to the harm of
12 these people, the situation here would be entirely different and my attitudes towards the
13 situation would be entirely different. When I learned, however, that in no case was this
14 danger actually - did it eventuate in harm other than the understandable anxiety of some of
15 these people that they might be harmed, that anxiety is a cost to those humans and I would
16 say a cost attributable largely to the Government (inaudible) to protect them by revealing
17 their names for redaction.

18 But, having done that, I think any harm such as having to leave the country or
19 momentary anxiety about this must be put in context of the situation which Mr Assange was
20 trying to expose and democratically (inaudible) which has led to 37 million refugees in that
21 area by US unmitigated wars and by over a million deaths of innocent civilians and others.
22 So the purposes it is there, which I think were the major purposes of violations, as I recognise
23 them, can be put in the perspective of the possibility that some name, having not been
24 protected by the Government, might lead to having to move at the expense of the US
25 Government. It seems to me that the Government is extremely cynical in pretending its
26 concern for these people in that context or in their absolute contempt for the lives of Middle
27 Easterners in general that has been demonstrated over the last 19 years, and their very
28 minimal concern for the people whose names are given here by their refusal to identify them
29 to the press, keeping in mind that their economy, including by way of (inaudible) documents,
30 the Government (inaudible) documents were presented to the Government which requested
31 specific omissions which were then made that very time. In this case, they did not bother to
32 do it.

33 JUDGE BARAITSER: Mr Ellsberg.

34 A. It is impossible to take seriously the claims of the US Government that they were

1 seriously concerned about the names of these (inaudible) who happily did not suffer any
2 genuine harm or any serious harm.

3 MR LEWIS: Now, Mr Ellsberg, I have let you answer that at length. I am going to answer
4 the question again because you have not answered it. The question is a simple question ---

5 A. Thank you.

6 Q. --- and it permits of a binary answer. I will ask the question again, are you saying no
7 one was placed in grave danger?

8 A. There were clearly not in grave danger (inaudible) no serious (inaudible) as defined
9 “serious danger” by the Defence Department who is actually experienced. Potentially, was
10 there grave dangers?

11 Q. I am just going to stop you there, Mr Ellsberg.

12 A. (Inaudible).

13 Q. All right, I am just going to stop you there, Mr Ellsberg. You must just answer the
14 question, not make a speech. Now, I have asked that question twice and I just would like an
15 answer. Are you saying no one was placed in grave danger? Please just tell us.

16 A. Not purposefully by Julian Assange or WikiLeaks and not in grave danger as
17 evidenced by the experience of the last 10 years.

18 Q. What about the disappeared people? The people who have had to disappear in
19 Afghanistan, Iraq, and Syria? It would defy common sense ---

20 A. (Inaudible) to identify ---

21 Q. Please let me finish. Mr Ellsberg, I have not finished the question. I am going to say
22 what about the disappeared people in Afghanistan, Iraq and Syria? Common sense tells us
23 that they have either been murdered or forced to flee under another identity. Are you saying
24 that the people who disappeared have not suffered any harm?

25 MR FITZGERALD: Is my learned friend putting that there is any evidence that people
26 disappeared as a result of these revelations?

27 MR LEWIS: Yes.

28 JUDGE BARAITSER: I assume so, yes.

29 MR LEWIS: I am.

30 MR FITZGERALD: And where is that?

31 MR LEWIS: And I have read that. I will show my learned friend. I read that out.

32 MR FITZGERALD: They said they could not prove, they said they could not prove.

33 MR LEWIS: Precisely.

34 A. Do you want answers?

1 JUDGE BARAITSER: We will in a moment.

2 MR LEWIS: Just a moment. I am just ---

3 JUDGE BARAITSER: Mr Fitzgerald has just interjected and Mr Lewis is just going to find
4 the evidence that he is putting to you. So, if you just bear with us for a moment.

5 MR LEWIS: I read that out.

6 MR FITZGERALD: Yes. They could not prove ---

7 MR LEWIS: It is at, yes, it is paragraph 32, page 108 going to page 109. “The United States
8 is also aware of individuals whose unredacted names or unidentified information were
9 contained in classified documents published by WikiLeaks who subsequently disappeared.”.

10 MR FITZGERALD: Could you read on?

11 MR LEWIS: “And although the United States ---

12 MR FITZGERALD: “Although the United States cannot prove ...” ---

13 JUDGE BARAITSER: Yes, he is going to ---

14 MR LEWIS: I can read.

15 JUDGE BARAITSER: --- prove it. He is going to read it Mr Fitzgerald.

16 MR LEWIS: “Although the United States cannot prove the point that their disappearance
17 was a result of being outed by WikiLeaks.”.

18 MR FITZGERALD: Thank you.

19 Q. I am putting to you that the obvious influence is that they were murdered or had to
20 flee, even though – and we cannot prove it because they have disappeared. That is the point,
21 Mr Ellsberg.

22 A. I am sorry, sir, but it does not seem to me at all obvious that this small fraction of a
23 number of people who have been murdered by – in the course of both sides in that conflict
24 were – can be attributed to the WikiLeaks’ disclosures. At least the government has made no
25 even alleged effort to link the two. There have been a million death there not related to
26 WikiLeaks and year old evidence that these were. And by the way, if there were evidence, if
27 for example the Taliban or others claimed that they had disappeared because of this leak,
28 particularly individuals, my answer to you would be “yes”, I would regard that as a seriously
29 harmful consequence. I am not aware of one single instance of that in the last 10 years or
30 what you told me.

31 Q. Mr Ellsberg, I am just going to have one final question. It is said in the WikiLeaks
32 book called “Inside Julian Assange’s War on Secrecy”, it is page 168 for the note, it says,
33 “Katz” – I am not quite sure who that – “Mr Katz asked what other copies of the database” –
34 he is being helped by someone.

1 A. I did not hear that, I am sorry. I have not heard, I am not quite sure.

2 Q. “Katz asked what other copies of the database existed. For instance, was it correct
3 that Ellsberg had one? Assange shot back, Daniel Ellsberg’s is an encrypted back-up copy of
4 a database which he was to give to the New York Times in a piece of political theatre.”. Did
5 Mr Assange give you ---

6 JUDGE BARAITSER: Did you not hear that, Mr Ellsberg?

7 A. I am sorry.

8 Q. I will try again.

9 A. I apologise for not hearing but could you repeat that again slowly?

10 Q. It is probably my fault. I will read it out again. It is page 168. “Katz” – K-a-t-z –
11 “asked what other copies of the database existed. For instance, was it correct that Ellsberg
12 had one? Assange shot back, “Daniel Ellsberg’s is an encrypted back-up copy of a database
13 which he was to give to the New York Times in a piece of political theatre”.”. Were you
14 given ---

15 A. What is your question? What is your question?

16 Q. I am just about to come to it. Were you given an encrypted back-up copy of the
17 database?

18 A. Yes. Yes, the answer is no. There was no agreement on my part or understanding of
19 any kind as to what would happen to that back-up copy.

20 Q. What did you do with it?

21 A. I kept it, there was no time, it was hard for me to get into it. I quickly recognised that
22 the (inaudible) as far as I could see. Eventually, that copy was destroyed with hammers, the
23 (inaudible) copy, nothing was found on it.

24 Q. So, it was never published? Your copy?

25 A. Say again?

26 Q. Your copy was never published?

27 A. No.

28 Q. Yes, thank you very much. Just one moment. Thank you very much.

29 JUDGE BARAITSER: Now, Mr Fitzgerald, do you need time with your client or are you
30 happy to re-examine ---

31 MR FITZGERALD: Well, perhaps I could ask the questions that I can ask now and then see
32 if there is time.

33 JUDGE BARAITSER: Yes. All right.

34 Re-examined by MR FITZGERALD

- 1 Q. Can I just deal with this, Mr Ellsberg? First of all, my learned friend put to you about
2 a number of counts that ---
- 3 A. I am having trouble hearing, I am sorry.
- 4 Q. I am sorry. Can you hear me now? Can you hear me?
- 5 A. Yes, I am good. Yes, better, thank you.
- 6 Q. OK. I think I had better lift this. So, my learned friend asked you about some
7 offences involving publication counts 15, 16, and 17, and you said well, there are other
8 counts which involve simply obtaining and receiving, is that right?
- 9 A. That point is definitely illegal, as far as ---
- 10 Q. Yes. So, if we, yes, if we just go through those. Count 3 alleges the unauthorised
11 obtaining of national defence information, that is to say the State Department cables. Count 4
12 alleges the unauthorised obtaining of the Iraq rules of engagement files, is that right?
- 13 A. Yes. I read that.
- 14 Q. Count 5 alleges the attempted unauthorised obtaining and receiving of national
15 defence information, is that right?
- 16 A. That is right.
- 17 Q. Count 6 relates to the Guantanamo detainee assessment briefs, that ---
- 18 JUDGE BARAITSER: Just out of interest, Mr Fitzgerald, are you going to ask a question
19 because obviously everyone in this room has ---
- 20 MR FITZGERALD: Yes.
- 21 JUDGE BARAITSER: --- the counts in front of them. We certainly know their content.
- 22 MR FITZGERALD: Yes. Well, because he was referring to the fact that there were charges,
23 ---
- 24 JUDGE BARAITSER: Yes.
- 25 MR FITZGERALD: --- I am just trying to see whether he was referring to them.
- 26 Q. What do you understand in those things where he has been done for obtaining and
27 receiving the detainee assessment briefs for rules of engagement and matters such of that sort,
28 what do you understand to be behind the prosecution for obtaining and receiving them? For
29 the purpose of it?
- 30 JUDGE BARAITSER: Just pause. On what basis does he give this? He is not a lawyer.
- 31 MR FITZGERALD: No, but he was asked about all he has been done for is publishing
32 sources. He quite rightly pointed out that there are a number of charges relating to obtaining
33 and receiving ---
- 34 JUDGE BARAITSER: Yes.

1 MR FITZGERALD: --- and I wanted him to comment on the fact, because he was stopped
2 there, about the fact that there were these number of counts that were for obtaining and
3 receiving.

4 JUDGE BARAITSER: What is the nature of the comment? The facts exists ---

5 MR FITZGERALD: The comment is, is he solely being done for publishing the names of
6 sources or for something else?

7 MR LEWIS: Madam, I agree.

8 JUDGE BARAITSER: Does he need to answer this because I know very well what he is
9 being done for.

10 MR FITZGERALD: Yes. I appreciate that, madam, but what I want to establish with this
11 witness is what he sees is the purpose behind that.

12 JUDGE BARAITSER: Perhaps you can phrase it without going through the 18 counts?

13 MR FITZGERALD: All right. No, I was not proposing to, I was on the last one then. OK.
14 We have established, Mr Ellsberg, that some of the counts, many of the counts, relate to
15 obtaining and receiving things like the Guantanamo assessment briefs and the, for example,
16 the rules of engagement. You have already commented on the public interest of the materials
17 that Mr Assange was handed by Mr Manning, do you regard those things that he obtained and
18 received, the Guantanamo assessment briefs, the rules of engagement, as having the public
19 interest you have referred to? The public interest ---

20 A. Absolutely. That is self-evident.

21 Q. Right. Thank you very much. Now, you also were asked about the four volumes that
22 you retained which related you said to the peace negotiations in Vietnam, is that right?

23 A. Correct.

24 Q. So, your decision to withhold those had nothing to do with not naming sources, it was
25 to do with the fact that they related to peace negotiations, is that right?

26 A. That is right. Of course, the Pentagon Papers, the 4,000 pages, had literally hundreds
27 if not thousands of things revealed both of American, Vietnamese, and not Vietnamese.

28 Q. And those names you said ---

29 A. No, none of it was redacted and as I said, I did not even choose to redact the name of
30 a current CIA agent who I thought would not actually be put in danger by revealing it.

31 Q. Yes. And if we go on from there, in the article which my learned friend showed to
32 you, I think, it is said that you have demasked the myth of the distinction between the good
33 Pentagon Papers and bad WikiLeaks, is that right?

1 A. That is correct. In the 40 years since the Pentagon Papers ended I have been subject
2 to a great deal of defamatory comment by many people and then over one period of regret, all
3 of a sudden with the Manning and Assange papers I found my name being mentioned all the
4 time as a good person and a clear patriot, which I was, and there was no criticism whatever.
5 And clearly the context of that was to use me as a foil against these new revelations which
6 were supposedly very different to mine. I found that absolutely misleading in terms of
7 motive, effect, the nature, the legal applications, and whatever, I firmly disagree with the
8 good Ellsberg/bad Assange theory.

9 Q. And so the ---

10 A. The same thing arose three years earlier with Ed Snowden.

11 Q. So, as to the motive, do you see that similarities of motive between your publication
12 of the Pentagon Papers and Mr Assange's WikiLeaks' publications? The same motives?

13 A. There is no charge, I see no charge made against him except for computer aspects
14 which did not exist then. On the espionage aspects I see no difference between the charges
15 made against Assange and the charges made against me. And no difference in connection
16 with the illegal acts taken of surveillance which in my case involved (inaudible) and efforts to
17 incapacitate me, and as I understand in Assange's case it involved the illegal wiretaps of his
18 communications to his lawyers.

19 Q. Yes.

20 A. Very similar. Very similar government behaviour and in both cases and for the same
21 reasons as I see it, we both challenged the legitimacy of the government secrecy system.

22 Q. Yes. And you have dealt with the fact that there has been no evidence of any deaths
23 occurring as a result of the WikiLeaks revelations, is that right?

24 A. I have not been made aware, even through Mr Kromberg's declaration, or any other
25 source of that.

26 Q. But I think Mr Kromberg on oath says that there is no evidence of any deaths
27 occurring as a result.

28 JUDGE BARAITSER: Well, just again, he cannot evidence about whether or not there have
29 been deaths and in relation to Mr Kromberg's evidence I have it. So, his confirmation of ---

30 MR FITZGERALD: Yes.

31 JUDGE BARAITSER: --- Mr Kromberg's evidence ---

32 MR FITZGERALD: Yes.

33 JUDGE BARAITSER: --- does not assist one way or the other.

1 MR FITZGERALD: Madam, my learned friend was trying to suggest that there was direct
2 evidence of disappearances resulting. That is not the evidence of Mr Kromberg ---

3 JUDGE BARAITSER: Yes.

4 MR FITZGERALD: --- and the evidence of Mr Kromberg is that they cannot causally relate
5 the disappearances to the WikiLeaks' revelations.

6 JUDGE BARAITSER: Well, you can put that point to the witness but what you cannot do is
7 ask him to confirm Mr Kromberg's evidence or ask him in general ---

8 MR FITZGERALD: All right.

9 JUDGE BARAITSER: --- about whether or not any deaths occurred because he will not
10 know the answer one way or the other, Mr Fitzgerald.

11 MR FITZGERALD: Well, I think he might, not from Mr Kromberg, but from his own
12 independent searches he might.

13 JUDGE BARAITSER: Well, this is the difficulty. Whatever his research turns up may or
14 may not be a complete picture.

15 MR FITZGERALD: Well, I agree, but I think he is entitled to comment on what he
16 understands to be the factual situation as an expert on this field.

17 JUDGE BARAITSER: Well, as an expert in the field of deaths caused in this way, Mr
18 Fitzgerald?

19 MR FITZGERALD: Yes.

20 MR LEWIS: I did not realise Mr Ellsberg was called as an expert.

21 MR FITZGERALD: Right.

22 MR LEWIS: There is no expert declaration.

23 MR FITZGERALD: OK. My learned friend put a passage to you at paragraph 32 and he
24 fairly concluded that the "Although the US cannot prove that any of the disappearances were
25 as a result of the WikiLeaks' revelations ...", is that your understanding of the position?

26 A. I think my understanding if I may, I can even say that given the declarations by the
27 government at the beginning, I was surprised at the lack of evidence that arose. I am still
28 capable of being fooled by the government and even being shocked by the government after
29 all these years and just as I was led to believe for some time that there must be WMD's in
30 Iraq the way the government was saying so precisely that they knew where they were and that
31 turned out to be false, in this case, where the government was saying there is blood on their
32 hands, I was prepared to believe that there was some. And I would not dismiss that. That
33 would be a serious matter. So, I would have to say that 10 years later I am still surprised to
34 discover that there has been no evidence of that.

1 Q. And you commented on the fact that the, I think you said in answer to my learned
2 friend's question, you would expect the Taliban to be saying we have killed this person and
3 we killed him because of WikiLeaks but there is no such claim.

4 A. I would have expected to hear something like that and that would transform these
5 proceedings. And what strikes me is that the government are not speaking only of this
6 present danger but have always been a government who is proceeding in its charges as if it
7 were the case that there were hundreds of instances or documents or one instance of actual
8 harm from him. And that appears not to be the case as far as I understand it.

9 Q. Are you aware of any convincing evidence to back up the claim that people have lost
10 their lives as a result? Of these revel- ---

11 A. I am open to hearing it and this I am absolutely hoping, hoping to hearing it and being
12 influenced by that but I have not yet heard it.

13 Q. Yes.

14 MR FITZGERALD: Madam, I am very grateful. I have no further questions then. Thank
15 you very much.

16 JUDGE BARAITSER: Thank you.

17 MR FITZGERALD: Oh sorry, madam, could you just wait one minute.

18 JUDGE BARAITSER: Do you want me to rise for five minutes?

19 MR FITZGERALD: Would you, madam? Yes.

20 JUDGE BARAITSER: I am only going to give five minutes. Will that be enough time for
21 you?

22 MR FITZGERALD: Yes.

23 Q. Mr Ellsberg, just in case there is a further question, could you just wait for a moment?
24 Would you mind waiting for a moment while I take instructions?

25 A. Of course not. Of course ---

26 JUDGE BARAITSER: I am just going to leave the room for about five minutes, Mr
27 Ellsberg, I will be back shortly and resume then. All right. Five minutes. It is just after 4
28 o'clock. Five past 4 then please.

29 (Short adjournment)

30 JUDGE BARAITSER: Is that enough time, Mr Fitzgerald? Have you had enough time?

31 MR FITZGERALD: Madam, I just want to finally clarify one point.

32 JUDGE BARAITSER: Can you just let me tell Mr Ellsberg we are now back in court, Mr
33 Ellsberg. Thank you for your patience for waiting. I am going to hand you back over to
34 Mr Fitzgerald who has a last question or two.

1 MR FITZGERALD: Yes.

2 JUDGE BARAITSER: All right?

3 MR FITZGERALD: Mr Ellsberg, you have read Mr Kromberg's affidavit and you have
4 heard me read out paragraph 32. Is this right? He does not allege that any deaths occurred as
5 a result of the WikiLeaks' revelations. Is that right?

6 A. Yes. I remember reading that.

7 Q. And is this also right, that at the Manning trial it was made clear by General Carr ---

8 JUDGE BARAITSER: Well, again we are back to the same situation. I am not sure that this
9 witness is an expert, or even a factual, witness on those issues.

10 MR FITZGERALD: Are you aware of any evidence that justifies the assertion that deaths
11 have been caused as a result of the WikiLeaks' revelations?

12 A. No, I followed that closely and in summary some aspects of the trial were closed to
13 everyone but the defendants and the prosecutors and the judge, but what was released later
14 was that there was no single instance here, and we are talking about the same material here
15 now, no single evidence given of any actual danger which implied that the anxiety and danger
16 felt by some of the people who were named, while perfectly understandable, was apparently
17 misplaced, was overplayed, even though this was a dangerous area, and it is surprising to me
18 actually.

19 MR FITZGERALD: I have no further questions.

20 JUDGE BARAITSER: Thank you. Mr Ellsberg, thank you so much, particularly as I
21 understand this is very early in the morning for you, for coming before the court in the way
22 that you have and for giving up your time. Your involvement in the case is now finished.
23 Thank you very much indeed. We are going to sever this link. Thank you.

24 WITNESS: Thank you for the opportunity.

25 (Witness withdrew)

26 JUDGE BARAITSER: Thank you. All right. Now, witnesses for tomorrow then, please,
27 Mr Fitzgerald.

28 MR SUMMERS: Madam, it is Professor Sloboda in the morning and Professor Shenkman in
29 the afternoon.

30 JUDGE BARAITSER: I am just looking at my list for the first of those two witnesses. Yes.
31 There are two witnesses giving the same evidence. Are you just calling, I do not know, is it
32 Professor John Sloboda but not Hamit Dardagan, is that right?

33 MR SUMMERS: Yes, madam, that is right.

34 JUDGE BARAITSER: I see. All right. So, Professor Sloboda is a UK witness?

1 MR SUMMERS: Yes.

2 JUDGE BARAITSER: He is not going to take terribly long by the looks of my sheet.

3 MR SUMMERS: I hesitate to agree because the cross-examination time estimates are not up
4 to date, but it would certainly assist us if we had an updated version of how long. The reason
5 we ran out of time this morning, or ran out of witnesses this morning, is because we thought
6 two hours and it only took half an hour.

7 JUDGE BARAITSER: But if I look at this witness list, I can see half an hour in-chief and 15
8 minutes by the looks of it in cross-examination.

9 MR SMITH: Madam, I rise at this point because I will be cross-examining Professor
10 Sloboda. It may well be more than 15 minutes, but not a great deal more. I would not have
11 thought it would be more than half an hour.

12 JUDGE BARAITSER: All right. Well, surely we can hear more evidence than just that
13 witness tomorrow morning.

14 MR SUMMERS: We will do our best, madam, but, of course, there is reading and
15 (inaudible) that we can usefully use if we need to, but we will, I am sure, do our best to find
16 somebody else for the morning.

17 JUDGE BARAITSER: Thank you. That will be helpful.

18 MISS DOBBIN: Madam, I mean my learned friend no discourtesy by rising. I am going to
19 deal with this. I think he is Mr Shenkman not Professor Shenkman. I give an estimate of an
20 hour and a half for him.

21 JUDGE BARAITSER: Two hours on my list.

22 MISS DOBBIN: Oh, was it two hours?

23 JUDGE BARAITSER: It is on my list.

24 MISS DOBBIN: Well, that may well be fine then.

25 JUDGE BARAITSER: All right. Good.

26 MR SMITH: Madam, forgive me, there is one other matter before we come to Professor
27 Sloboda. We are aware that some defence witnesses who are also journalists, or at least one
28 defence witness who is also a journalist, is listening in to proceedings in their capacity as a
29 journalist. We are now approaching areas of evidence which may well overlap. I am
30 thinking of Miss Maurizi, just so we know exactly who it is.

31 JUDGE BARAITSER: You are thinking of whom?

32 MR SMITH: Miss Maurizi.

33 JUDGE BARAITSER: Yes.

1 MR SMITH: She is a journalist. She has been listening in to proceedings in her capacity as a
2 journalist, but she is also a witness. It may well be that those on the other side of the court
3 were simply unaware that she was listening in as a journalist, but given that she is a witness,
4 that does seem inappropriate, particularly as we are now approaching the areas that she is
5 going to give evidence about.

6 JUDGE BARAITSER: Observations from the defence?

7 MR SUMMERS: I was not aware of it. I would like time to consider it, please.

8 JUDGE BARAITSER: On the face of it Mr Smith has a point. Unless there is very good
9 reason for her to continue to report on these proceedings, given that she is a witness in it, it
10 would seem right that she no longer listens in from now.

11 MR SUMMERS: Certainly, I will convey that.

12 JUDGE BARAITSER: Thank you. And both of you have agreed to speak overnight in
13 relation to the agreed evidence issue. Is that right?

14 MR LEWIS: We have now, yes.

15 JUDGE BARAITSER: Good. I very much hope that in the morning in relation to all
16 witnesses which previously have been agreed, that they can be summarised in short order by
17 way of agreement between the two of you. If that is not possible we will have to raise it in
18 the morning, but it does, for reasons already discussed, raise all kinds of additional issues if
19 you cannot reach agreement. I will have to hear extensive argument from the defence about
20 what their case is and how each witness which has been agreed, but appears no longer to be
21 agreed, fits into that case, and I will have to make rulings which are likely to distract from
22 these proceedings. So I am reluctant to go down that path ---

23 MR LEWIS: We will do our very best, madam.

24 JUDGE BARAITSER: --- and I would be very grateful if you could avoid it if possible. All
25 right. 10 o'clock in the morning then, please, for the first witness. Thank you very much.
26 Mr Assange, as always, you remain in custody overnight for the same reasons as have been
27 given to be produced again in the morning. Thank you.

28 ADJOURNED AT 16.13 UNTIL THURSDAY, 17th SEPTEMBER 2020

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