

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

21st SEPTEMBER 2020, 10.00-16.17

1 JUDGE BARAITSER: Yes. Good morning. We will just wait for Mr Assange to come into
2 the dock. Whilst we wait, how is the connection with our witness, have me made ---

3 COURT USHER: It seems fine.

4 JUDGE BARAITSER: --- contact? Good. I can see there is nobody in the public gallery but
5 I am informed that it is open.

6 COURT USHER: Yes.

7 JUDGE BARAITSER: Yes, good morning Mr Assange, please take a seat. I understand the
8 first witness is Mr Augstein, is that correct?

9 MR SUMMERS: No, it is Professor Grothoff, madam.

10 JUDGE BARAITSER: I see. All right.

11 MR SUMMERS: Madam, his first statement is in two places. Tab 37 in letter format then
12 tab 46 converted into a formal signed statement but the content is identical. Tab 47, madam,
13 are his exhibits, and 59 is a short additional statement.

14 JUDGE BARAITSER: Thank you.

15 COURT USHER: Can you hear me, Professor Grothoff?

16 WITNESS: Can you hear me, sir?

17 COURT USHER: I can hear you. Can you hear me?

18 WITNESS: Yes. I hear you, sir.

19 COURT USHER: OK.

20 PROFESSOR CHRISTIAN GROTHOFF, Affirmed

21 JUDGE BARAITSER: Thank you. Mr Summers.

22 Examined-in-chief by MR SUMMERS

23 Q. Good morning, Professor. Can you hear me please?

24 A. Yes, I do, sir.

25 Q. Are you a professor of computer science at Bern University in Switzerland?

26 A. Bern University of Applied Science as there are two in Bern, yes.

27 Q. Thank you. And your areas of specialism include network security and cryptography,
28 is that right?

29 A. That is correct.

30 Q. All right. I think, Professor, that you were asked to investigate the circumstances
31 surrounding and the chronology of the release in early September of the unredacted cash of
32 diplomatic cables, is that right?

33 A. Specifically I was initially asked to look at the unredacted classified release of cables,
34 yes.

1 Q. And the events to which you are able to speak are not events that you were involved
2 in but they are ---

3 A. No.

4 Q. --- but they are matters that you have been able to ascertain from the public domain,
5 the public record, is that right?

6 A. Yes. I also specifically refer to materials that I found on the internet in that regards.
7 They were I believe two pieces of evidence that I received from the defence.

8 Q. Thank you.

9 A. But I do not know if they are public.

10 Q. And the materials that you unearthed as part of your research, would they have been
11 visible to anybody else had they undertaken the same research?

12 A. I believe so, yes.

13 Q. Yes, you do not have particular ---

14 A. If they had looked at it at the time at least.

15 Q. We are not talking about secrets or hidden materials?

16 A. No.

17 Q. All right. Well, let us please look at ---

18 A. Maybe obscure but not hidden.

19 Q. Let us look please then at what ---

20 JUDGE BARAITSER: Sorry, the answer was obscure but not hidden?

21 MR SUMMERS: Yes.

22 JUDGE BARAITSER: Thank you.

23 MR SUMMERS: --- at what your research showed please. Let us start please in the Summer
24 of 2010. Did you discover that WikiLeaks shared access to the cable database with
25 somebody called David Leigh using an obscure file on the website?

26 A. Based on what David Leigh writes in his book, yes, this is the primary source I have
27 on this.

28 Q. OK.

29 A. I put of course not very far that it was actually on the WikiLeaks' website, he was
30 quite serious he received it from a website, that is what I know and I believe that this makes
31 sense and ---

32 Q. Just pausing there, you have exhibited as exhibit 2 to your first statement extracts
33 from David Leigh's published book and it recounts does it the circumstances in which he
34 received access to ---

- 1 A. Yes.
- 2 Q. --- the files on a website. Now, to your knowledge and based on what you have read,
3 was that file accessible to David Leigh encrypted or open?
- 4 A. It was encrypted.
- 5 Q. And how strongly?
- 6 A. It was encrypted with a cipher that made it basically useless to anybody who did not
7 know the encryption key.
- 8 Q. And just again, so that we are aware, how do you know about the strength of the
9 encryption key please?
- 10 A. Well, the encryption key was again described in David Leigh's book as these very
11 long passphrase he provided there. And one can look at the length of that passphrase and
12 based on that estimate the (inaudible) to be included and how likely it is for somebody to
13 determine the same passphrase by brute force and the access to the computational (inaudible)
14 has been prohibited.
- 15 Q. All right. That is a very complex way of saying it was a big and strong password, is
16 that right?
- 17 A. Correct.
- 18 Q. That even if you set a computer about it you were not going to break.
- 19 A. Yes. Not in a reasonable amount of time, yes.
- 20 Q. All right. And just stepping back, the storage online of sensitive materials in strongly
21 encrypted form, is it something that you have come across before in your line of work?
- 22 A. Yes, this is sometimes done as a way to exchange information that is typically too
23 large for say encrypted email to other forms and it is common practice in some protocols or
24 some exchanges to put encrypted files online with the intent of sharing it with the specific
25 parties who have access to the key.
- 26 Q. And is it regarded as irresponsible or responsible behaviour?
- 27 A. As long as the key is sufficiently strong, it is perfectly acceptable.
- 28 Q. All right. And once a key is set such as the one we see at exhibit 2, is it one that can
29 be changed at will?
- 30 A. No, for data addressed ones the key is set during encryption. One of course can
31 produce a second file with a different encryption key but the first file will always have that
32 encryption key or the encryption key at that point.
- 33 Q. So, even if I wanted to would I be able to change the encryption key to a file?
- 34 A. For the existing file, for the existing file if somebody else has it in their hands, no.

1 Q. OK. Now, moving on, so that is the Summer of 2010, in November 2010, did your
2 online enquiries reveal anything about the publication of cables beginning from that date?

3 A. In November we had the – well, there was the publication of redacted cables by the
4 various media partners of course ---

5 Q. Thank you.

6 A. --- where, you know, media partners started to respond to the disclosed information.
7 That was not considerate scope for me to look at whether that redaction was done properly or
8 not.

9 Q. No. But what you were able to observe from November 2010 onwards, were the
10 media partners publishing cables but in redacted form?

11 A. Yes.

12 Q. I have understood that.

13 A. Of course, it happened, they had them for a long period of time from then on because
14 it was lots of cables.

15 Q. Yes. Did you also observe beginning in November 2010 something else in relation to
16 the WikiLeaks site?

17 A. Well, the WikiLeaks site was under denial, a service attack or just a denial service
18 attack to be precise. They were various unknown attackers, we still do not know who, tried
19 to make the site less accessible, inaccessible, and as a result people started to put up copies of
20 the data on the WikiLeaks site.

21 Q. All right. Well, let us take those two events please in turn. Firstly, the denial of
22 service attack. Your exhibit 4 to your first statement is an article it seems from “wired.com”
23 dated 29 November, so the day after the redacted cables start being published. It is being
24 reported, is it, that there was a distributed denial of service attack on the WikiLeaks site?

25 A. Yes.

26 Q. And how serious was that denial of service attack?

27 A. It seems the first attack was not particularly serious as you can also see the traffic and
28 that the site was commonly experiencing already about 30 megabytes of traffic per second
29 and, so this maybe added 50 per cent to that.

30 Q. Just ---

31 A. But it was still slowing down the experience.

32 Q. Just pause so I understand. How does a denial of service attack work, please?

1 A. Basically one directs computers to request the resources, the same thing with normal
2 users, in such a number that the targeted server cannot handle all of the requests which results
3 in the additional users not being able to access the resource.

4 Q. So is it an automated overwhelming of the website?

5 A. Yes. You are also – basically the computers (inaudible) and re-requesting resources
6 at an unusual frequency.

7 Q. All right. So that is the denial of service attack and you have gone into some detail in
8 your statement in relation to it. Did it result in the WikiLeaks DNS hosting being
9 terminated?

10 A. Yes. I mean as we have seen in the next, you know, evidence, every DNS which was
11 WikiLeaks' DNS provider then decided to terminate WikiLeaks service because the service
12 attack was also affecting his other customers.

13 Q. And just again to help me, please, what is a DNS server?

14 A. A DNS server allows you to resolve the name like WikiLeaks.org to set up inverses of
15 the actual machines that are hosting the service so whenever you access any website on the
16 internet the first thing your browser does is to make a request to DNS to find out where the
17 resource is actually hosted. So if you have this human name that you have for resource and
18 DNS matches that to the IP address, which is initially used on the (inaudible) protocols to
19 access the website, so DNS is the first step you need to do to access the resource and
20 afterwards, once you have done the DNS resolution, you can access the resource by other
21 protocols.

22 Q. Is it part of the web hosting service that WikiLeaks required?

23 A. No, it is – I mean overall of course is part of the hosting every site requires, but more
24 particularly has the DNS provider that can be severed from the web hosting provider.

25 Q. All right. So we know that the denial of service attack was causing difficulties for
26 WikiLeaks. What, based on your ---

27 A. Well, for the users mostly.

28 Q. OK. What, based on your researches do you understand to have been WikiLeaks'
29 reaction to that attack?

30 A. I believe that it encouraged people to put up mirrors even though that encouragement,
31 of course, is only partially required because people often just do that by themselves anyway
32 whenever they find a resource that is under attack.

33 Q. Right. Now, just ---

34 A. Or ---

- 1 Q. No, no. Go ahead, you wanted to say something else.
- 2 A. In fact, it does not have to be an attack. I mean it has happened to me myself that we
3 had hosted a popular video at the university and people found it was slow to access and put
4 up mirrors for our video and that was just normal usage by normal users, not even an attack.
5 So mirroring happens by people normally on the internet as soon as they discover their
6 resource is not as available as it should be.
- 7 Q. And just for the ignorant, and that includes me, a mirror is another copy of the
8 website, is it?
- 9 A. Yes, specifically hosted somewhere else thereby adding additional resources to a
10 serving request to it.
- 11 Q. Now, you have told us that WikiLeaks encouraged people to make mirrors of its site.
12 Your exhibit 7, please.
- 13 A. Yes, that is a list of those mirrors that one could find.
- 14 Q. Now, this is a web archive print, I think, of a page from the WikiLeaks site. Are you
15 able to help us with the date that the web archive machine archived this page? If not, do not
16 worry.
- 17 A. I have to look it up, and, as you said, it was around the time of the last service attack.
- 18 Q. OK. So ---
- 19 A. Also, the web archive dates are not necessarily always very precise here and they
20 (inaudible) only to look at the pages.
- 21 Q. I see. And what do we see, please, from this page that you have archived from the
22 WikiLeaks site?
- 23 A. We see that there are lots of mirrors all over the world that are clearly controlled by
24 lots of other people that have voluntarily set up copies of the WikiLeaks' website.
- 25 Q. And how would these people have known how to copy the WikiLeaks' website?
- 26 A. Well, some people just know how to copy websites. It is not that difficult to begin
27 with.
- 28 Q. Right.
- 29 A. I believe also they were – it is the second, you see there is a mirror in my second
30 statement, I do not remember, where there were instructions how to do this kind of set up.
- 31 Q. Perhaps we will come back to it, but did WikiLeaks themselves post instructions on
32 how to mirror its site?
- 33 A. Yes.

1 Q. And to your knowledge and based on what you have looked at, if one had followed
2 the instructions on the WikiLeaks' site and mirrored the site, would you have copied the
3 unredacted classified cables in that process?

4 A. No. As far as I can tell, no.

5 Q. All right. Well, let us just hold that thought and come back to it a little while later.
6 So WikiLeaks encourages people to make mirrors and we know from your evidence that
7 ultimately some of those mirrors did end up including the cache of unredacted classified
8 cables. Is that right?

9 A. Some mirrors that were created at the time created a set of unredacted cables, but, I'm
10 not sure, some mirrors at some point started to create the unredacted cables, but in an
11 encrypted form first of all, which again means it is useless, but those mirrors then are listed
12 here as far as I could tell at this point.

13 Q. And just so we are sure, that is the file XYZ underscore z.geg?

14 A. That is the encrypted archive, yes.

15 Q. And you can assist us in due course with which mirrors did and which mirrors did not
16 contain that encrypted archive, can you?

17 A. What we can say is there were some very few mirrors of WikiLeaks data that included
18 it. I cannot say that I found all of them, but they were not the majority of the mirrors. There
19 were some very special ones that were typically created, as far as I can tell, by people who
20 just decided, "I will mirror everything I can get my hands on" and did not follow the
21 instructions from WikiLeaks, but just grabbed whatever they could find.

22 Q. All right. Now, for that file, the passcode or password that David Leigh held would
23 unlock it. Is that right?

24 A. That is right.

25 Q. And moving the chronology forward, what happened to your knowledge in February
26 of 2011, please?

27 A. Well, David Leigh published the password as the title of a chapter in his book and
28 explained that this was the passwords he had been given by Julian Assange to decrypt the
29 cables, so a very revealing publication to say.

30 Q. Now, the passphrase is in the public domain. You have told us that ---

31 A. At this point, yes.

32 Q. --- some of the files that it unlocks are also in the public domain. Could WikiLeaks
33 take those files down?

1 A. At this point not really because the mirrors were not under WikiLeaks' control and
2 even if they had been able to identify all of these mirrors and had been aware of all of these
3 mirrors, and it is not clear that they could have been, they would have alerted people to the
4 sensitivity of the files which might have propagated the spread than to (inaudible).

5 Q. Could they change the password to make it useless?

6 A. No, no.

7 Q. Was there anything they could do from February 2011 onwards?

8 A. Distract, delay.

9 Q. I see. All right. So did anything then happen until the end of August 2011?

10 A. Not until the end of – well, there was – if you are talking about 25 August then
11 something happened, but until then basically nobody publicly put the two together.

12 Q. All right. Now, on 25 August what happened, please?

13 A. Der Freitag, a German newspaper, and I do read German as I am a German citizen,
14 published a story basically saying that there was a sensitive passphrase that had been leaked
15 and that this leads to a file that could be found in some WikiLeaks mirrors to lead to the
16 unredacted full set of cables.

17 Q. To be clear, Der Freitag did not publish the location of the file, did they?

18 A. No.

19 Q. Neither did they publish the password.

20 A. Correct.

21 Q. But armed with what Der Freitag did publish, was it then possible to go away and do
22 your own research if you were so inclined?

23 A. Of course, and beforehand, you know, people could have read the book and said it is
24 probably that this passphrase is useless, or they might have stumbled over the encrypted file
25 and said, "Well, I can't decrypt this, I don't have the passphrase." But at this point when
26 somebody tells you, "Well, if you find those two pieces and put them together you have it",
27 now they are motivated to try it and so now people could basically go to all of the mirrors and
28 try to find all of the WikiLeaks' archives to see if they could find an encrypted file, and there
29 were apparently a couple. They could just try all of those encrypted files against all of the
30 passwords they might find. So if somebody had read that book and knew there was a
31 passphrase in there prominently, so easier to remember in that (inaudible) then they could
32 easily put two and two together.

33 Q. Right. Your exhibit 9 is an article from Nigel Parry.com.

34 A. Yes.

- 1 Q. In which from page 5 to page 8 he recounts how, beginning with ---
- 2 A. That basically he puts two and two together, yes.
- 3 Q. Beginning with Der Freitag on 25 August he did what you have just suggested. At
- 4 page 7 he located the file on a mirror. Now just look, please, at the mirror in question at the
- 5 top of page 7 of his article. The mirror is at a website called 193.198.207.6.
- 6 A. Yes.
- 7 Q. Was that one of those mirrors that did contain the archive?
- 8 A. No, that one is not in the list of the WikiLeaks' mirrors that were advertised by
- 9 WikiLeaks themselves.
- 10 Q. Sorry. It is my question. Firstly, did that mirror, 193, contain the file?
- 11 A. The encrypted file?
- 12 Q. Yes.
- 13 A. As far as we can tell, yes.
- 14 Q. Was this one of the mirrors created pursuant to the WikiLeaks instructions?
- 15 A. No.
- 16 Q. So this one of the other ones you are talking about.
- 17 A. Yes.
- 18 Q. All right. And Nigel Parry managed to extract the unredacted cables, it seems, on 31
- 19 August. When did other websites start doing the same thing, please?
- 20 A. On the website? They were around the same time and of course we also saw some
- 21 torrents being created also on these websites and then there was Cryptome, that is the website
- 22 that published the cables in unencrypted form shortly afterwards.
- 23 Q. All right. So at page 9 of your exhibit 9.
- 24 A. Yes, so Cryptome was a website doing it and then there was the MRKVA site that had
- 25 a search engine publishing a search of the original cables.
- 26 Q. Just ---
- 27 A. But, again, there were also ---
- 28 Q. Sorry, sorry, my fault. I just want to take this a little slower. Cryptome, is it an
- 29 obscure website?
- 30 . No, it is a well-known site for leaking classified or other kinds of information that has
- 31 been in operation long before WikiLeaks and, as far as I can tell, it inspired WikiLeaks and it
- 32 has been in various media reports, and I did research that fact, both in terms of access
- 33 frequency of the website as well as lots of media reporting. It was quite visible and anybody

1 who was interested in that subject would have known about it. I also talked to a couple of
2 friends of mine who also confirmed that they had known about Cryptome at that time.

3 MR SMITH: I have let a little bit of latitude for areas outside the witness statement. We are
4 now getting into areas outside the witness's direct knowledge and I do think we have to be a
5 little careful.

6 MR SUMMERS: I am sorry, it is dealt with in his second statement.

7 JUDGE BARAITSER: I am not sure how relevant it is to your questions. It presumably
8 came out of something you did not particularly ask the question about.

9 MR SUMMERS: It is in the second statement, but I am happy to move swiftly on.

10 JUDGE BARAITSER: You have about five minutes.

11 MR SUMMERS: Thank you. And then, that is 1 September, Professor. Then, I think you
12 then mentioned another site, MRKVA, making a searchable copy. When was that?

13 A. That was also the 31st.

14 Q. On the 31st.

15 A. (Inaudible).

16 Q. Okay, and what about Pirate Bay?

17 A. Yes, they put up a BitTorrent which is another way of making the files accessible
18 without having a website. Pirate Bay is not itself hosting it. Pirate Bay is merely making it
19 discoverable that this torrent exists.

20 Q. And your second statement at paragraph 10 tells us that the US Government
21 themselves accessed the full unredacted file through that Pirate Bay publication on 1
22 September and I think you produced an investigation report that you have uncovered to ---

23 A. This was one of the documents that was given to me by the defence that was a non-
24 public document, as far as I know, that the defence provided me with that is basically an
25 internal report of the US Government where they found it first.

26 Q. Thank you. And so far as Cryptome and Pirate Bay are concerned, are any of them
27 based in the US?

28 A. Cryptome is based in the US. The Pirate Bay one, I cannot say it is based in a
29 particular location at this point, not to mention, as I said, that torrents themselves are in a
30 peer-to-peer network posted globally by many participants, so there is really no location
31 specific to Pirate Bay, but Cryptome is US based.

32 Q. So far as you are aware, have you been able to research whether the materials are still
33 available on Cryptome or Pirate Bay?

34 A. Yes. In fact, I accessed them this weekend from that location at Cryptome.

1 Q. Thank you and to your knowledge, has Cryptome ever been prosecuted for publishing
2 those materials?

3 A. The defence provided me with a witness statement from Cryptome saying no to this,
4 but that is the only knowledge I have on that.

5 Q. Now, when did WikiLeaks first make available the unredacted cache that we are
6 talking about?

7 A. The first information I could find when WikiLeaks was making this information
8 available was after those two events had expired. There was a series of tweets as well as some
9 announcement on the website that are all around September 2, 2011.

10 Q. Thank you very much. So, just am I right, by that time, this material was already
11 available on the internet?

12 A. It was already available on the internet in a way that would be virtually impossible to
13 stop. As we know, movie studios try to stop movies being spread online and fail and this is
14 the same kind of thing that one could not stop at this point.

15 Q. Alright. Thank you very much. If you would like to wait there, there may be some
16 more questions for you.

17 A. Sure.

18 Cross-examined by MR SMITH

19 Q. Good morning, Professor, can you hear me?

20 A. Yes, I can, sir.

21 Q. Perfect. I am going to ask you some questions on behalf of ---

22 MR SUMMERS: I am terribly sorry, I forgot to ask the Professor to adopt his two
23 statements. I think I need to do it. I am sorry, it is me again. You have provided, Professor,
24 two witness statements, the first dated 28 February 2020 and the second dated 17 July 2020.
25 Just formally, please, are they accurate?

26 A. Yes.

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

28 A. Yes I do.

29 Q. Thank you very much. Now there really will be some more questions for you.

30 MR SMITH: Morning again, Professor. I am going to be asking you some questions on
31 behalf of the government. If you cannot hear me, you must let me know, alright? If I speak
32 too fast which is a habit of mine, you must let me know and if I do not understand the
33 technicalities of your profession because I am not an expert in computers, then you must set
34 me straight, alright?

- 1 A. I will try.
- 2 Q. Alright. Well, let us start off with your position in this case. You have made two
3 statements, is that right?
- 4 A. Two witness statements, yes.
- 5 Q. You are a professor of computer science.
- 6 A. Yes.
- 7 Q. You can speak to the technical nature of computing matters as you just have.
- 8 A. I believe, yes.
- 9 Q. And you have also produced a chronology, this is not a criticism, but would it be fair
10 to say that is not something you did as an expert. It is something you did researching on the
11 internet.
- 12 A. Not necessarily because sometimes, the researching of the chronology requires using
13 tools that may not be general knowledge of how to research what has been posted ten years
14 ago on the internet that is no longer available directly.
- 15 Q. Understood. Your first statement was, in fact, a letter to Ms Pearce from the
16 defendant's solicitors and that was dated 12 February of 2020, yes?
- 17 A. Yes.
- 18 Q. The second one was a statement signed on 11 July 2020. Now, you were instructed
19 by ---
- 20 JUDGE BARAITSER: That is 17 July. That '1' is quite difficult to read, but it is dated 17
21 July.
- 22 MR SMITH: Thank you, madam. So, you were instructed before February of 2020. Can
23 you remember when you were first instructed to be a witness in this case?
- 24 A. I do not exactly remember but I can look it up. I believe it was 8 February, but that is
25 the first written conversation I had. I might have had a phone call beforehand, but it was
26 around that time.
- 27 Q. And you have outlined what you were asked to do which was to provide a chronology
28 of the release of the cables culminating in that late August, early September 2011 period.
29 Correct?
- 30 A. I was asked to look specifically at the unredacted classified cables, but yes.
- 31 Q. Now, you said that you were given two pieces of information by the defence. Am I
32 right in thinking those were the statement of Mr Young from Cryptome?
- 33 A. Not initially, those came later, but yes, I was eventually given that statement.

1 Q. And you were given the US Government report from which you determined that the
2 cables had been accessed on 1 September by the US Government.

3 A. Again, this was, might have been much later as supporting evidence.

4 Q. Were you given anything else ---

5 A. Not initially.

6 Q. Were you given anything else by the defence or is everything else from your own
7 research?

8 A. The defence gave me a couple of links to public information like the article in Der
9 Freitag as starting points for my own research, but nothing else that was not in the public
10 domain and I did verify the other information provided by the defence by accessing those
11 websites myself and checking the facts provided on them.

12 Q. So, you were given Der Freitag. Were you given Der Spiegel?

13 A. Yes.

14 Q. Were you given Mr Parry's blog?

15 A. Maybe. I do not remember. It might have been something I discovered, but it may
16 also have been given by the defence.

17 Q. And to a certain degree, would you accept that you are dependent on the contents of
18 those documents being true when piecing your chronology together?

19 A. Not on any individual document. There were many supporting documents, but of
20 course, the story in Der Freitag, which is still accessible today, is crucial because it was the
21 first published story to put these things together as far as I could find.

22 Q. Now, in your second witness statement, you mention having read the Criminal
23 Procedure Rules, part 19.

24 A. Yes.

25 Q. Do you remember that? And that is not in your first statement. Did you read part 19
26 between finishing your first statement and signing your second statement?

27 MR SUMMERS: Sorry, it is in the first statement. It is paragraph 4.

28 MR SMITH: Well, I am reading the letter as it was first provided to us and served on the
29 court.

30 MR SUMMERS: It is tab 46, 21 February, paragraph 3.

31 MR SMITH: If I have taken a bad point, I will take it back, forgive me. Paragraph 3. My
32 Lady, the letter does not have any paragraph relating to the Criminal Procedure Rules. When
33 it was converted later to a witness statement ---

1 JUDGE BARAITSER: Yes, I understand that, but what is before the court is the witness
2 statement and not the letter.

3 MR SMITH: I was going, I am afraid, from what was originally – the letter is also before the
4 court. That was the first document served. It was later – I will explore it with the witness
5 because I am sure he can tell us whether he read part 19 before.

6 JUDGE BARAITSER: Can I just be clear with the defence? Are you relying on the letter or
7 just the witness statement of 21 February?

8 MR SUMMERS: The witness statement is the evidence. The letter is from where it came. It
9 was served in haste and so that is ---

10 MR SMITH: I can ---

11 JUDGE BARAITSER: Can I just ask where in the bundle the letter is to be found?

12 MR SUMMERS: The letter would be at tab 37, madam. It is annex 2 to Ms Pearce's fourth
13 statement.

14 JUDGE BARAITSER: I see, alright. Thank you.

15 MR SMITH: And forgive me, Professor, when did you first read part 19?

16 A. I do not know exactly which date the defence provided it me with, but when it was
17 provided to me, I do not remember the specific date of this. It is not something I took much
18 note of because simply, they were rules that I was expecting to follow in the first place.

19 Q. Yes, of course. So, it was provided to you by Mr Assange's lawyers.

20 A. Yes.

21 Q. And you were aware, having read it, that you were required to disclose anything
22 which might reasonably be thought to show that you were not impartial as to the outcome of
23 this case. Correct?

24 A. Yes.

25 Q. Can you think of anything that might reasonably be thought to show that you are not
26 impartial as to the outcome of the case?

27 A. I do not know what you are thinking about. I mean, obviously, we know that Mr
28 Assange did publish information about war crimes being committed by governments which
29 makes him a bit unsympathetic character, but there is nothing in my specific history would
30 suggest that I am not impartial and I did conduct my investigation in line with trying to find
31 evidence that would contradict the defence's position.

32 Q. In 2017, the WikiLeaks legal defence fund wrote an open letter to President Trump.
33 Are you aware of that?

34 A. Not anymore.

1 Q. Sorry, not anymore?

2 A. I do not recall this, I do not know. It was not in the evidence in investigated.

3 Q. Alright. Well, I am going to read you a couple of excerpts. It reads, “Dear President
4 Trump, we are journalists, activists and citizens of the United States and around the world
5 who care about press freedom and are writing to you in response to the latest threat of
6 prosecution against WikiLeaks for its journalistic work. We ask you to immediately close the
7 grand jury investigation to WikiLeaks and drop any charges against Julian Assange and other
8 WikiLeaks staff members which the Department of Justice is planning.”

9 Two paragraphs later, “We call on you as the president of the Unites States to close
10 the grand jury investigation into WikiLeaks and drop any charges planned against any
11 member of WikiLeaks. It was a free and robust press that provided you with a platform on
12 which to run for president. Defending a free press requires freedom from fear and favour and
13 the support of journalists and citizens everywhere. For the kind of threats now facing
14 WikiLeaks and all publishers or journalists is a step into the darkness.” Does that ring any
15 bells?

16 A. Not specifically, no. I mean, it does not sound unreasonable, but yes.

17 Q. There were two types of signatures to that open letter, initial signatures and then
18 normal signatures who, once the open letter had been published, could add their signature to
19 the letter and one of the initial signatures was Christian Grothoff, researcher. Was that you?

20 A. Possibly. I mean, the defence reminded me on Saturday that they said they had found
21 a statement in support of WikiLeaks supported by me in the past and I definitely told them on
22 Saturday I don’t recall. Possible I said, but they did not say which specific statement so I did
23 not know that this was a statement that I had signed. I occasionally sign petitions that I find
24 reasonable, but I did not recall this statement, having signed the statement before Saturday
25 when - or not even, they just told me that I had signed something from the defence but this
26 specific statement I was told that I had signed it by you now. It has been a few years.

27 Q. Now I want to make something quite clear, in fairness to you, Professor, the
28 difference between an initial signature and a normal signature to this letter, all right. The fact
29 that the initial signatures were the first signatures to this letter, that is my supposition, all
30 right. There are two different types of signature, initial and normal signatures. Can you help
31 us with who the initial signatures were, why is there a distinction between those two types of
32 signature?

33 A. I - as I said, I do not recall when I signed it or how this signature came to be.

34 Q. You just do not remember signing an open letter ---

1 A. No.

2 Q. --- to the President of the United States calling for the cessation of criminal
3 proceedings against Julian Assange?

4 A. No, I had forgotten that I had signed the letter. It was not that important to me at the
5 time. I have been asked to sign lots of different letters over the years and I usually read them
6 carefully to see if there is anything in there that I think is objectionable and, if I do not, and I
7 am asked by people that seem reasonable, I sometimes decide to sign, yes.

8 Q. Do you ---

9 A. But I did not initiate that process, I am pretty sure of that.

10 Q. Do you think the prosecution in America is a step into the darkness?

11 A. I think that this case has the potential of setting a very, very bad precedent on press
12 freedom, yes.

13 Q. So have you come to hold strong views as to what the appropriate outcome of this
14 case is?

15 A. No, because I have only considered this one particular document I was asked to
16 investigate and I cannot comment on the other ones because I did not even try to follow it that
17 closely.

18 Q. Right. Having signed a letter to the President of the United States of America, did
19 that reflect on your part holding a strong view as to what the proper outcome of this case
20 should be?

21 A. I think - I, of course, have a view on that this prosecution seems to have been a bit
22 unfair, but I again have only looked at the specific part that I was asked to investigate and I
23 tried to look at this and to also see if there was a case for the prosecution and I tried to find
24 supporting evidence and I did not find that supporting evidence.

25 Q. Let us just go back to your views, as you put it, that this prosecution is unfair; in other
26 words, you are biased, you are partial?

27 A. No, I believe that, looking at the indictment that you put forward and the specific
28 paragraphs relating to it, you are confusing actions that WikiLeaks made to hide and obscure
29 the documents to us then publishing it and so, on those very specific technical points where
30 you say WikiLeaks published those cables, I would very much say that you are wrong and
31 you did not properly do your homework identifying who first published those cables. So, in
32 that sense, I believe it is unfair for you to accuse Mr Assange of having published the
33 unredacted, unclassified cables.

34 Q. I am talking about or asking you questions about your partiality, all right. When you

1 signed that letter in 2017, did you have any knowledge of the issue of who first served - who
2 first published the cables in 2011?

3 A. Yes, I had at that time, of course, followed a bit the news cycle and, having been able
4 to read the file back, I had some vague recollection of the facts and, of course, in preparation
5 for this case I researched them more closely, but even at that time it seems clear to me that
6 the primarily publisher of the unredacted cables was not the WikiLeaks because they were
7 well-known for trying to be a responsible publisher.

8 Q. And in two ---

9 A. So, yes, I did at that time already have some initial emotion about this accusation
10 being false.

11 Q. So in 2013 - 2017 when you signed the letter, what was your understanding of the
12 allegations against Mr Assange or WikiLeaks?

13 A. That they were not journalists and publishing information in an irresponsible manner,
14 and I believe that publishing information about war crimes as a journalist with proper
15 redactions should not be a crime.

16 Q. What did you understand the criminal allegation against Mr Assange or WikiLeaks
17 was as of 2017?

18 A. I am not a criminal expert, so asking me did I know the details of the allegation, no, I
19 did not. What I did know is that some of the specific accusations seemed to be wrong
20 because WikiLeaks was not the primary publisher of some of the unredacted cables and that
21 they seemed to be trying to be responsible journalists. So this is what I based my opinion on
22 and it has not changed even after a more close investigation of the facts.

23 Q. Do you accept that writing - signing a letter to the President of the United States
24 calling for the cessation of criminal proceedings against WikiLeaks might reasonably be
25 thought to detract from your impartiality in those proceedings - these proceedings?

26 A. No, I did - again, as I said, I did not even remember that I had signed that letter. I was
27 doing my investigation as neutral as I could considering all sides and trying to construct a
28 timeline that was accurate, irrespective of any specific feelings in this regard.

29 Q. And your evidence as to why it does not appear in your report is that, two and a half
30 years later when you were instructed, you forgot signing a letter to the President of the United
31 States?

32 A. Yes.

33 Q. All right. Well, let us move on to your timeline and this goes to the issue of the
34 cables, all right, the cables that were released in full in August and September of 2011, you

1 understand that, yes?

2 A. Yes.

3 Q. You cannot speak to the Iraq or Afghan Significant Activity reports, can you, you
4 have not been asked to ---

5 A. I did not look into this, yes.

6 Q. Did you, in fact, download the cables themselves, the file itself in the course of your
7 research?

8 A. Yes.

9 Q. So did you download ---

10 A. Yes.

11 Q. --- them from WikiLeaks?

12 A. No, I downloaded from Cryptome.

13 Q. Did you use the WikiLeaks search function?

14 A. A little bit, yes. I did not find it very usable, so I usually used my own scripting and
15 analysis tools.

16 Q. All right. Summer 2010, Mr Leigh is given the password, that is right, is it not?

17 A. As far as he tells us.

18 Q. And the file itself is put up on a public website?

19 A. That depends on how you define "public". As far as we know from Mr Leigh, his
20 publication was obscured but it was on a web server that would have been accessible to
21 anybody who knew the exact URL, as far as you can read from his statement.

22 Q. Well, it is on the WikiLeaks' website because when people start mirroring it, it gets
23 transferred, correct?

24 A. Not necessarily, but I cannot say it was on the WikiLeaks' website at that time and the
25 website, obviously, has things that you can actually reach by that medium through the
26 website and then the mirror will pick up and you can also have hidden directories that are not
27 linked by anything else that you will not find by simply navigating the web page and,
28 therefore, would not have included the mirroring.

29 Q. It was on the website, was it not?

30 A. It was on any website as far as they release this. I do not even know if it was the
31 WikiLeaks' website.

32 Q. Well, how would you explain it appearing on the mirrors if it was not on the
33 WikiLeaks' website?

34 A. As far as I know, there was a report that there was a, let us say a split between Mr

1 Assange and Mr Domscheit-Berg and it is Mr Domscheit-Berg who took some files from
2 WikiLeaks' machines, which does not necessarily have to be the right server, and copied
3 those into (inaudible) from the original one and then later returned them or somehow, so there
4 are other ways how WikiLeaks' staff members or former staff members might have made
5 copies of that file. Also, as I said, there are - there is the website and then there are archive
6 files where you have all of the leaked information which may not be necessarily on the main
7 website.

8 Q. Your explanation as to how the file got out of the control of WikiLeaks is that it
9 appeared on mirrors, correct?

10 A. Appeared on some mirrors, yes.

11 Q. And those were mirrors of the WikiLeaks website?

12 A. No, not necessarily. Those were mirrors that people had set up of WikiLeaks'
13 documents and some of them have, for example, specifically encouraged content media of
14 any information that you got from WikiLeaks somewhere and that was just added to my
15 torrent. There - as I said, they were information, they were believing to mirror public
16 information WikiLeaks had released.

17 Q. And the security of the encrypted file was protected by a lengthy password?

18 A. Passphrase I would say, but yes.

19 Q. Passphrase. And that is one way of ensuring the security of an encrypted file because
20 the longer the passphrase the more difficult it is simply to force your way through by doing a
21 dictionary test, for example, using computers?

22 A. General understanding, yes.

23 Q. But it is also only as strong as the people it is given to, correct?

24 A. Of course.

25 Q. And ---

26 A. We would say in most computer systems, it is the - it is the human.

27 Q. And the more people you give it to the weaker it becomes?

28 A. Not necessarily but, yes, in principle, of course, if you put a passphrase in a book then
29 you give it to lots of people then it becomes weaker, yes.

30 Q. And, also, of course, the more people you give the password to, the greater the
31 potential for the password to be given away, human error et cetera, yes?

32 A. Yes.

33 Q. And if you do not have any control over the people you give it to, they can
34 maliciously, duplicitously give the password to other people?

- 1 A. Like this what he did.
- 2 Q. And have you any idea how many people were given that password?
- 3 A. No. Well, by Mr Leigh I would say hundreds of thousands; I do not know how many
4 copies this book sold.
- 5 Q. Summer 2010?
- 6 A. But I do not know ---
- 7 Q. Mr - Professor, summer 2010, how many people did WikiLeaks give the password to?
- 8 A. I have no idea.
- 9 Q. The file contained 250,000 cables of which 100,000 were classified, is that right?
- 10 A. Probably.
- 11 Q. And if we look - you should have been sent a cross-examination bundle, Professor. It
12 may well have come to you yesterday. Do you have that? I am going to take you to page
13 sixty ---
- 14 A. I - which page?
- 15 Q. It is page, forgive me, 61.
- 16 A. 61. I do not see it. Yes, I have 61.
- 17 Q. So this is ---
- 18 A. (Inaudible).
- 19 Q. Editorial ---
- 20 A. So this is the editorial from WikiLeaks, right?
- 21 Q. Yes. Bottom of the second paragraph, "The unpublished material contains over
22 100,000 classified unredacted cables that were being analysed in parts by over 50 media and
23 human rights organisation from around the world". So is it fair to say that at least 50
24 organisations were given access to the unredacted cache of cables?
- 25 A. No, because it is not clear that they all have full access to all the cables.
- 26 Q. Right, but the hundred ---
- 27 A. They might have been given access to a subset of the cables and passed to me by a
28 different means.
- 29 Q. "100,000 classified, unredacted cables were being analysed in parts by 50 media and
30 human rights organisations from around the world". Is it fair to say, Professor ---
- 31 A. As you said, in parts. As you said, in part or analysed in parts, which means that some
32 parts were given to some organisations.
- 33 Q. There were 250,000 cables of which 100,000 were classified and unredacted, correct?
- 34 A. Were classified and, sorry?

- 1 Q. Unredacted.
- 2 A. For the media organisations, yes.
- 3 Q. So, 50 media organisations were given access to unredacted – well, not just media,
4 media and human rights organisations were given access to unredacted classified documents.
5 Correct?
- 6 A. It does not say that they were all given the same access to all the documents.
- 7 Q. It is not the question you were asked, Professor.
- 8 A. OK. What was the question I am asked?
- 9 Q. Is it right that 50 organisations were given by WikiLeaks access to unredacted
10 classified cables?
- 11 A. Based on that statement it seems so, yes.
- 12 Q. Is that a yes?
- 13 A. Yes.
- 14 Q. So, it is not just Mr Leigh by the looks of things who has been given access to these
15 documents but many other organisations as well. Is that correct?
- 16 A. As far as I can tell, Mr Leigh was one of the very few who was given access to the
17 full set and as far as I can tell only Mr Leigh was the one who resulted in a leakage of, an
18 argument for full leakage of information, so the other 49 organisations might have been
19 actually reliable.
- 20 Q. And what is the basis for you saying that?
- 21 A. That we did not find any problematic cables being published by those or leaked by
22 those organisations. Mr Leigh was the one that resulted in a large publication of unredacted,
23 unclassified – classified materials.
- 24 Q. And why does that mean that they did not have access to the full batch?
- 25 A. It does not. I just – when I look at the book of Mr Leigh, it is very clear that Mr
26 Assange was very reluctant to give him full access to the entire set and that policy that Mr
27 Leigh describes seems to be that media partners get access to the point where Mr Assange
28 feels that they would be most likely competent to evaluate ---
- 29 Q. Can you take us ---
- 30 A. --- and so it seems that WikiLeaks was careful about who would get access.
- 31 Q. Take us to the part where David Leigh says that Mr Assange did not want to give him
32 full access.
- 33 A. I have to find the book chapter. It is a bit difficult.
- 34 Q. It is your exhibit ---

1 A. But this is ---

2 Q. It is your exhibit 2. I will read you the first page. “David Leigh had listened patiently
3 to Assange then had instructed him he must never allow his memory stick to be connected to
4 any computer that was exposed to the internet for fear of electronic eavesdropping by US
5 intelligence. But there was currently no danger of that at all. Leigh’s rented cottage way up
6 in Scottish highlands was unable to receive a TV signal never mind a broadband connection.
7 The Guardian’s investigations editor had originally planned to spend his annual Summer
8 vacation with his wife hill-walking in the Grampians but the summits of Dreish, Mayar,
9 Lochnagar and Cat Law went unclimbed. He sat transfixed at his desk, while the sun rose
10 and set daily on the heather-covered hills outside. On the tiny silver Hewlett Packard thumb-
11 drive plugged into his MacBook were the full texts of more 250,000 diplomatic cables. To
12 search through them was maddening, tiring – and utterly compelling.”. “It had been a
13 struggle to prise these documents out of Assange back in London. There were repeated
14 pilgrimages ---

15 A. That is, that is, that is the sentence, it had been a struggle to prise out these documents
16 from Assange in London.

17 Q. All right. “There repeated pilgrimages to the mews house belonging to Vaughan
18 Smith’s Frontline Club near Paddington station before Assange reluctantly turned them over.
19 “We have to be able to work on them, Julian”, Leigh had argued, “None of the partners have
20 any real idea what’s there except their contents are supposed to give Hillary Clinton a heart
21 attack!”. Assange was keeping the three news organisations dangling despite his original
22 agreement to deliver all the material for publication. He willingly passed on the less
23 important war logs from Afghanistan and Iraq, but talked of how he would use his power to
24 withhold the cables in order to “discipline” the mainstream media.”. All right? Now ---

25 A. I feel Assange would be initially reluctant about that, yes.

26 Q. What do you think changed?

27 A. And interestingly this one states only three media organisations and not 50.

28 Q. What changed?

29 A. I do not know what changed. I mean, as David Leigh said, he tried, he worked hard to
30 convince Mr Assange to hand over the full set and I believe Mr Assange was probably
31 convinced by the argument that the attacks on WikiLeaks might otherwise endanger the
32 publication process.

33 Q. So, how do you know that the 250,000 cables were not handed over to others?

1 A. I do not know. I – as I said, it seemed that the – we only know that this was the main
2 place where they were actually ending up in the public eye. You know, it is impossible to say
3 that they were not handed over to others for sure.

4 Q. What we do know is that WikiLeaks’ account, 50 organisations were given access to
5 unredacted cables, that must be right?

6 A. To some unredacted cables, not necessarily the whole stash, yes.

7 Q. But you have no idea whether it is some or all, have you?

8 A. No.

9 Q. Then nothing happens until August of 2000 and, forgive me, in fact, we have
10 February 2011 where Mr Leigh publishes his book, yes?

11 A. Yes.

12 Q. And at that point WikiLeaks are aware, presumably, that the password to the file has
13 been published?

14 A. I do not know who and WikiLeaks may have been aware of it when. It is not clear to
15 me that they would all read that book immediately given the small number of (inaudible) but
16 of course it is possible that some people who read it might have become aware of it ---

17 Q. But ---

18 A. --- but I have no clear evidence that they were because, if they were, whether they
19 kept quiet.

20 Q. By this stage, there has been a mirroring process undertaken of the WikiLeaks’
21 website, is that right?

22 A. Yes.

23 Q. Your witness statement and it is at page 2, paragraph 3, describes a DDoS attack
24 against WikiLeaks, that is – we have been through, it is effectively flooding the website with
25 traffic to try and shut it down because the server cannot cope.

26 JUDGE BARAITSER: Sorry, page 2, paragraph?

27 MR SMITH: Paragraph 3, it beings “2 December, the DDoS attack against WikiLeaks raises
28 to the point that every DNS net terminates ...”.

29 JUDGE BARAITSER: So, you are not looking at the 21 February statement, you must be
30 looking again at the letter?

31 MR SMITH: I am looking at the letter.

32 JUDGE BARAITSER: So, it does not corollate to the statement.

33 MR SMITH: Ah. Well, it is the bold ---

34 A. It is the same statement.

- 1 MR SUMMERS: Paragraph 9, madam.
- 2 JUDGE BARAITSER: Paragraph 9, thank you. Yes.
- 3 Q. So, DNS.net terminates the hosting, correct?
- 4 A. Yes.
- 5 Q. And then over the page for me, the next paragraph, “December 2010, in a collective
6 effort to defeat the DDoS attack, third parties globally begin to mirror the information from
7 the WikiLeaks’ website.”. Now, did you mention in your witness statement that that was at
8 the encouragement of WikiLeaks?
- 9 A. But some of the mirrors was – had only partially been released, some might have been
10 done on their own account, but I do not know if I mentioned the encouragement of
11 WikiLeaks but it is I think encouragement of WikiLeaks given that they had put up some
12 instructions how to do this.
- 13 Q. Yes, but they are cross-examination ---
- 14 A. Now, interestingly ---
- 15 Q. In our cross-examination bundle, page 6 ---
- 16 MR SUMMERS: No, no, wait, the witness had something else to say.
- 17 MR SMITH: I am so sorry.
- 18 JUDGE BARAITSER: Well, he answered the question and then said, “The interesting thing
19 is ...” ---
- 20 MR SUMMERS: Yes.
- 21 JUDGE BARAITSER: --- so, I do not know if that is something additional to what he was
22 asked.
- 23 MR SUMMERS: Well, please.
- 24 MR SMITH: Well, perhaps I could ask this question and I undertake to return to the half-
25 spoken answer and we will get there.
- 26 Q. Page 6 of our cross-examination bundle is a WikiLeaks page for the website.
27 Professor, this has been taken from the Wayback Machine, we can see at the top it is dated 10
28 December 2010, yes?
- 29 A. Can you give me a second, I do not have it open yet?
- 30 Q. Of course.
- 31 A. Please. Page 6 of the prosecution bundle?
- 32 Q. That is correct.
- 33 A. This is the mass mirroring of WikiLeaks ---
- 34 Q. This is the mass-mirroring WikiLeaks page.

- 1 A. Yes.
- 2 Q. And we can see WikiLeaks encouraging, WikiLeaks is currently under heavy attack,
3 top of the page, “In order to make it impossible to ever fully remove WikiLeaks from the
4 internet, we need your help”, and there is then an encouragement to other users to lend their
5 servers to mirrored versions of the WikiLeaks website. Yes?
- 6 A. Yes.
- 7 Q. And if we look at page 46.
- 8 A. 46. What is on page 46?
- 9 Q. It says “WikiLeaks Mirrors”.
- 10 A. Fine.
- 11 Q. Or it should say “WikiLeaks Mirrors”.
- 12 A. Mmm hmm.
- 13 Q. 7 December ---
- 14 A. Ah, this is all of the mirrors.
- 15 Q. Yes. So, this is WikiLeaks giving its readers a list of the mirrors in case they need to
16 go elsewhere because WikiLeaks itself is under attack. Yes?
- 17 A. Right.
- 18 Q. So, the mirroring process is not purely a third party matter but it is something that was
19 arranged and encouraged by WikiLeaks itself.
- 20 A. Yes. Yes. Can I now say what the important part about this is?
- 21 Q. Of course you can.
- 22 A. The important part about this is that since those mirrors set up by those instructions
23 did not contain the file, this is WikiLeaks building a haystack. So, if they were aware of
24 some existing mirrors, including the encrypted archive, the best way to hide it is by setting up
25 thousands and thousands of mirrors without the archive so that people trying to find the
26 encrypted file – that they would reduce the chance of people finding the encrypted file. So,
27 by doing so, they obscure it, the existence of mirrors that are not authorised and that did
28 include – or not encourage, not authorised, whatever, that some (inaudible) set up that did
29 include the encrypted file. So, this is them trying to build a haystack to make it more difficult
30 for people to find the needle.
- 31 Q. Are you saying that in December 2010 WikiLeaks realised that there was a problem
32 with the security of their file?
- 33 A. No, I do not say that. I am saying if somebody did realise that WikiLeaks might have
34 been a good strategy to hide that and to obscure that, I do not know if somebody did realise it,

1 but since these mirrors were totally uncritical and only have public information they actually
2 in effect make it harder for anybody to find the critical information.

3 Q. I follow that, Professor, I am more interested in your assertion that this was a
4 deliberate attempt by WikiLeaks in December 2010 to your phrase “build a haystack”. Is that
5 what you are telling the court?

6 A. No, I am not saying it is a deliberate attempt, I am saying this was the effect. The
7 effect was that they were building a haystack. Whether that was deliberate or not I cannot
8 say.

9 Q. Well ---

10 A. It was also of course possibly just what they say plainly a way to make the website
11 more robust, but in the end the effect was one of building a haystack.

12 Q. I understand the effect, Professor, but your evidence was to the effect that this was a
13 deliberate plan to build a haystack. Now, as of December 2010 ---

14 A. No, I did not say that. I did not – can I as such ascertain to the motivations behind
15 doing it because I did not say anything beyond mirroring the website.

16 Q. Well ---

17 A. I said that if somebody at WikiLeaks had been aware then this would have been a
18 very smart move as a way to build a haystack ---

19 Q. Well ---

20 A. --- but I do not know if this was actually an attempt.

21 Q. Let me explore that because we might be able to go a little further. As of December
22 2010, WikiLeaks is saying we are doing this to proliferate websites because we are under
23 attack. Yes? So, that is their open or public motivation. Correct?

24 A. Yes.

25 Q. As of December 2010, David Leigh’s book has not been published. Correct?

26 A. Mmm hmm.

27 Q. And so, we have not got the password issue. Is that also correct?

28 A. Yes.

29 Q. And your evidence, I think it was in chief, but it may have been right at the beginning
30 of my cross-examination, is that as of December 2010 when WikiLeaks has started to mirror
31 its website, the encrypted file was not even on the website or might not have been. Is that
32 correct?

33 A. As long as there is mirrors, yes. Yes.

1 Q. So, can we go a little further and say it certainly was not WikiLeaks' intention to
2 build a haystack because the issue had not even arisen?

3 A. At that time but of course they were continuing the mirroring programme after the
4 issue had arisen and more and more mirrors were coming up for the rest of the time.

5 Q. You accept at that time that it could not have been WikiLeaks' intention in your
6 phrase "to build a haystack"?

7 A. At that time, no, but maybe at a later time, yes.

8 MR SMITH: And I will maintain, I suspect having seen the transcript, that that was the
9 witness' evidence earlier but I am not going to trample back over old ground.

10 JUDGE BARAITSER: All right.

11 MR SMITH: We then come, Professor, to the week between 23 and 30 August of 2011, and
12 I am going to go through that in a little detail with you by reference to your chronology.

13 Now, if you need some more time because I am going too fast, please let me know, but are
14 you aware that on 23 August, WikiLeaks starts to release more cables?

15 A. Yes. They decided to release unclassified cables early. That is what you are talking
16 about, right. Also at the same time there were still media releases of redacted cables. I do
17 not know which one of them he is talking about since they were all (inaudible).

18 Q. Alright. Well, let us go to page 42 of the prosecution bundle, and for my Lady's
19 assistance and for the Professor, at page 42, we are picking up the WikiLeaks Twitter feed
20 and we are going to go forward in time but backwards through the bundle, so in other words,
21 page 41 is the next page we will go to. Have you got page 42, Professor?

22 A. Yes.

23 Q. We can see halfway up the page, 23 August, WikiLeaks shortly release 5,523 new
24 cables. Above that, the cables deal with US reporting on China, Taiwan and Libya, and then
25 we have the Taiwan cables, the China cables, the Libya cables and some more Libya cables
26 being released. Can you see that?

27 A. Yes.

28 Q. And then further up, fourth tweet from the top, "Stay tuned for Israel, Russia,
29 Venezuela, Indonesia, Syria, Somalia, Bahrain, South Africa and Yemen," and above that
30 "Stay tuned for Cuba, Germany, Iran, Afghanistan," et cetera, yes?

31 A. Yes.

32 Q. Do you know what the contents of those cables were?

- 1 A. Yes. I verified against the archive developed from Cryptome that those were
2 unclassified cables because if I look for the respective countries and count the number of
3 unclassified cables, I have those numbers.
- 4 Q. So, you have looked at the cables that were released between 23 and 30 August.
- 5 A. Between the ---
- 6 Q. 23 and 30 August.
- 7 A. Not at all of them. There were also these tweets and I sampled some of them to verify
8 or detect whether the total number of unclassified cables matches that number there.
- 9 Q. Do you know if any of them were marked “secret”?
- 10 A. I specifically checked that the mark was unclassified.
- 11 Q. Do you know if they were marked “secret”?
- 12 A. Usually, if something is marked unclassified, it is not marked secret as far as I can
13 tell.
- 14 Q. Do you know if there were names in those cables marked “Strictly protect”?
- 15 A. I did not look at the specific contents of the cables. I only looked at the classification
16 level.
- 17 Q. If we turn over to page 41, the first tweet up from the bottom, “Announce WikiLeaks
18 have released 35,000 US diplomatic cables today.” A little further up, right at the top, we
19 have Libya and the China cables released in searchable format. Can you see that?
- 20 A. Yes.
- 21 Q. And one of the boasts that WikiLeaks makes, is it not, Professor, that they released
22 the cables initially, and thereafter they released them in searchable format, better to allow
23 people to navigate around?
- 24 A. Myself, I am not sure, but the searchability adds little significance, given that it is
25 rather easy to make thousands of cables and then make them searchable locally.
- 26 Q. It is not the question you were asked. The question you were asked was do you
27 accept ---
- 28 A. I am not sure what the question I was asked was.
- 29 Q. Well, I will ask it again. Do you accept that one of the things that WikiLeaks boasts
30 about is having released cables, they released them shortly afterwards in searchable form?
- 31 A. Yes. They released them in searchable format, yes.
- 32 Q. Turn over to page 40. By page 40, we are on to 24 August and we can see, bottom of
33 the page, China, Taiwan cables being released. In the middle of the page US, Russia cables
34 being released and US, Iran cables being released and at the top, fourth from the top, US,

1 Syria cables being released, so that is on the 24th we have more cables being released by
2 WikiLeaks, yes. Over the page to page 37, still on the 24th, middle of the page, we can see
3 Iraq cables. Further up, Zimbabwe and then, the penultimate tweet at the top, the Iraq cables
4 now released in searchable format. Can you see that?

5 A. I did not see the Iraq cables, but I yes, I assume that those things were published by
6 the twitter feed before.

7 Q. So, WikiLeaks seems to be emphasising when it releases cables in searchable format.
8 Do you accept that?

9 A. Yes.

10 Q. Now, that is the 24th. On the 25th, we have Der Freitag releasing their article. Now, it
11 may have been a slip of the tongue, Professor, so I am going to give you a chance to correct
12 yourself, or it may be that I am wrong. You said in chief that Der Freitag had said that the
13 files was available on a mirror of WikiLeaks. In fact, they did not mention mirrors of
14 WikiLeaks in their article. That is right, is it not? There is a potential problem in that you
15 will be looking at the original German, looking at a translation, so if I am wrong, please let
16 me know.

17 A. That is what I am looking at, the original in German, exactly. So they were writing
18 that the file is circulating around the internet.

19 Q. Right. No mention of mirrors though.

20 A. So, if that is your question, how you interpret the term “mirrors”, usually the way files
21 circulate around the internet are on mirrors.

22 Q. No mention of mirrors, is there?

23 A. No mention of that specific technical term, but as I said, circulating a file on the
24 internet, where most people (inaudible) the internet as the web, and they are, these are always
25 mirrors because any time I copy a file and put it on a new website, I am mirroring it, so the
26 fact that the file is circulating on the web means that it is being mirrored. I am using the
27 technical term that they did not use, but that is just a question of whether you use the
28 technical term or not.

29 Q. So your evidence is that if somebody says something is circulating on the web, most
30 people would need to look for mirrors.

31 A. No. That technically is what we call mirroring the file.

32 Q. Der Freitag do not publish the password, correct?

33 A. Not explicitly, no. They just gave a hint that it is not, that it is public.

1 Q. And if we go to page 34 of our prosecution bundle, four tweets down from the top,
2 WikiLeaks say Der Freitag's story is mostly false and they identify the source as a former
3 associate of Mr Assange with whom he had fallen out. Yes?

4 A. Yes.

5 Q. So, that is 25 August. By 29 August, we have the article in Der Spiegel, which is
6 your exhibit 1 to your first witness statement. Now, again, Der Spiegel did not identify the
7 password, correct?

8 A. Not explicitly, yes.

9 Q. And said - the extent of which Der Spiegel identified the location was that "Since the
10 beginning of the year an encrypted file has been circulating on the internet containing the
11 collection of 251,000 US State Department cables." Correct?

12 A. And it was acknowledged that their release could endanger the lives of informants.
13 So that is 29 August. If we go to page 25 of the prosecution bundle, second tweet from the
14 top, WikiLeaks responds with a tweet, "The current story being spun about wild cables,
15 including from Spiegel, is significantly incorrect." So, that is the WikiLeaks' response.

16 Q. At page 24, seven tweets down from the top on the same day, WikiLeaks continues to
17 publish cables. "Note, all Australian cables have been in the process of release since last
18 night, live as soon as mirrors sync." So, cables are still being released, Professor, and
19 WikiLeaks is still making ---

20 A. (Inaudible), yes.

21 Q. And WikiLeaks is making use of mirrors still, yes? If we turn over to page 22, we
22 have a little more detail of what is being released. The first tweet up from the top,
23 "WikiLeaks release, all Sweden related US cables released including secret." And above that
24 ---

25 A. Yes.

26 Q. "Australia, all US cables from Australia released including secret," so some of these
27 cables appear to be secret.

28 A. Well, you have to distinguish between cables released in redacted form by media
29 partners and in this case I did not include those cables in my analysis because they were
30 published but as media partners say they are redacted where no redactions are necessary, so
31 we have these three groups of cable releases. We have the media partner releases where
32 some media partner that is an expert in what actually might endanger people has decided that
33 those can be released. This is the two secret cable sets that you are referring to. Then there is

1 the unclassified cables that were released, but the critical ones were plainly the ones that have
2 not been vetted, have not been checked and have been classified by the US.

3 Q. So, who has told you about the media partners ---

4 A. So, the releases ---

5 Q. Who told you that the media partners were experts?

6 A. Well, usually, I believe that media partners, this is what the press are supposed to do,
7 take out what information is relevant for the public eye and what information should be
8 withheld because it is private and does not belong to the public. I believe that is the role of
9 journalists.

10 Q. Who told you they were experts?

11 A. Experts on what?

12 Q. It was your phrase, Professor.

13 A. As in experts on being journalists. So if you are a newspaper, I genuinely believe that
14 you are an expert on being - doing journalism. That is my position, you know. Of course, we
15 have some German newspapers that may not actually be experts on journalism, but in general
16 that is a common presupposition that people doing their job are expert at their job.

17 Q. Do you know who the cables were given to?

18 A. I do not know all of the media partners that the cables were given to, no.

19 Q. Do you know some of them?

20 A. Yes, of course.

21 Q. Well, why?

22 A. Because some of them published stories about the cables and since they were the first
23 to publish them, I believe that it makes sense to presume that they received them from
24 WikiLeaks.

25 Q. If we go to page 20, we are now over to 30 August, so after Der Spiegel, and we have
26 WikiLeaks tweeting, third down from the top, "New Swedish and Australian cables now
27 searchable," so we have had WikiLeaks released secret cables now saying they are searchable
28 for Sweden and Australia, correct?

29 A. Yes.

30 Q. And then, two tweets from the top, "WikiLeaks fast mirror fall back." And over to
31 page 19, halfway up the page or a third of the way up the page, "Please report using
32 herdict.org if WikiLeaks.org or mirrors are inaccessible in your country," so WikiLeaks still
33 using mirrors and still trying to ensure that the site is accessible.

1 A. Of course. As a denial service attack may always resume or may have still even been
2 present, it still makes sense to use mirrors for the public to gather information. Why not?

3 Q. So we are clear, Professor, as of 30 August, where WikiLeaks was mirroring,
4 ensuring that its website was available, are you aware of whether names were posted in
5 cables which were marked, "Strictly protect."

6 A. As far as I know, there were certainly some cables that were marked, "Strictly,"
7 before it was made public, labelled, "Strictly protect." However, they were at the same time
8 in jurisdictions like Sweden where the respective media partners had presumably decided that
9 this was not going to endanger somebody.

10 Q. Where did you get that information from?

11 A. I believe there was a witness statement circulating in the bundle from the defence that
12 -from a media partner that they just basically just said that they had looked over it and made
13 those decisions.

14 Q. So you are taking that from someone else?

15 A. But another witness was testifying that (inaudible), yes.

16 Q. That will be the witness Wahlström which dealt with Sweden. What about any other
17 countries? Are you aware of any other countries?

18 A. I did not look and make a comprehensive lists of countries where "Strictly Protect"
19 was in the unclassified cables. My presumption was that if the US Government did not
20 decide to protect this information in the first place and made it accessible to presumably lots
21 of people without authentication within the internal network, it must have been that these
22 people were that much at risk.

23 Q. So the bottom line is ---

24 A. Again, I cannot say. There are too many cables to investigate this question fully.

25 Q. So the bottom line is you do not ---

26 A. And I am not an expert on ---

27 Q. You do not know whether there were names in the cables released as of 30 August
28 which were marked, "Strictly Protect"?

29 A. No, as I say, I do know that there were some cables, there were some cables where
30 those things were released. It is easy to find out that sometimes does exist but I cannot say to
31 you what the scope is.

32 Q. And then we move on to 31 August. Now, as of 31 August, Professor, you can find
33 no evidence before then of anyone publishing the cables. Is that correct?

34 A. Define "the cables." We have lot of different sets of cables.

- 1 Q. 250,000 ---
- 2 A. (Inaudible) some cables.
- 3 Q. 250,000 unredacted in toto, the whole. You cannot find anyone having done that
- 4 before 31 August.
- 5 A. Yes, I believe there was no – at this time I did not find anything before then. It is
- 6 possible I missed something, but the first leaking – no, there was the torrent of August 31,
- 7 sorry.
- 8 Q. No, I ---
- 9 A. The (inaudible).
- 10 Q. Forgive me, Professor. Before August 31?
- 11 A. Before August 31?
- 12 Q. Yes
- 13 A. No, I do not think I found anything before August 31.
- 14 Q. Right. Now, 31 August you say, and I am afraid my paragraph numbering is going to
- 15 be wrong because I am dealing with the letter that was originally served by the defence, it is
- 16 my paragraph 7, but it is the one that begins 31 August, it is the last page. “Cryptome .org
- 17 and others report on the specific passphrase which file it decrypts.”
- 18 A. Yes.
- 19 Q. Yes? Now, and then on the same day before 8 pm someone makes the first searchable
- 20 copy of the cables. First of all ---
- 21 A. So, that is what I am saying, that is the first, you know, version, depending on what
- 22 you consider to be sufficient.
- 23 Q. Where is the evidence? It is simply that I cannot find it. Everywhere else you have
- 24 footnoted, but where is the evidence for the MRKVA.EU cable publication?
- 25 A. If you go on to the (inaudible) at archive.org, I think there were some tweets that
- 26 basically were saying you can find the searchable cables there, so that you can find some
- 27 tweets pointing to that site.
- 28 Q. Right, well, let us have a look at the tweets.
- 29 A. (Inaudible) I believe.
- 30 Q. I think we are looking at page 66 of the prosecution bundle because it is not in your
- 31 exhibits.
- 32 A. It is quite possible. 66? Page 6 ---
- 33 Q. 66.
- 34 A. (Inaudible) of my subset? Which subset?

- 1 Q. Page 66 of the prosecution bundle.
- 2 A. Let me see.
- 3 Q. It is a tweet by – I am going to call him Mr Kvak, but it may be MRKVAK. Can you
4 see that?
- 5 A. Yes.
- 6 Q. And it says, “Complete unredacted cables leaked from WikiLeaks cables.csv”, and
7 then it has got a SHA hash. Yes?
- 8 A. Yes, there. There is a SHA hash, yes.
- 9 Q. Right. So that is not either file or a link. It is simply a tweet saying, “I’ve got a SHA
10 hash.” Basically, “I’ve got it”, is what it is saying.
- 11 A. Right. There was a different tweet which actually mentioned the mirror sites
12 specifically on it.
- 13 Q. Could you find that for us? It is simply that I could not find it. Well, it is your
14 witness statement.
- 15 A. Probably not very quickly. Yes, I said probably I cannot find this very quickly for
16 you, but I did find a link posted around that time pointing to it, but I cannot find it for you
17 very quickly in these proceedings.
- 18 Q. Well, I ---
- 19 A. Also, the update was also (inaudible) given that the information was already on the
20 Cryptome site.
- 21 Q. Well, we will come to Cryptome in a second.
- 22 A. Yes.
- 23 Q. But first of all I would like to understand, and perhaps the judge would, the basis upon
24 which you say the first time it was posted was before 8 pm on the 31st by
25 cables.MRKVA.EU.
- 26 A. There was, as I said, there was a tweet mentioning that the searchable cables were on
27 cables.MRKVA.EU and that tweet was dated at, I believe, 8 pm which means that if
28 somebody tweets online, then somebody must have posted it before then on that website.
- 29 Q. Where is that tweet?
- 30 A. I do not have the specific tweet.
- 31 Q. We have never been shown that, unless I am going to be corrected.
- 32 MR SUMMERS: I think the witness is hoping he will find it if it is important.
- 33 JUDGE BARAITSER: Well, I think Mr Smith is saying it is important. How do you want to
34 deal with it, Mr Smith?

1 WITNESS: I will find it, but I will have to find it later. I am going to have to find it later; it
2 is not going to be workable in this limited timeframe,

3 MR SMITH: My Lady, I think I have about another 20 minutes or so, possible 25 minutes. I
4 am happy to give the witness 15 minutes as a break and to conduct his researches if the court
5 would be happy. I think we are going to have plenty of time today, so.

6 JUDGE BARAITSER: Professor Grothoff, if we give you 15 minutes will that be enough
7 time to find this tweet?

8 WITNESS: Maybe. I will try.

9 JUDGE BARAITSER: All right. Well, let us see if we can. It is 25 to 12 now. If we come
10 back at 10 to 12, can you be available then and hopefully with this relevant tweet.

11 WITNESS: Yes. Yes, I will try to go back through my list of things and information I
12 collected and try to find the specific one.

13 JUDGE BARAITSER: All right.

14 WITNESS: I have seen there have been lots and lots and lots of tweets, so it is not the easiest
15 one to find.

16 JUDGE BARAITSER: 10 to 12 then in the hope that you have managed to do it by then.
17 Thank you very much.

18 WITNESS: OK.

19 (Short adjournment)

20 JUDGE BARAITSER: Thank you very much.

21 MR SMITH: Professor, can you hear me?

22 A. Yes, I can hear you.

23 Q. Have you been able to find the tweet?

24 A. Yes, I have been able to find the tweet.

25 Q. Excellent. Could you just tell us what the date and the time of it is and who sent it?

26 A. Mr Radek Pilar, MRKVAK.

27 Q. Yes.

28 A. Sending a tweet quick (inaudible) for all WikiLeaks Cablegate archive.

29 Q. Now, we have that ---

30 A. And the tweet is ---

31 Q. Yes.

32 A. Yes.

- 1 Q. We have that, my Lady, I am afraid because none of the defence bundles are
2 paginated, it is in the middle of the third P bundle at C209 I think. It will not need to be
3 pulled out. In our version of that, Professor, it is dated 1 September at 5.58. Is that right?
- 4 A. Yes. No, no, it is not right because it depends a lot on which time zone you apply.
- 5 Q. Right.
- 6 A. I have a different time when I look at it because I am in a different time zone than you
7 are.
- 8 Q. And what does yours say?
- 9 A. At this point from this time zone says 7.58 pm on the – it depends on which time zone
10 you are in.
- 11 Q. On 1 September?
- 12 A. In my time zone, yes.
- 13 Q. Right. So if we look at your witness statement where you say, “On the same day”,
14 that is to say 31 August, “before 8pm.” Can we put a line through that because in fact it is on
15 1 September?
- 16 A. On the same day, (inaudible) end up in the same 24 hour interval depending on where
17 your time zone is correct, but, of course, I also made the mistake of not having the time zone
18 for the pm correctly for last year.
- 19 Q. Well, there has also, Professor ---
- 20 A. (Inaudible).
- 21 Q. Hang on, Professor,
- 22 A. --- around that time.
- 23 Q. Look at your report. You set out what happens on 31 August and then you set out
24 what happens on 1 September, don’t you? And the MRK ---
- 25 A. I should have probably moved that line to one statement down.
- 26 Q. Well, you should have moved it to 1 September and you should have put a line
27 through “On the same day”, should you not?
- 28 A. Well, for 1 September it would have been on the same, but it depends, yes, it is a bit -
29 I am going to have to say that, yes, you might argue that this was September 1st, yes.
- 30 Q. OK. So it is very important that we just understand. So I am going to write next to
31 your, “On the same day”, “1 September” and then depending on our time zone I have got
32 5.58, you have got 7.58 in the afternoon. Yes?
- 33 A. In my case, yes.

1 Q. All right. So I am staying on 31st August for the moment because we have moved
2 MRKVA on to 1 September. Yes?

3 A. OK.

4 Q. What else is it that you say happened on 31 August? You say, “Cryptome.org and
5 others report on the specific passphrase and which file it decrypts”, and you have got a
6 footnote, which is footnote 9, which takes us to the Nigel Parry blog. OK. So I am going to
7 look at Nigel Parry now, which is your exhibit 9.

8 JUDGE BARAITSER: Just pause. You are looking at the statement, Mr Summers. Is there
9 a footnote attached to this last page? I do not see any footnotes on the statements. How do
10 they translate?

11 MR SMITH: Mine, my Lady, is 31 August 2011, “Cryptome.org and others report on the
12 specific passphrase and which file ---

13 JUDGE BARAITSER: Yes, I have that.

14 MR SMITH: And then I have got a 9.

15 JUDGE BARAITSER: I have got exhibit 9. Oh, I see, so the footnote is simply the exhibit
16 and the defence have translated it into an exhibit. All right. OK. Thank you.

17 MR SMITH: So that takes us to your exhibit 9. Can we go to that because that is Nigel
18 Parry’s blog.

19 A. Yes.

20 Q. OK. And this is the source material that you cite for Cryptome reporting on the
21 passphrase. Yes?

22 A. Well, Nigel Parry does not only have a blog, he also has a Twitter account and around
23 Twitter, of course, the information was flying, so this is ---

24 Q. I am ---

25 A. (inaudible) the Cryptome source in that regards. There are reports, I believe, on
26 Cryptome as well in that blog.

27 Q. Right. I am looking at the assertion in your statement that on 31 August Cryptome
28 has reported on it. All right? Now, just so we are clear, Cryptome do not actually publish
29 until 1 September, do they?

30 A. I believe on the 31st they did publish the Cryptome version again, if I recall correctly.

31 Q. All right. Well, it may be we ---

32 A. But they do not publish the final Cryptome version before, I believe.

33 Q. All right. Let us have a look at what Mr Parry says. So Mr Parry has written a blog,
34 your exhibit 9, about his efforts to try and decrypt the passcode. Yes?

1 A. Yes.

2 Q. And he sets out, and we have internal pagination so it is 14 internal pagination, page 2
3 he sets out the page from Mr Leigh's book. Yes? Page 5 he sets out the Freitag report. Yes?

4 A. Yes.

5 Q. And then page 6 we pick up. Bottom of page 6, Mr Parry starts searching the
6 WikiLeaks' torrents on August 30th. Yes?

7 A. Yes, I have read that paragraph, yes.

8 Q. Yes. And he sets out the efforts that he took and also his correspondence with a
9 Twitter user called Nim underscore 99. Yes? And then if we go over the page, at the top of
10 page 8 we have Mr Parry saying that he had discovered the file and the password and, as you
11 put it, put two and two together. All right? So "Game over at this point. The cat was forever
12 out of the bag, regardless even of what we both did, it was only a matter of time." You can
13 see that paragraph. Yes? And so Mr Parry tweets, "It's a bad day for David Leigh at The
14 Guardian. His book password decrypts an old WikiLeaks.org directory file into cables.csv
15 1.16 – it was 1.61 gigabytes, hash tag Cablegate", and a minute later he says, "Just to be
16 clear, I ran the password from page 139 of David Leigh's book and it opened the cables."
17 Yes?

18 "It was a tense minute or so", I am still reading from Mr Parry, "after I first unzipped
19 the cables. The bigger the secrets the bigger the sense of personal responsibility. If the
20 United States Government was unhappy about redacted cables being released by media
21 organisations, it was going to have a giant Wikicow about the unredacted ones being released
22 to the whole world. I emailed WikiLeaks copying the tweet ULR. Whether in response or
23 not, WikiLeaks sprung into action and released a statement within 20 minutes." Yes? And
24 the WikiLeaks' statement is at 22.27 GMT on August 31st. Do we see that?

25 A. Are you talking in the evidence you are saying?

26 Q. Well, it is in Mr Parry's ---

27 A. (Inaudible).

28 Q. It is in the blog article. As it happens it is in the cross-examination bundle as well.

29 A. Yes, I have this. "A (inaudible) journalist has", this is the statement you are talking
30 about?

31 Q. Exactly. So what Mr Parry is saying is he has put two and two together and he has
32 found the file. He has tweeted about it and emailed WikiLeaks, but he has not published. All
33 right? He has made it relatively clear where you can go to get the password, but he has not
34 published. All right. And within 20 minutes WikiLeaks have issued their statement. So on

1 our timetable, on our chronology, the Parry breakthrough, if what he is saying is right, is that
2 at about 10 o'clock in the evening GMT on 31st August. Yes?

3 So on our 31 August paragraph we have - take out cables. MRKVA, that is the next
4 day, but put in 10 pm Parry just to remind ourselves that is when Mr Parry claims to have had
5 his breakthrough. Where in Mr Parry's blog does he say that on 31st August Cryptome is
6 publishing or reporting the specific passphrase?

7 A. (Inaudible).

8 Q. We have the next page, but that is 1st September.

9 A. Within an hour, right afterwards, within an hour and within a couple of hours the
10 cables were also available (inaudible).

11 Q. OK. So it is half-past 10 in the evening, it maybe I am being pedantic now, but if it is
12 half-past 10 in the evening by the time WikiLeaks respond and a couple of hours later
13 Cryptome is reporting on it, that would be 1 September, would it not?

14 TURN 08 FINISHES HERE

15 A. Depending on your time zone.

16 MR SMITH: Yes, and if we look at the Cryptome page cited by Mr Parry, it is dated, 1
17 September, although lower down they say, "On 31 August Cryptome has decrypted the file."

18 MR SUMMERS: Well, and it bears the password.

19 A. Yes.

20 MR SMITH: And the password, yes. So all of this is happening late 31 August into 1
21 September, correct?

22 A. Right.

23 MR SMITH: Right. So when we look at your paragraph on 31 August, rather than being
24 before 8.00 pm first publishing, we have got 10.00 pm Parry commenting. At some point
25 thereafter, Nim99 and Cryptome commenting and, at some point on 1 September, Cryptome
26 uploading, correct?

27 MR SUMMERS: I do not want to ---

28 A. Yes.

29 MR SMITH: I do not want to - that is not right, at the bottom of page 6 ---

30 JUDGE BARAITSER: Well ---

31 MR SUMMERS: Well, it is important that the evidence be properly put to the witness. The
32 evidence is within an hour Nim99 had uploaded the unredacted cables onto the internet, not
33 just ---

34 JUDGE BARAITSER: Yes.

1 MR SMITH: All right. Have you been able to find Nim99 uploading the unredacted cables
2 onto the internet using the Wayback machine?

3 A. There was a BitTorrent that was published around that time. I cannot just to claim at
4 this point very quickly that was the one that Nim99 published, but if you - let me see if I can
5 find it, going through my evidence quickly, there was a ---

6 Q. Is that the - is that the BitTorrent that was posted to the Pirate Bay by Draheen?

7 A. Draheen then, yes, there is one like this. So, presumably, that will have to have got
8 this from somewhere also and that was a few hours again later on 1 September, so, you know,
9 this is all happening very quickly at that time.

10 Q. Yes, all right. So we then have - we have now ticked into 1 September. So 10.00 pm
11 on the 31st is when Parry starts to tweet about it. We know by 1 September Cryptome have
12 uploaded it, do you know when on 1 September Cryptome uploaded?

13 A. I do not have the exact time stamp there, but given that the blog says it was going to
14 do it in a few hours it was presumably early in the morning, or maybe rather like late in the
15 night of the day before.

16 Q. If the blog ---

17 A. But I suspect he decrypted it on the 31st very late and then uploaded it early in the
18 morning, but it is not quite possible it is the Cryptome's information at this point not exactly
19 dated by minute.

20 Q. So speculation, but the bottom line is you cannot say exactly when it was put up?

21 A. Right.

22 Q. And then we have the Pirate Bay and you mentioned a user name Draheen who
23 uploaded a BitTorrent which was on 1 September and you give us an exhibit to show that
24 happening. I think it is your exhibit 11, and we can see that Draheen puts it up at 13.09 GMT
25 on 1 September, yes?

26 A. Yes.

27 Q. But, in fact, if you look at the comments, the first comment is by someone called
28 Yoshima and it says, "I haven't seen the decrypted file on any torrents yet, so I'm putting it
29 up here. In fact, I was up with the decrypted file earlier". And then he gives a Pirate Bay
30 reference, can you see that?

31 A. Yes, I saw that in your bundle that there is one that is slightly earlier.

32 Q. Yes, and then we could go to the prosecution bundle, if need be, my Lady, but I am
33 sure the witness will accept that, in fact, Yoshima posted it up at 11.23 GMT?

34 A. Yes.

- 1 Q. Yes. So our chronology now is 10.00 pm on the 31st Parry commenting; at some
2 point, by 1 September, Cryptome uploading; by around about 11, 11.30 in the morning, Pirate
3 Bay is being used to upload torrents, correct?
- 4 A. Yes.
- 5 Q. Meanwhile, WikiLeaks --- WikiLeaks, forgive me, we can see their approach at page
6 17 of our prosecution bundle. In fact, if we start at page 16. No, I am so sorry, it is page 18
7 because we have to go backwards and I am going forwards. So are you at page 18,
8 Professor?
- 9 A. I am at page 18, yes.
- 10 Q. Right.
- 11 A. This is the tweets from Wikileaks, right?
- 12 Q. Exactly. So halfway up the page we can see that tweet at 22.27, which is the one that
13 Mr Parry cites which is - which begins, "A Guardian journalist", yes, can you see that?
- 14 A. "Guardian journalist". Sorry, I have one, "A Guardian journalist" ---
- 15 Q. Yes, so we have two, one at 22.27 which begins, "A Guardian". About a third of the
16 way down the page, it begins ---
- 17 A. "A Guardian journalist has negligently", yes.
- 18 Q. The one below that is the one at 22.27. It begins, "Statement on the betrayal of
19 WikiLeaks passwords by the Guardian".
- 20 A. Ah, yes.
- 21 Q. Yes. So that is the one that Mr Parry talks about at 22.27. By 23.44, WikiLeaks have
22 issued an editorial, is that right, yes?
- 23 A. Yes.
- 24 MR SMITH: And we can see that editorial at page 61 of the prosecution bundle and this is
25 the editorial that I showed to you earlier, Professor, which made it clear that the unpublished
26 material includes 100,000 classified, unredacted cables, yes. So this is WikiLeaks on 31
27 August saying, well, that is on the file and when we turn over to page 63 ---
- 28 JUDGE BARAITSER: Sorry, on 1 September?
- 29 MR SMITH: The editorial was actually tweeted at 23.44 on the 31st.
- 30 JUDGE BARAITSER: 23.44 you are saying on 31 August.
- 31 MR SMITH: Yes.
- 32 JUDGE BARAITSER: And that was your tweet from page 18, was it?
- 33 MR SMITH: Yes.
- 34 JUDGE BARAITSER: All right.

1 MR SMITH: It begins - we can see this because it begins, "A Guardian journalist has
2 negligently (continued)". And we begin on page 61, "A Guardian journalist has negligently"
3 before we get "disclosed"

4 JUDGE BARAITSER: All right.

5 MR SMITH: And at page 63, Professor, in the editorial, WikiLeaks cited the paragraph from
6 the book but replaced the password with X's, yes. So, similarly to Mr Parry having blogged
7 the page number or tweeted - forgive me, you can probably tell I am not particularly
8 technically adept, but if Parry has tweeted at about 10 o'clock the page number, by quarter to
9 12 WikiLeaks are doing the same thing, telling everybody where to go if they want the
10 password, yes?

11 A. Well, essentially if it is out there, it is out there, so - but, yes, they are following up -
12 this is basically providing the information that is already in the public domain.

13 Q. And would you accept that WikiLeaks' Twitter account has a very significant public
14 reach?

15 A. I would think compared to Mr Parry, yes.

16 Q. Further up the page, still on 31 August at 2011, WikiLeaks - sorry, page ---

17 A. (Inaudible).

18 Q. I am so sorry, page 18, Professor, my fault entirely, page 18.

19 A. Page 18 in the prosecution bundle?

20 Q. That is the one. "WikiLeaks cause a global vote on whether WikiLeaks should
21 immediately release all US cables", yes. So before we ---

22 A. I am there.

23 Q. Before we have ticked into 1 September, we have the vote being called. Over the
24 page to page 17, about four tweets up from the bottom we have an update on the vote, still on
25 31 August, "The current vote is over 100 to 1 in favour of release", yes? And, then, on page
26 16 on 1 September, bottom two tweets, "The WikiLeaks vote will continue unless there is a
27 global consensus. It is necessary to act urgently but the debate is defining". And, then, the
28 next one, "Given that the full database is downloadable from hundreds of sites, there is only
29 one internally rational option", yes. So the decision has been taken then to publish and at
30 page 14 on your analysis at 20 past 1 in the morning, or on 2 September, WikiLeaks
31 publishes the cables and calls it a Cablebomb or Cablegate II. We can see that in the top five
32 or six tweets, yes?

33 A. Yes, it depends on which timing. There is a tweet on the website and then there is the
34 tweet with the key, so it is 1.20, 1.19 am, depending on your time zone again, but yes.

- 1 Q. And at ---
- 2 A. That is the first I could find where WikiLeaks definitively made their version
3 available.
- 4 Q. And then at the very top of page 14 we can see WikiLeaks mirroring to ensure that
5 Cablegate II, the Cablebomb, stayed online, yes?
- 6 A. Yes.
- 7 Q. Page 12, Professor, still on 2 September, the second tweet up from the bottom,
8 “Cablegate search is overloaded. Help us purchase more capacity”. So it would appear that
9 the WikiLeaks server was struggling to cope with the number of people looking at the
10 unredacted cables, correct?
- 11 A. Yes, or not necessarily; it could also have been starting to smell a denial-of-service
12 attack.
- 13 Q. Could be, yes, so DDoS or lots of people ---
- 14 A. (Inaudible).
- 15 Q. Because ---
- 16 A. Yes.
- 17 Q. --- as I think you accept, the WikiLeaks’ Twitter account and, indeed, the WikiLeaks’
18 website have a significant global reach?
- 19 A. Yes, compared to (inaudible). It depends on what you compare it with.
- 20 Q. If we go up five tweets, still on page 12, we have an alternative Cablegate II search
21 interface launch, correct?
- 22 A. Yes.
- 23 Q. And, in fact, I neglected to mention it, but we can see they had already put up the
24 cables in searchable format and that is at page 14 in case you need the reference, my Lady.
25 And, further up on page 12, five tweets, six tweets from the bottom, “The Cablegate II search
26 is overloaded. Help us purchase more capacity” So by 2 September, WikiLeaks, early hours
27 of the morning, has published and appears to be attracting significant global interest, correct?
- 28 A. Correct.
- 29 Q. Just so that I understand the first time you are able to say the cables were uploaded
30 onto the internet, what is the time and the date that you can say was the earliest that they were
31 put up?
- 32 A. The earliest they were put up, I mean I think - I mean, given that you pointed out this
33 second torrent, I think from the - from the prosecution bundle that was probably the earliest
34 time we know about them at this point.

- 1 Q. So, in fairness to you ---
- 2 A. They might have been earlier but this was ---
- 3 Q. So that is ---
- 4 A. This, this BitTorrent posting by Yoshima's was probably the very first.
- 5 Q. And that is 11.20 I think in the morning of 1 September, yes; so that is about 14 hours
- 6 before WikiLeaks post up, yes?
- 7 A. Yes.
- 8 Q. But no doubt it will - the point will be made, we do not know the precise time that
- 9 Cryptome uploaded on 1 September, we just have the date?
- 10 A. But it might have been earlier. It is not a hundred per cent clear.
- 11 Q. So, in terms of what we can definitively ---
- 12 A. I ---
- 13 Q. --- say from your evidence, we have Yoshima at 11.20 in the morning; we have
- 14 Cryptome, put a question mark next to it. Now ---
- 15 A. But, again, it does not say, so part of those three days is the WikiLeaks' publication
- 16 and this was what was important to me.
- 17 Q. Why was it important to you?
- 18 A. Because the question was who published the unredacted, unclassified cables first.
- 19 That was the question that was put to me.
- 20 Q. I see. Now the file itself was relatively large, between 1.6 and 1.7GB?
- 21 A. In those (inaudible) for sure, yes.
- 22 Q. It was not impossible but would you accept that it was not particularly user friendly to
- 23 search through?
- 24 A. I mean, the CF3 file is pretty standard format for importing to various processing
- 25 software, so it was not particularly hard to search. On the other hand, of course, there are
- 26 always more convenient ways to access the data.
- 27 Q. And one of the things that WikiLeaks boasted of in its tweets was presenting it in a
- 28 searchable format and preventing - presenting alternative search tools. That is correct, is it
- 29 not?
- 30 A. Yes.
- 31 Q. If we turn to page 71 of the prosecution bundle. Forgive me, we will go to 72. This is
- 32 a report by The Independent on 3 September, so in the immediate aftermath of what
- 33 WikiLeaks called Cablegate. And we see in the last paragraph that, although The
- 34 Independent understood the database was downloadable from other sites, this release was far

1 more comprehensive and publicly visible. Would you accept that the WikiLeaks' release was
2 more comprehensive and publicly visible than previous releases?

3 A. More comprehensive n part of their searchable material, which I do not quite see in it
4 ---

5 Q. Right.

6 A. --- but more visible, I would accept.

7 MR SMITH: My Lady, will you give me one second to check that I have covered everything.
8 Thank you, my Lady.

9 JUDGE BARAITSER: Mr Summers.

10 MR SUMMERS: Just so we can be clear, on 31 August - we will come back to how we got
11 there, but on 31 August Nigel Parry has ---

12 JUDGE BARAITSER: Now just to stop you for a moment. Your client clearly wants to give
13 you instructions. Do you want to take time before you re-examine?

14 MR SUMMERS: Yes.

15 JUDGE BARAITSER: Or do you want to carry on as you are?

16 MR SUMMERS: Yes, no, no, I should take time.

17 JUDGE BARAITSER: All right, it is 20 past 12. I know you do not know how long you are
18 going to be, but can you give me your best guess.

19 MR SUMMERS: 10 minutes.

20 JUDGE BARAITSER: 10 minutes. Back at half past 10, please. Sorry, just so you
21 understand, Professor, the defence are going to take some instructions from their client. If
22 you can be available at half past 12, that will be helpful. Thank you.

23 WITNESS: Of course.

24 (Short adjournment)

25 JUDGE BARAITSER: Thank you. And I can see you are back, Professor. Mr Summers.

26 MR SUMMERS: Professor, can I go back to the beginning of the chronology and ask you
27 please to help us with the provision of the materials to David Leigh and what was said about
28 that in the David Leigh book. Just remind us, David Leigh was one of the media partners,
29 was he not, involved, or supposed to be involved in the redaction process, reviewing the
30 materials for the purposes of redaction?

31 A. Yes. And as written in his books he was a recognised journalist for major newspapers
32 so one would expect that he would be qualified to do that process.

33 Q. And amongst those media partners, are you are aware of anybody except from David
34 Leigh being given access to the whole store?

1 A. No.

2 Q. No. All right. And you ---

3 JUDGE BARAITSER: Sorry, can I just ask, does that mean he is not aware one way or the
4 other ---

5 MR SUMMERS: Yes.

6 JUDGE BARAITSER: --- or he is aware that nobody else was?

7 A. I am not aware of it ---

8 MR SUMMERS: Not aware.

9 A. --- but of course I cannot prove that it was not the case, my Lady.

10 Q. No.

11 JUDGE BARAITSER: Thank you.

12 MR SUMMERS: But you have come across nothing which suggests that anybody other than
13 David Leigh was ever given access to the whole store? Is that right?

14 A. Outside of WikiLeaks, certainly not, yes.

15 Q. Yes. And ---

16 A. It is kind of interesting do not know either but ---

17 Q. Your evidence was that he was given the whole store reluctantly and you were tested
18 on that, can you remember?

19 A. Yes.

20 Q. Yes. Do you have ---

21 A. And the prosecution quoted from the book ---

22 Q. Yes.

23 A. --- I believe that quote quite did show that Mr Leigh had to repeatedly tease the
24 information out of Mr Assange.

25 Q. Yes. So, you were taken to your exhibit number 2 and the first page of David Leigh's
26 chapter was read to you. Can I just take you to a little further in? On page 138, do you recall
27 reading this? So, in the middle of the page, David Leigh asked Assange to stop
28 procrastinating and hand over the biggest trove of all: the cables. Assange said, "I could give
29 you half of them containing the first 50 per cent" and Leigh refused. "All or nothing", he
30 said. And then he suggested that Mr Assange could end up in an orange jump-suit on a route
31 to Guantanamo before he could release them in full. And then further down, bottom of that
32 paragraph, do you see, "Eventually, Assange capitulated.". Does that accord with what you
33 wrote?

1 A. Yes, that is what I referred to when I said he was reluctant to give full access and that
2 he might have caved under the pressure that WikiLeaks was under and so these quotations
3 about Guantanamo is basically the expression of that pressure WikiLeaks was under.

4 Q. Yes. And then having capitulated, if we carry on reading, Mr Assange wrote down on
5 a scrap of paper part of the passcode, yes?

6 A. Yes.

7 Q. And told Mr Leigh he had to add an extra word into it when he typed it.

8 A. Yes.

9 Q. And told him that he would be – and then we are on page 139 – he would be able to
10 download the file from a temporary website. Yes?

11 A. Yes.

12 Q. All right. Now, the putting on online in a temporary website of an encrypted copy of
13 sensitive data with the expectation that it will remain private, is that something that happens
14 regularly or not? Can you give us examples or other situations in which that occurs?

15 A. For example, when I was given access to some of the materials for this court, the
16 defence decided sometimes to put these files on a temporary website with similar encryption
17 in place, so yes. This happens whenever you want to transfer large files that should only be
18 accessible to a limited set of people.

19 Q. What about medical data or financial institutions? Is that something that they use?

20 A. Yes. Also possible that for example, a bank might encrypt a bunch of transactions
21 that they need to share with other banks and the other banks download it via some protocol
22 and indeed additionally encryption protects it against interception and transfer.

23 Q. And just to be clear, publishing encrypted materials on the internet in that way, is that
24 the same as publishing the content of a file to the public?

25 A. No, because encrypted information, if it is properly encrypted, no information, it is
26 useless. Like, only if you have an encryption key it becomes useful so basically saying they
27 are the same, it could conflate publishing something that is useless as something that is
28 useful.

29 Q. Yes.

30 A. So, it is not the same at all.

31 Q. And aside from David Leigh, are you aware of anybody else having revealed the
32 passcode to this store of materials?

- 1 A. Of course, after the book was published eventually, in August and September of 2011,
2 people referring to David Leigh's book revealed that passphrase but before I was not able to
3 find somebody revealing the passphrase without referring to Mr Leigh.
- 4 Q. So, before that happened, the unredacted classified cables it would seem were private
5 to the media partnership who were reviewing them for redaction, is that right?
- 6 A. Yes.
- 7 Q. All right. Can I ask you about mirrors, the next thing in our chronology?
- 8 A. Sure.
- 9 Q. Do you have the prosecution little clip of papers?
- 10 A. Are you talking about the prosecution bundle?
- 11 Q. Yes, yes. Please, the 74 page one.
- 12 A. Which page?
- 13 Q. Page 6 please.
- 14 A. That is tweets? Ah, that is the mass mirroring of WikiLeaks, yes, OK.
- 15 Q. You were taken to this and other parts to which we will turn just shortly and asked
16 about WikiLeaks' encouragement of others to mirror its site.
- 17 A. Yes.
- 18 Q. Yes? And the result of that encouragement ---
- 19 A. Is this about the encouragement reference? The main one?
- 20 Q. Yes, quite. And the result of that encouragement, page 46.
- 21 A. Yes.
- 22 Q. Yes? A list of mirrors that was then set up under the encouragement of WikiLeaks.
23 Those mirrors, those mirrors that WikiLeaks facilitated and encouraged, did they contain the
24 store of cables?
- 25 A. As far as we can tell, obviously some mirrors are no longer available, they did not
26 contain the encrypted form or unencrypted version of the cables.
- 27 MR SMITH: My Lady, we had that in chief ---
- 28 A. Of course, we are talking about the classified cables.
- 29 MR SMITH: --- and I did not explore this, I am not quite sure why it is coming up again.
- 30 JUDGE BARAITSER: I do have the answer to that question in my note.
- 31 MR SUMMERS: Yes, thank you.
- 32 Q. And the mirrors created that we see and you were asked about in cross-examination,
33 listed at page 46 and page 50, those were created pursuant to the instructions provided by
34 WikiLeaks, is that right?

1 A. Yes. Most likely, I mean, it is possible that some people did not follow the
2 instructions closely but yes.

3 Q. Now, the mirrors that did contain the store, the XYZ file, such as 193.198, were they
4 mirrors created under the encouragement of WikiLeaks to your knowledge?

5 A. The encouragement I cannot speak to but I know under the instructions we can see
6 that, for example, some of these mirrors were using a completely different kind of software
7 that does not match what WikiLeaks prescribed.

8 Q. WikiLeaks prescribed Apache, is that right?

9 A. Yes, that is the website and the configuration for it they provided. Or some of the
10 mirrors did include the file user “Jetty” which is a different kind of (inaudible). And
11 similarly these, again, are setting up – Apache and the other ones were BitTorrent or Jetty so
12 it is different software and so these people did not follow these instructions.

13 Q. So, the WikiLeaks’ instructions would not have mirrored the cable store but others
14 were mirroring the site anyway. And how would they have ended up including this store of
15 materials?

16 A. I cannot say to you very specifically how they did it but most likely by accident
17 because we know that some of these files, especially the torrents were described as not
18 including the Cablegate archive, and given that they were clearly downloading thousands of
19 files and surprising that it is not including Cablegate, the answer is as to how would be by
20 accident. How specifically they could have achieved getting the file I cannot say.

21 Q. Now, Professor, you mentioned at one point in cross-examination something called
22 hidden directories.

23 A. Yes.

24 Q. What relevance does that have, do you think, to what happened here?

25 A. It means that – I cannot say exactly how it was hidden, but it probably means that it
26 was not linked and, therefore, was more difficult to discover for people who just were going
27 on the website.

28 Q. But if you are mirroring a website in full, on your own, is it possible that you would
29 pick up hidden directories?

30 A. Depends on how they were hidden.

31 Q. Alright.

32 A. And depends on how you are viewing, of course.

33 Q. Okay. Now, the store contained, we know, about 250,000 cables.

34 A. Yes.

- 1 Q. And your evidence is that some were classified and some were unclassified.
- 2 A. Yes.
- 3 Q. Do you know exactly how many were unclassified?
- 4 A. I should say if you go through the database and look for unclassified you find 133,887
- 5 unclassified cables. However, I should qualify, there are a couple of cables attacked with 1-2
- 6 unclassified or some other misspelling before they were classified. Those would act like
- 7 (inaudible) cables, so overall there might be a few additional cables where the archive is, as I
- 8 say, imprecise in attacking where the word ‘unclassified’ does not appear as such, but with
- 9 some additional stuff around it. So if you search it, the search fields correctly, you get to
- 10 146,187 unclassified cables. There might have been a few more in there that (inaudible)
- 11 quite probably tagged and they also could be considered unclassified.
- 12 Q. Alright. Now, we know, because you were questioned about it, on 23 August
- 13 WikiLeaks began releasing a large number of cables and you were taken through the releases
- 14 by embassy, yes?
- 15 A. Or by country, depending on – embassies, countries, consulate, it depends on the
- 16 source, yes.
- 17 Q. Now, you have looked at those releases, is that right?
- 18 A. I have looked at the second lot of those releases where also there were quite few.
- 19 Q. And the numbers released by country or by embassy, do they correlate or not correlate
- 20 to the number of unclassified cables within the store referable to that country or embassy?
- 21 A. Yes, I checked dozens of embassies and they always matched.
- 22 Q. So, let us just take an example. Page 42, middle of the page, 3,004 cables from China
- 23 released. How many unclassified cables within the store of 250,000 were referable or would
- 24 have been referable to China?
- 25 JUDGE BARAITSER: Page 42?
- 26 MR SUMMERS: 42. Are you looking, Professor, for page 42?
- 27 A. Yes, I am looking for page 42.
- 28 Q. Alright, well do not ---
- 29 A. As I said, the numbers always matched and it is a bit hard to read some of the
- 30 evidence. I compared some of these. I do not remember specifically comparing China, but
- 31 they always matched those numbers.
- 32 Q. Are you saying that the numbers of releases per country matched the number of
- 33 unclassified cables per country each time?
- 34 A. Yes.

1 Q. And the precise total released over this period by WikiLeaks we know was 133,887.

2 Is it your evidence that that is also the precise total of unclassified cables?

3 A. If you count only the ones that are (inaudible) unclassified as a 1-2-1 classified, then
4 yes.

5 Q. And I think you have also told us, and just correct me if I am wrong, you did a dip
6 check to verify that these were unclassified cables.

7 A. Yes. In the cables there is basically a tag that says, "This is a classified, unclassified,"
8 whatever the classification of it is, and you look at those cables that have the tag, country by
9 the country and you get these numbers.

10 Q. Okay. Are unclassified cables ever marked 'secret'?

11 A. Not in the same header.

12 Q. Are unclassified cables ever marked, "Strictly protect"?

13 A. I do not believe cables themselves are marked "Strictly protect." I think this is
14 something that applies to the body but not to the meta description of the cable.

15 Q. And if a cable contained the name of somebody whose disclosure would put their life
16 at risk, would it be unclassified?

17 JUDGE BARAITSER: He cannot possibly answer that. He really cannot.

18 WITNESS: I do not know. I would hope not, but I cannot say how the US Government
19 exactly makes its classifications.

20 MR SUMMERS: Alright. Can I then just turn, please, to the chronology about which you
21 have said.

22 JUDGE BARAITSER: Just so I understand, his answer of the "Strictly protect", it may apply
23 to the body but it is not in the meta heading.

24 MR SUMMERS: Yes.

25 JUDGE BARAITSER: So it is not easy to search but it might be there in any event. Is that
26 his answer? Yes.

27 MR SUMMERS: On 25 August, just help us with the chronology again, I am sorry to go
28 through it again, on 25 August, Der Freitag published the article that you have produced at
29 exhibit 8, yes?

30 A. Yes.

31 Q. And Der Freitag disclosed in that article that the file was available on the internet.

32 A. Yes.

33 JUDGE BARAITSER: I hope you are going to make some progress because this is certainly
34 territory which has been gone over several times before.

1 MR SUMMERS: Yes, but it was challenged in cross-examination.

2 JUDGE BARAITSER: Well, the fact of Der Freitag publishing I do not think was
3 challenged.

4 MR SUMMERS: Mr Smith spent a long time trying to create his own chronology about
5 what happened here.

6 JUDGE BARAITSER: I do not think there is any dispute that on 25 August 2011 the Der
7 Freitag story appeared because we can see it.

8 MR SUMMERS: Yes.

9 JUDGE BARAITSER: So, let us not go over the same incontrovertible evidence. If there is
10 a new point that you wish to make, you are very welcome to do so.

11 MR SUMMERS: Alright. After the Der Freitag article on the 25th, you had observed the
12 WikiLeaks' Twitter feed. What was WikiLeaks saying, please, about the Der Freitag
13 disclosures?

14 A. That it was mostly false, that they are calling it into question, but being unspecific as
15 to what was false about it of course.

16 Q. Thank you. However – it obviously was not false and on the 29th ---

17 A. Some parts may have been false, but not this critical part.

18 Q. On the 29th, Der Spiegel published what you have set out, or is set out at page 6 of
19 your exhibit 9.

20 JUDGE BARAITSER: Again, we know that. What is your question?

21 MR SUMMERS: The question is what could now be inferred, please, from the combination
22 of those two reports?

23 A. That many people who had been trying to put two and two together, because now it
24 was clear that there was a passphrase open that was very interesting and, basically, this would
25 have prompted people to try passphrases they would find in the public view against files that
26 were encrypted they could not open before. Before people fully had the information to look
27 for this, because it was never clear that there might be something of a leak somewhere, but
28 now we have two reports that said that there was something to be got. This basically, I think,
29 must have changed the motivation for people wanting to look for (inaudible) that would tell
30 them exactly where the information was.

31 JUDGE BARAITSER: Mr Summers, you are not strengthening by repetition. That was an
32 exact point you dealt with in examination-in-chief. I recall.

33 MR SUMMERS: Yes, and then on the 31st, am I right Nigel Parry tweeted the location of the
34 password?

1 JUDGE BARAITSER: Again, the Parry breakthrough was dealt with. This is all ---
2 MR SUMMERS: But it was all challenged, madam and it was given a different ---
3 JUDGE BARAITSER: No, it was not.
4 MR SUMMERS: --- chronology from Mr Smith.
5 JUDGE BARAITSER: No.
6 MR SUMMERS: It is important, madam, that we understand exactly – the suggestion that
7 was made was that WikiLeaks ---
8 JUDGE BARAITSER: Mr Smith will I am sure correct me if I am wrong, but at 22.27, the
9 Parry breakthrough on 31 August, was not challenged in any shape or form.
10 MR SMITH: No. 22.27 is the response. Mr Parry says, “I was tweeting about 20 minutes
11 beforehand, so it is about ten o’clock in the evening.
12 MR SUMMERS: It is what he was tweeting that is important when one needs to assess the
13 chronology that was put to this witness.
14 JUDGE BARAITSER: Yes, but of course, I have the Parry tweets.
15 MR SUMMERS: Can I tell you, madam, what I intended to do now and you can tell me
16 whether you regard it as contentious or not.
17 JUDGE BARAITSER: Alright.
18 MR SUMMERS: Firstly, Nigel Parry, at 10pm, had discovered and tweeted the location of
19 the password.
20 JUDGE BARAITSER: Yes, that is accepted. Where to get the password, although he does
21 not actually say what it is.
22 MR SUMMERS: Well, he says it is page 139 of David Leigh’s book.
23 MR SMITH: I suspect we can agree this in the chronology.
24 MR SUMMERS: I do not need to agree it. I have got a witness here.
25 JUDGE BARAITSER: I do not believe this has been challenged, Mr Summers. The point is
26 what has been challenged that you wish to re-examine about, that has been challenged?
27 MR SUMMERS: Well, what has been challenged, what has been put is in amongst this
28 chronology, that WikiLeaks released an editorial to which Mr Smith would suggest led
29 people to the location of the files and that is just not right when one looks at the ---
30 JUDGE BARAITSER: So that is just about reach, is it not? So, 23.44 WikiLeaks does issue
31 the incontrovertible. The only issue I was trying to make is where it should reach, does it
32 not? Something else.

1 MR SUMMERS: At 10pm, Nigel Parry tweets the location of the password. That same
2 evening, the whole cables are on the internet at the behest of nin99, it seems. That is part of
3 the chronology that I was going to ask this witness to confirm. That same ---

4 JUDGE BARAITSER: Well, I thought the witness agreed that there was not – on the 1st of
5 September was the first time that they were posted.

6 MR SUMMERS: Well, no, you see, that is why this needs to be done in re-examination,
7 madam, because I do not accept that at all.

8 JUDGE BARAITSER: Right, well, if that is not accepted, right, well then ---

9 MR SMITH: Perhaps I should make it clear. There is, in Mr Parry’s blog, he mentions nin99
10 uploading the cables at some point after 10.30. The earliest this witness can find the cables
11 on the internet, if you want a time was 20 past 11 on the 1st. Cryptome could be earlier on the
12 1st, but that is why I asked the witness whether he could identify where nin99 was uploading.
13 He cannot, but there is the reference in the blogs of nin99.

14 JUDGE BARAITSER: So, Mr Summers, if there is something you challenge about what has
15 been put, then you are welcome to do so, but repeating it really does not assist one way or the
16 other.

17 MR SUMMERS: Alright. Nim99 they are happening. On the 31st of August, Cryptome has
18 published the password in full and then, on the 1st of August, Cryptome has published the
19 cache with the password. Pirate Bay has done so on multiple occasions and MRVA has also
20 published. Madam, that is the chronology as we understand it and I would have had the
21 witness confirm, but I am happy if you are satisfied that that is the proper chronology that
22 emerges.

23 JUDGE BARAITSER: You went rather quickly. I was trying to compare as you went
24 through. I do not think that is disputed.

25 MR SMITH: Not disputed.

26 MR SUMMERS: In the midst of that, the prosecution has produced, and I have not said
27 anything about it until now but the production of these matters is not accompanied by
28 evidence. This is counsel drawing stuff down off the internet. It is a matter for you how far
29 you permit that to continue, but the prosecution, page 61, madam, have produced an editorial
30 dated 1 September in more than one place, but which they suggested to this witness actually
31 was published on the evening of the 31st and what I would like to establish from this witness
32 is that this editorial neither discloses the password which had already been disclosed, but
33 more importantly says nothing at all about the location of the file on the internet to which the
34 password relates.

1 JUDGE BARAITSER: I do not think that is disputed either. I do not think WikiLeaks
2 discloses that information until it publishes at about 20 past one on 2 September. Do you
3 agree that that is not in dispute?

4 MR SUMMERS: Yes, but that is not the point that Mr - it is not my place to make his case
5 for him, but the point that Mr Smith was seeking to make was that WikiLeaks was somehow
6 responsible for the cat getting out of the bag through the publication of this editorial in the
7 midst of the firestorm that was raging about spreading passwords.

8 JUDGE BARAITSER: I might be wrong, but I think what he is saying is not that WikiLeaks
9 was responsible for that because of the evidence that he was saying that WikiLeaks made
10 things worse by having greater reach than some of the other websites that published it.

11 MR SUMMERS: No, that is ---

12 JUDGE BARAITSER: And I could be wrong but that was the impression that I got from Mr
13 Smith's questions.

14 MR SUMMERS: Well, that is not the point ---

15 A. But, my Lady ---

16 JUDGE BARAITSER: Just wait one moment.

17 A. Sorry.

18 JUDGE BARAITSER: Mr Smith, these were your questions, have I got that wrong?

19 MR SMITH: Yes, that was the very focus of the question. The importance, really, of having
20 the chronology accurately set out was to try to tie down, first of all, the timings as accurately
21 as we could with this witness.

22 JUDGE BARAITSER: Yes.

23 MR SMITH: And, also, so far as the editorial is concerned, to show what WikiLeaks was
24 doing during the period that the password was becoming revealed. Now the significance of
25 that, I suspect, will be for submissions. I am not sure that other than confirming, as will be
26 obvious to any witness, that WikiLeaks has a large online presence and a global reach, I do
27 not think that this witness can really take us any further.

28 JUDGE BARAITSER: Well, that is a matter for Mr Summers, but that is the point then. It is
29 not only the reach but there is a global vote, I think is what Mr Smith is referring, in what
30 WikiLeaks was doing. Is there anything that this witness can help you with?

31 MR SUMMERS: Well, he could, for example, help us with the timing of this editorial given
32 that it is saved 1 September and Mr Smith is suggesting it was, in fact, 31 August.

33 JUDGE BARAITSER: That is right, so that relates to a tweet. He clarified that, but what is
34 the question of this witness that can help you with that? That is a supposition that Mr Smith

1 has made on the basis of the evidence before the court, how can this witness help with that?

2 MR SUMMERS: All right.

3 JUDGE BARAITSER: I do not want to stop you asking questions but there is no point in
4 repeating evidence which is not in dispute.

5 MR SUMMERS: Well, if it is not in dispute that this editorial does not refer or assist
6 anybody with the location of the file and came amidst the spreading of the password on 1
7 September, then I am happy to leave it.

8 JUDGE BARAITSER: Mr Smith, he identifies the location of the passphrase ---

9 MR SMITH: Yes.

10 JUDGE BARAITSER: --- do you accept, not the file itself?

11 MR SMITH: Not the word and not the file. And, my Lady is quite right, I had added two
12 and two together because the editorial is published on the website, according to the tweet it is
13 23.44.

14 JUDGE BARAITSER: Yes.

15 MR SMITH: And it has got the first four or five words. If I am wrong, that is ---

16 JUDGE BARAITSER: But that is your submission. I do not think this witness can help you.
17 In fact, that is your conclusion.

18 MR SMITH: Yes.

19 JUDGE BARAITSER: I do not think he can conclude one way or the other.

20 MR SUMMERS: All right.

21 JUDGE BARAITSER: Any different from Mr Smith can.

22 MR SUMMERS: I will ask just one more question and it concerns, madam, the open letter
23 that was referred to at the beginning. We would like to know, please, if Professor Grothoff is
24 aware of any of the other original signatures on this letter.

25 JUDGE BARAITSER: Did you hear ---

26 A. Not really. I have not reviewed it for a long time, I'm sure, as I was not informed that
27 which specific thing I have stated today in court and I have not tried to find the letter online
28 to review the other signatures. But if you can give me the names, I am happy to comment on
29 it possibly.

30 MR SUMMERS: Well ---

31 MR SMITH: Forgive me, because it may assist Mr Summers, I do not think all of the initial
32 signatories are on that letter because I only printed off the bits that I needed, but I can hand
33 Mr Summers my laptop and he can have the original document if he wishes.

34 MR SUMMERS: I have got a sufficient list of original signatories. Were you aware, Mr

1 Grothoff that you were signing a document that had also been signed by members of the
2 German Parliament? No? Yes?

3 A. I would - if they are before me on the list, I would suspect so. Yes, I mean (inaudible)
4 ---

5 Q. Well, you have not been shown the list?

6 A. But I can't recall.

7 Q. I ---

8 A. I do not recall much about this, if at all, I am afraid.

9 Q. OK. There are the signatures of former US Army, CIA, FBI, the Air Force, judges,
10 Human Rights Act activists and important people in society on this list. Do you now
11 remember the circumstances in which you signed this open letter calling for an end to this?

12 A. No, I do not recall how I was invited to sign or who else was signing it. It has been
13 years ago and it was not that significant for me at the time that I would even have taken any
14 note of it.

15 MR SUMMERS: Thank you very much. Madam, unless there is anything you ask.

16 JUDGE BARAITSER: Thank you very much indeed, Professor, for giving up your time to
17 give evidence to the court. We are very grateful that you have done so. Your involvement is
18 now finished. You are very welcome to go. We are going to sever this link now. Thank you.

19 WITNESS: Thank you, my Lady.

20 (Witness withdrew)

21 JUDGE BARAITSER: Can I just say, I appreciate it is 1 o'clock but at some point, whether
22 it is today or first thing tomorrow, I will need a revised list.

23 MR SUMMERS: Yes.

24 JUDGE BARAITSER: An order of witnesses because of my concern that we finish within
25 the four weeks.

26 MR SUMMERS: Yes, well, I am only going to make you angrier by what I am about to say
27 now.

28 JUDGE BARAITSER: Oh, dear.

29 MR SUMMERS: It is because, based on the estimates that we were given, we lined up two
30 witnesses this morning. Mr Augustine was supposed to have time this morning to give
31 evidence.

32 JUDGE BARAITSER: Yes.

33 MR SUMMERS: We have run out of time and he is not available this afternoon. He has a
34 flight he needs to be on. The witness for this afternoon was Mr Worthington. I understand

1 that there may be agreement to a substantial measure of his evidence. The result of it,
2 madam, is that we may have no further evidence to move to this afternoon but we will not
3 know until 2 o'clock.

4 MR SMITH: Madam, can I ask this, because I think I have four questions for Mr Augustine,
5 I do not know if he is available now.

6 MR SUMMERS: He is on a plane.

7 JUDGE BARAITSER: Already?

8 MR SUMMERS: Yes, he is on his way to the airport in Rome.

9 JUDGE BARAITSER: I see.

10 MR SMITH: Ah, so he was not available for the whole afternoon? Forgive me, I thought he
11 might have ---

12 MR SUMMERS: He was available until 1 o'clock.

13 JUDGE BARAITSER: I see, all right. But we do not yet know whether Mr Worthington can
14 be agreed, but that will ---

15 MR SMITH: We will try and deal with that, madam, over the short adjournment.

16 JUDGE BARAITSER: OK. I do need a revised list.

17 MR SMITH: Yes.

18 JUDGE BARAITSER: I appreciate it is difficult and I understand things change all the time,
19 but I need a list and I also need to incorporate closing submissions within the timetable so
20 that I know that we can finish within two weeks.

21 MR SUMMERS: Well, madam, two things. Firstly, this week's list is reasonably clear
22 because we are now moving on to the medical evidence, so the next three days, madam, are
23 reasonably foreseeable.

24 JUDGE BARAITSER: All right.

25 MR SUMMERS: After then, it is difficult because we are trying still to juggle the available
26 witnesses but we hear what you say, madam, and we will do our best to finalise the list as
27 soon as possible and provide it to you. But it certainly was not our intention that closing
28 submissions would be subsumed within the four week period. We had hoped at the
29 beginning, when we had what seemed to be three clear days at the end, that we might be able
30 to get to those, but we were always conscious that Mr Lewis was not planning or able to be
31 here in those last weeks. He is now.

32 JUDGE BARAITSER: Oh.

33 MR SUMMERS: But the slippage we have had, largely due to the Covid scare, means that
34 the evidence timetable when you receive it, madam, is going to go right up to next Friday.

1 JUDGE BARAITSER: Well, we are going to have to consider what best to do in light of
2 that.

3 MR SUMMERS: Yes.

4 JUDGE BARAITSER: Is that right, Mr Lewis, you are here for the last week?

5 MR LEWIS: I am.

6 JUDGE BARAITSER: That is very helpful.

7 MR LEWIS: I was due to go to the Carnwath Chief Justices' Conference but, in fact, it has
8 been cancelled because of Covid. Can I simply say, and I float this as a suggestion, it might
9 be that you would be best assisted by written closing documents with simply one day, but
10 perhaps not in this four weeks period, where the defence have a morning and the prosecution
11 have an afternoon and that is it, so we have a really tight timetable just on the submission - I
12 have not mentioned that to my learned friends yet.

13 JUDGE BARAITSER: No, I know, and I do not know whether it will find favour. I have to
14 say I have found it extremely helpful having limited examination in-chief to 30 minutes for
15 the defence to pick out the key parts of a particular statement or statements that they wish to
16 rely upon and it may be that closing, in the same way, knowing that the document is in front
17 of me, will have a similar useful role. This is not going to be decided now but it has been
18 mooted and sensibly so. I would ask you to think about.

19 MR SUMMERS: Yes.

20 JUDGE BARAITSER: And let me know your thoughts in due course, perhaps not now.

21 MR FITZGERALD: My Lady, as to the proposal that there be a break and then we put in our
22 submissions in writing, and then we have a final day or two, we can see the force of that and
23 so that we would not conclude, but I would like to consult, obviously, with Mr Assange and
24 make sure that that - but I think, however hard we try, we are not going to complete the
25 hearing absolutely, including closing submissions, by next Friday.

26 JUDGE BARAITSER: Well, it is interesting, is it not, that at 1 o'clock on Monday it only
27 becomes apparent now that Mr Worthington is, in fact, agreed or may be agreed.

28 MR FITZGERALD: Yes.

29 JUDGE BARAITSER: I wonder if that does not apply going forward to other witnesses.

30 MR FITZGERALD: We are working on that.

31 JUDGE BARAITSER: And that you can address your mind to it now.

32 MR FITZGERALD: Yes.

33 JUDGE BARAITSER: It may be that two days at the end of this two week period is still
34 available or even a day for closing submissions to be done without a break. That would be

1 my hope and expectation. All right. One other question, just since we are on housekeeping,
2 can the prosecution provide me with a draft indictment, please, of the UK charges. And, also,
3 you refer in your opening, amended opening note to the White Paper attached to the 1989
4 Official Secrets Act which I cannot find anywhere, can you provide that to me too.

5 MR LEWIS: Sorry, what was the first question, my Lady?

6 JUDGE BARAITSER: A draft indictment, please, in relation to ---

7 MR LEWIS: Draft English charges?

8 JUDGE BARAITSER: Exactly, yes.

9 MR SUMMERS: Madam, the White Paper is a substantial document. It may assist you to
10 know that it is summarised in some detail in the *Shayler* decision in the House of Lords.

11 JUDGE BARAITSER: I would quite like to see the document and if it can be provided
12 electronically and save paper so much the better.

13 MR SUMMERS: Certainly.

14 JUDGE BARAITSER: Thank you. All right, do you want 10 past 2 to resume or is everyone
15 happy with 2 o'clock?

16 MR FITZGERALD: 10 past.

17 JUDGE BARAITSER: Any views one way or the other?

18 MR FITZGERALD: Yes, can we have 10 past?

19 JUDGE BARAITSER: 10 past 2 it is then, thank you.

20 (Luncheon adjournment)

21 JUDGE BARAITSER: Thank you. Please sit down. Ms Iveson, you seem to be
22 representing the defence?

23 MS IVESON: Madam, yes, could I just ask for a moment? Thank you.

24 JUDGE BARAITSER: Thank you. And for this afternoon then.

25 MR SUMMERS: Mr Augstein is, as I have said, unavailable I am afraid now and will have
26 to be rescheduled, but I am in a position to call Mr Worthington. I understand however, Mr
27 Lewis has submissions.

28 MR LEWIS: Madam, on Friday I asked who was going to be called. We were given two
29 names. We were not told about Mr Worthington. We sent an email yesterday afternoon to
30 check. We were not told Mr Worthington was going to be called. At five to 10 this morning,
31 I was told they are going to call Mr Worthington. Madam, it is just not possible because I
32 have not prepared any cross-examination. So, I offered the other side well, if we can edit his
33 statement because it is very felt El-Masri, I have an adoption like that, they could read him,
34 but I am told that is not acceptable and Mr Assange wants to call him.

1 Now, madam, I do want to stand firm on this because if we are not given any notice
2 someone is being called and we have not prepared him at all it is just not fair. We would do
3 our best to see if we could agree something but if he is going to be called and cross-
4 examined, I do need at least overnight because at the moment we have been concentrating
5 very hard on the medical witnesses who are complex. And that is where we are, madam.

6 JUDGE BARAITSER: All right. Can we just deal with whether or not Mr Worthington
7 needs to be called? What does the witness go to?

8 MR SUMMERS: His statement, madam, is tab 33.

9 JUDGE BARAITSER: Yes, I have it.

10 MR SUMMERS: He deals with the Guantanamo assessment briefs. He was an expert called
11 in by the Telegraph and WikiLeaks in order to assist them with their understanding.

12 JUDGE BARAITSER: Can I just understand, this also goes to the importance of the detainee
13 assessment briefs?

14 MR SUMMERS: It does.

15 JUDGE BARAITSER: That is what his evidence ---

16 MR SUMMERS: Almost exclusively to it issue.

17 JUDGE BARAITSER: Relates to that. All right. Well, let me ask Mr Lewis then, what do
18 you challenge about his account?

19 MR LEWIS: Madam, if we adopted the same position as we did with Mr El-Masri that,
20 madam you are not being asked whether or not the Bush administration was justified, the
21 invasion of Iraq, et cetera, and the other matters which are all set out about what the cables
22 are, if the court is not going to be asked to come to a conclusion on that, it is simply set out as
23 allegations and for the purposes of these proceedings I would have no instructions to cross-
24 examine.

25 JUDGE BARAITSER: Mr Summers? Do you take issue with that?

26 MR SUMMERS: It is not quite the El-Masri point because, madam, I do not know if you
27 have had chance to read his statement recently, his main point, and the point he would make
28 in evidence is that the Guantanamo detainee assessment briefs disclosed that the intelligence
29 being used to justify detention of various prisoners was fellow prisoners and, importantly,
30 fellow prisoners in respect of whom there had been findings, either by the Senate Torture
31 Report or by the Strasbourg Court that they had themselves been tortured.

32 JUDGE BARAITSER: And what relevance does that have to your issues that you raise?

33 MR SUMMERS: Well, the relevance is that the revelation that people were being detained
34 based on torture evidence was Article 10 protected revelations and conduct.

1 JUDGE BARAITSER: So, it is a freedom of speech Article 10 issue rather than a public
2 interest ---

3 MR SUMMERS: Well, they ---

4 JUDGE BARAITSER: --- in disclosing their (inaudible).

5 MR SUMMERS: --- they are linked. Yes, madam. But in El-Masri's case, Mr Lewis was
6 able to say that Mr El-Masri's allegations were allegations, the truth of which were not
7 material to be decided. This is with respect slightly odd because Mr Worthington, from a
8 position of expertise, was able to take that. A number of people within Guantanamo had been
9 found to have been the subject of torture and the like and the detainee assessment briefs held
10 by WikiLeaks and Mr Assange revealed or linked those persons as the source of detention of
11 other people and there was, we will ultimately submit to you, an obvious public interest in
12 those disclosures.

13 JUDGE BARAITSER: Well, let us just look at those two points then. Are you asking me to
14 make a finding as to whether or not those particular detainees were found to be the subject of
15 torture? Is that a decision for me to make? First point.

16 MR SUMMERS: Well, I will invite you to make a finding that they have been found to have
17 been. So, yes, I will invite you to recognise judgments of the Strasbourg Court and the
18 Senate Torture Report that those are findings.

19 JUDGE BARAITSER: But Mr Worthington is not a witness who speaks to the court's
20 findings.

21 MR SUMMERS: But he will tell you why he knows as an expert practising in this field that
22 these were people who are known and have been found and recognised to have been the
23 subject of treatment.

24 JUDGE BARAITSER: I think Mr Lewis is going to say that he does not dispute the findings
25 of a court ---

26 MR SUMMERS: But you have to hear ---

27 JUDGE BARAITSER: --- as an international jurisdiction. So, those findings, Mr
28 Worthington cannot assist with. That is your first point. You are asking me to find as a fact
29 whether or not one of the detainees was found to be subject to torture, well, I am not going to
30 do that and if you want me to take into account because you produce a finding by an
31 international court, well then you are very welcome to adduce that.

32 MR SUMMERS: The difficulty I have in relation to that is that the witness statement asserts
33 that these detainees have been found to have been subjected to torture but I need, in order to
34 make good that proposition before you, to understand the source of that. And the source of it

1 I know is Senate Torture Reports and Strasbourg decisions. If I am free to summarise before
2 you, madam, that source then I am content to proceed in the way that you suggest but
3 otherwise I need Mr Worthington to say it because it is not evident from the face of his
4 statement.

5 JUDGE BARAITSER: I think the issue seems to be, Mr Lewis, well, given that Mr
6 Summers does not have the judgments himself, whether Mr Worthington can say that his
7 information that they were found to have been tortured comes from these particular courts.
8 Presumably, that is not an issue as far as you are concerned?

9 MR LEWIS: Madam, this is entirely repetitive of what Mr Clive Stafford Smith said. This is
10 exactly the evidence he gave to you before.

11 JUDGE BARAITSER: Well, he was speaking more about the content of the assessment
12 briefs. I am not sure who referred to a finding by Mr Stafford Smith. Obviously, the Indian
13 court he certainly did, but a finding in relation to torture from an international court. This is
14 not an issue that I am going to determine one way or the other but Mr Summers would like to
15 rely upon it in closing that they are such findings. Presumably, you can reach agreement
16 about the existence of those findings?

17 MR LEWIS: My Lady, yes. My Lady, our overall position is that it is completely irrelevant.
18 That is our position one. There is no relevance in this. And to the bars of extradition that you
19 are dealing with ---

20 JUDGE BARAITSER: Yes.

21 MR LEWIS: --- if my learned friend wants to rely upon in front of the court what was said in
22 the European Court of Human Rights, well, he can do so.

23 JUDGE BARAITSER: Must he produce the judgment to say or can he rely on Mr
24 Worthington's comments about it?

25 MR LEWIS: I do not really understand how he puts it. I mean, certainly if it was for my part
26 I would just rely on the judgment because you will be more influenced, my Lady, I am sure
27 by the judgment.

28 JUDGE BARAITSER: But by way of a shortcut to me receiving that information, do you
29 have objection to it coming through this witness?

30 MR LEWIS: Well, only if it is said that because we do not cross-examine on any of it or go
31 through any detail that somehow we have accepted it to be true. I have no instructions on
32 that.

33 JUDGE BARAITSER: Yes.

34 MR LEWIS: And therefore ---

1 JUDGE BARAITSER: Well, I am not going to make a finding, as I have said before, about
2 whether or not detainees at Guantanamo Bay were or were not tortured. That is simply out
3 with the issue I need to determine.

4 MR LEWIS: Well, madam, we confident it is irrelevant. In those circumstances, if my
5 learned friend just wants to read it but simply by reading it is not to be taken that we accept
6 the truth of its contents.

7 JUDGE BARAITSER: Well, let us, just to be ---

8 MR LEWIS: I am happy for that to be put.

9 JUDGE BARAITSER: --- clear, let us just absolutely clarify, there were two issues you
10 wanted to rely on this statement for. The first was that ---

11 MR SUMMERS: That is the primary issue but ---

12 JUDGE BARAITSER: --- and I am not going to make a finding on that issue. Anything else
13 this witness speaks to, because it is important for me, if we are going to proceed in this way
14 with Mr Lewis not accepting the content of the statement, but you accepting that it goes to a
15 very limited, well, a limited part of it is relevant, it is important to establish ---

16 MR SUMMERS: Yes.

17 JUDGE BARAITSER: --- on what basis it is being accepted.

18 MR SUMMERS: I think I need to be clear. Even if you have to make no findings about
19 whether or not anyone at Guantanamo was tortured, it remains entirely relevant and
20 potentially determinative of Article 10 that the information being disclosed by WikiLeaks
21 was, on its face, evidence which suggested that, and that is the purpose for which I would call
22 Mr Worthington or read him if required to do so.

23 JUDGE BARAITSER: All right. Well, that is important. Can I ask Mr Lewis on that point,
24 please? That is the reason this is being adduced that the cables assisted somebody else, a
25 different court, make that determination. Do you accept that and allow this statement to go to
26 that point?

27 MR LEWIS: My Lady, yes, I think so. I mean our position here is that part of our
28 submission would be because none of it, he is not charged with any of the publication, it does
29 not go to Article 10 in any event. So that is one of our relevant points here because there is
30 no publication he is charged with and therefore it is not within the arena.

31 JUDGE BARAITSER: I appreciate that.

32 MR LEWIS: But if we were to be wrong on that and you would find something else, I do not
33 think we dispute, without accepting it, that the cables had been interpreted by some people to
34 show that there has been torture in Guantanamo Bay.

1 JUDGE BARAITSER: So, as Mr Summers says, evidence which has been used by another
2 court to support that final proposition. Whether or not the proposition is true, it has been
3 used to support that conclusion.

4 MR LEWIS: Yes, of course, because the United States – I am trying to be careful because
5 obviously we are careful, my Lady, on this, the United States was not a party to that court
6 decision.

7 JUDGE BARAITSER: Yes.

8 MR LEWIS: And did not produce evidence and all the rest of it. So it would be wrong for
9 me to make any concession in those circumstances, but I cannot stop my learned friend
10 making those submissions to you on that basis.

11 JUDGE BARAITSER: No. Mr Summers, was there anything else in the statement that you
12 rely upon?

13 MR SUMMERS: Yes. The bulk of the statement deals with that issue and before I leave it
14 can I just remind you that it is not just Strasbourg court decisions, it is the Senate torture
15 report that is in issue here. But the other issue, madam, is paragraph 12, the other principal
16 issue is paragraph 12 and who published these materials in what order. As part of the media
17 team who was working on that Mr Worthington is able to tell you that in fact WikiLeaks was
18 the last to publish: The Telegraph published before WikiLeaks and in fact The Guardian and
19 The New York Times before The Telegraph, madam, and that is something that we
20 understand to be within his personal knowledge and we would wish to adduce, it is in his
21 statement and we would wish to adduce in evidence.

22 JUDGE BARAITSER: It is a little frustrating because the professor who I have just heard
23 from could have dealt with that himself. That was very much his area of expertise.

24 MR SUMMERS: Not the detainee assessment briefs, madam.

25 JUDGE BARAITSER: Well, given his expertise, that question could have easily been asked
26 of him ---

27 MR SUMMERS: All right.

28 JUDGE BARAITSER: --- and he could have easily done the very basis research required to
29 answer it. That is why he was before the court to deal with ---

30 MR SUMMERS: He was dealing with ---

31 JUDGE BARAITSER: --- the publication dates. I appreciate he dealt with the cables but he
32 could have dealt with this information in the same way, could he not?

33 MR SUMMERS: Madam, it was not in his statement.

34 JUDGE BARAITSER: No.

1 MR SUMMERS: He deals with the cables; that was the limit of his evidence. We have
2 evidence from those with first-hand knowledge of what happened in relation to other
3 publications and so it was not thought, certainly by me, to be necessary to have an expert to
4 look at it as well.

5 JUDGE BARAITSER: Let me ask Mr Lewis if he disputes that. In relation to paragraph 12,
6 is there an issue?

7 MR LEWIS: There is an issue, my Lady. My learned friend is talking about the final
8 sentence in paragraph 12. My understanding is, and can be confirmed, "The Telegraph
9 published the day before it appeared on the WikiLeaks' site." We do not accept that.

10 JUDGE BARAITSER: Well, there you go. That is a factual issue which is in dispute.

11 MR LEWIS: It's a factual issue.

12 JUDGE BARAITSER: Which I do not think can be agreed between the two of you, so he
13 will need to be called, but I am going to be asked that he be called for that reason only, given
14 the discussion that we have just had.

15 MR SUMMERS: But may I please adduce from him the source of his understanding ---

16 JUDGE BARAITSER: Yes.

17 MR SUMMERS: --- of that which he ---

18 JUDGE BARAITSER: Yes.

19 MR SUMMERS: --- makes clear at paragraph 8.

20 JUDGE BARAITSER: That is the issue that he will have to speak to.

21 MR SUMMERS: No, not paragraph 12, madam.

22 JUDGE BARAITSER: Ah, paragraph 8.

23 MR SUMMERS: The source of his understanding. Where he gets his information from.
24 When he says at paragraph 8 that the files contained explanation of supposed intelligence
25 used to justify the prisoner's detention and then explains that that intelligence was in fact
26 other prisoners who had been the subject of torture. What I need to get out of him because it
27 is not in his statement is where he understands those witnesses have been found to be the
28 subject. So the answer, madam, would be, "The Senate torture report and various Strasbourg
29 judgments", but I need him to say it.

30 JUDGE BARAITSER: Well, Mr Lewis, it is outside the statement. It is a point we have had
31 a discussion about. You do not appear to object to it. Will you allow Mr Summers to adduce
32 that information?

33 MR LEWIS: Madam ---

1 JUDGE BARAITSER: You do not know because you have not prepared your cross-
2 examination is the answer.

3 MR LEWIS: I have not prepared anything.

4 JUDGE BARAITSER: OK. Well, that is ---

5 MR LEWIS: It would be much better if it was in a short witness statement so we can then
6 understand it. I can take instructions upon it. There may be specific things those instructing
7 me from America want to say.

8 JUDGE BARAITSER: All right.

9 MR LEWIS: And I do really just need the opportunity and ---

10 JUDGE BARAITSER: Let us deal with that issue then, Mr Summers. That was the second
11 issue. Why has it come about that the prosecution were not aware until five past 10 this
12 morning that Mr Worthington was to be called today?

13 MR SUMMERS: Because, madam, you know – sorry. Let me start again. I do not mean to
14 be disrespectful in any way at all, but we have had difficulty rescheduling the witnesses in
15 this case in light of what happened to us a week and a half ago. We had hoped that it would
16 simply be possible to shunt the timetable back two or three days and people would remain in
17 their slots, but once one person says, “No, I can’t come that afternoon, I need to come another
18 time”, and then the whole thing comes out of kilter and we have been, and I ask you to accept
19 from me that the team has been, working hard to ensure that there are witnesses here each day
20 in order to be called.

21 This afternoon, as a slot, had proved difficult to fill for reasons that are just
22 happenstance: people have their pre-existing commitments. Mr Worthington was able to
23 notify us very late last night that he was able to be here this afternoon and we informed the
24 prosecution this morning when we learnt when we arrived at court that that was the case. I
25 had hoped, madam, and I mean this not by way of comment, but I had hoped that the time
26 between 10 am and 2 pm would have been sufficient for Mr Lewis to prepare this witness. I
27 accept entirely that that has not proved to be the case.

28 JUDGE BARAITSER: All right. It is clearly unfair to the prosecution to have such late
29 notice, although you eloquently explain the reason for it. I hope this will not be repeated
30 because you are now going to provide a definitive list going forward of witnesses who are
31 available so this is not going to be done in this ad hoc manner after today. When can the list
32 be provided, please?

33 MR SUMMERS: I am being told tomorrow. I fear that that is optimistic because the process
34 of working this all out is still up in the air as and as soon as one slot is filled another one

1 becomes open. So, madam, can I ask for 48 – we know the schedule for the next three days –
2 can I ask for 48 hours to finalise the remaining schedule after that?

3 JUDGE BARAITSER: Yes. And that is right, Mr Lewis? You are aware of the witnesses
4 over the next three days who the defence intend to call?

5 MR LEWIS: Madam, yes. We are doing all the doctors, so that is fine, and we have
6 prepared the doctors and we know where we are.

7 JUDGE BARAITSER: Doctors on both sides.

8 MR LEWIS: Doctors on both sides, my Lady, so they are back to back.

9 JUDGE BARAITSER: All right. And this afternoon, Mr Summers, anything else?

10 MR SUMMERS: That is it, I am afraid. There was Mr Worthington or Mr Augustine and
11 both of those have bitten the dust.

12 MR FITZGERALD: My Lady, in order to try and use the time, there is one witness in
13 respect of whom, if we can have half an hour with Mr Assange, it may be that we can work
14 out a formula for Cassandra Fairbanks. She is at tab ---

15 JUDGE BARAITSER: I do not need to know that. I am just wondering - again this is rather
16 piecemeal that witnesses are being agreed as we go along - given that there is time this
17 afternoon, can the prosecution and the defence not meet and go through each and every
18 witness to identify any other witnesses that can be agreed?

19 MR FITZGERALD: We have been through this, but events overtook us, but my learned
20 friend Mr Joel Smith and I have been discussing this witness and then obviously we have had
21 the psychiatric witnesses coming up.

22 JUDGE BARAITSER: But can you not go through each and every witness this afternoon
23 and identify those witnesses who can be agreed now rather than as they come ---

24 MR FITZGERALD: You mean and indicate to the court?

25 JUDGE BARAITSER: Yes, rather than as they come to give evidence suddenly there is the
26 possibility of agreement.

27 MR FITZGERALD: Well, there was never any question of Cassandra Fairbanks coming to
28 give evidence. The point was there being some time now we could use it to try ---

29 JUDGE BARAITSER: I understand that, but my point is there needs to be a review ---

30 MR FITZGERALD: Yes.

31 JUDGE BARAITSER: --- of all of the witnesses going forward to identify and discover
32 which can be read. It feels as if this is happening on a piecemeal basis; as the witness is due
33 to be called to give evidence the discussion in relation to the possibility of agreement seems
34 to be arising. It is simply too late.

1 MR FITZGERALD: I appreciate that. I can tell you that we have identified a number of
2 witnesses of which this witness is one in respect of whom there might be scope for
3 agreement, and, as you saw, we did then read two witnesses ---

4 JUDGE BARAITSER: Yes.

5 MR FITZGERALD: --- on Friday.

6 JUDGE BARAITSER: Are there others?

7 MR FITZGERALD: There may ---

8 JUDGE BARAITSER: Can you tell me about them now?

9 MR FITZGERALD: There may be. For example, there is the witness who does the
10 psychometric testing. My learned friend Mr Lewis and I have virtually reached agreement as
11 to how her edited report could be read to the court.

12 JUDGE BARAITSER: This afternoon?

13 MR FITZGERALD: I suppose if you could give us a minute, yes, I think we could probably
14 ---

15 JUDGE BARAITSER: Anybody else in that list?

16 MR FITZGERALD: I am so sorry. Could you give ---

17 JUDGE BARAITSER: I am going to give you half an hour now, but ---

18 MR FITZGERALD: Yes.

19 JUDGE BARAITSER: --- I am trying to make it as clear as I possibly can ---

20 MR FITZGERALD: Yes.

21 JUDGE BARAITSER: --- that a review needs to be done of all of the witnesses.

22 MR FITZGERALD: Yes, well, we did do that, but obviously other priorities overtook us.
23 We did do that but we had not reached a final, final conclusion, but we have had discussions
24 about a number of witnesses.

25 JUDGE BARAITSER: 30 minutes in relation to the Fairbanks witness. I will come back and
26 hopefully you can read her and thereafter I am very happy to sit and wait for a response in
27 relation to agreed evidence for later this afternoon. How would you like me to proceed?

28 MR FITZGERALD: Well, it may be difficult because ---

29 JUDGE BARAITSER: I am just reluctant to leave it to the parties now, given how little
30 progress with agreement of witnesses has been made thus far. I am very happy to try and
31 oversee this process if I need to.

32 MR FITZGERALD: My Lady, there are two witnesses: one is the psychologist test where I
33 think we can reach agreement.

34 JUDGE BARAITSER: Yes.

1 MR FITZGERALD: The other is Cassandra Fairbanks where I think we can reach
2 agreement.

3 JUDGE BARAITSER: Are you saying that a review has been done and no other witnesses in
4 the list that has been given to me can be agreed?

5 MR FITZGERALD: Not as yet.

6 JUDGE BARAITSER: And when is that going to take place?

7 MR FITZGERALD: Well, my Lady, can I just explain that the prosecution indicated they
8 wanted all our witnesses called and therefore we were going to call them. Now they have
9 reviewed the situation and they have identified a few witnesses who they may not want us to
10 call, and so, in a sense, we have to await for an initiative saying, "Well, perhaps you don't
11 need to call this one."

12 JUDGE BARAITSER: I do not want to lay blame at anybody's door ---

13 MR FITZGERALD: No, ma'am, but I am just ---

14 JUDGE BARAITSER: --- but I do want a process now of discussion and I would like it to
15 take place this afternoon if possible.

16 MR FITZGERALD: Yes, madam.

17 JUDGE BARAITSER: I am very happy to come back into court at 4 o'clock to find out the
18 progress, or leave it to the parties, but I am reluctant to leave it to the parties in the light of
19 what has happened to date. Can I trust the two of you to actually speak this afternoon and to
20 go through systematically each and every witness?

21 MR FITZGERALD: My Lady, can I just indicate? I need now some time to talk to
22 Mr Assange about the next witness.

23 JUDGE BARAITSER: Yes, I understand.

24 MR FITZGERALD: And then to see if there is an acceptable formula to all parties for
25 Cassandra Fairbanks.

26 JUDGE BARAITSER: Yes.

27 MR FITZGERALD: I then need to deal with the question of the psychometric tests and see
28 whether we can simply read that.

29 JUDGE BARAITSER: Yes.

30 MR FITZGERALD: Those are the two witnesses that were outstanding from our list of
31 possible agreement. I do not know whether there will be other witnesses who the prosecution
32 will say we need not call and I do now know whether my learned friend is in a position at this
33 stage to tell us that there are other witnesses who they do not need us to call.

1 JUDGE BARAITSER: Well, let me ask him because I need to know the answer. At what
2 point can you have your discussion and reach agreement on witnesses?

3 MR LEWIS: It is a slightly more nuanced feel, my Lady, because when we make proposals,
4 of course my learned friend has to go and take instructions on them and then those
5 instructions may not always accord with what we thought might have been an agreement, and
6 in those circumstances we have out of - there are a number of witnesses we originally said we
7 did not want, so these were the ones which came. It is slightly different. Normally – I say if
8 it was an ordinary criminal case – one knows that ---

9 At what point can you have the discussion and reach agreement on witnesses?

10 MR LEWIS: It is a slightly more nuanced view, my Lady, because when we make proposals,
11 of course, my learned friend has to go and take instructions on them.

12 JUDGE BARAITSER: Yes.

13 MR LEWIS: And then those instructions may not always accord with what we thought might
14 have been an agreement and, in those circumstances, there are a number of witnesses we
15 originally said we did not want and so these were the ones which came. It is slightly
16 different. Normally, I say if it was an ordinary criminal case one knows that in a complex
17 case it is quite simple because counsel can agree it themselves because we are dealing with
18 prosecution witnesses and the defendant is not normally involved in the decision on whether
19 or not a person needs to be called or can simply be edited.

20 JUDGE BARAITSER: I appreciate that.

21 MR LEWIS: So this is a slightly more difficult situation.

22 JUDGE BARAITSER: But it does not stop the discussion being had and instructions,
23 thereafter, being taken.

24 MR LEWIS: No.

25 JUDGE BARAITSER: But, unless the discussion is had, then we are in a position that
26 nobody knows, as each witness is intended to be called, whether or not they are needed to be
27 called.

28 MR LEWIS: One of the problems we respectfully say is many of these witnesses are very
29 repetitive. Now if we cross-examine one of the journalists, they call 10 journalists who say
30 the same sort of things, by agreeing one we have let the whole lot in if the view is taken that
31 anything which is not challenged is dealt with. So, by having this many witnesses which
32 repeat themselves, it means we do have to challenge them all or sometimes we can find some
33 editing approach, but if they were all witnesses dealing with different things it would be
34 completely different.

1 JUDGE BARAITSER: Well, I appreciate you are making a critique of the way the defence
2 have brought their case and I am not going to get involved in that particular discussion. My
3 key priority at the moment is to identify witnesses which have a possibility of agreement so
4 that the defence can take their instructions and they can be agreed, if necessary, and I would
5 like that to take place sooner rather than later.

6 MR LEWIS: Yes, but in a case such as this, and, madam, we are experienced counsel dealing
7 with it, it is more complicated because it is not always clear what issue a witness is being
8 used for and, in those circumstances ---

9 JUDGE BARAITSER: Yes, but a simple enquiry of the defence should ---

10 MR LEWIS: Exactly.

11 JUDGE BARAITSER: --- yield the answer.

12 MR LEWIS: Which is helpful, madam. But sometimes it takes an examination in court to be
13 very clear what that is and it is sometimes not possible for counsel to have such an exacting
14 reference by way which they can then decide whether or not they can deal with it. So, in an
15 ideal world, I mean these are witnesses who give opinion evidence. These are not witnesses
16 of fact in the vast majority of cases.

17 That is why it wanders into areas which it is very difficult for us simply to say, “Oh,
18 well, you can bring him”, “You cannot read him” or whatever. But I can assure you, madam,
19 we are doing our best on it. It is not something that we are being dilatory about. The number
20 of witnesses is in itself somewhat daunting and each witness, as you see, gives long, complex
21 statements. We will be able to, I am sure, because it concentrates the mind much more when
22 the witness is just about to give evidence.

23 JUDGE BARAITSER: Do you want me to conduct this forensic exercise this afternoon in
24 relation to each witness, would that assist you to identify the issue between the two of you
25 and for you to make a decision whether or not you require the witness to attend? Would you
26 like me to do that, would that help?

27 MR LEWIS: Well, perhaps it would, madam, because we do not feel we are terribly helped
28 by the 200 page submissions which witnesses are referenced against lots of different issues.
29 If we went through them in that list, my learned friend tells us exactly why he wants to call
30 them and it is limited to that, that would be quite helpful.

31 JUDGE BARAITSER: Well, there might be a handful of about five witnesses that this
32 discussion is relevant to. Perhaps you can identify that handful and draw them to my
33 attention after the witness has been read this afternoon. All right. 30 minutes then to take
34 instructions. It is quarter to 3. Quarter past 3 for that witness to be read and then perhaps we

1 can conduct a case management exercise thereafter. Thank you.

2 (Short adjournment)

3 MR SUMMERS: Sorry, madam.

4 JUDGE BARAITSER: I am sure you were doing useful work.

5 MR SUMMERS: We are doing useful work. May we ask for permission to continue it?

6 JUDGE BARAITSER: Alright. Is this useful work with the prosecution team or with Mr
7 Assange?

8 MR SUMMERS: Yes, yes, yes it is. Both actually. Mr Fitzgerald is with Mr Assange and
9 we are banging heads upstairs.

10 JUDGE BARAITSER: Alright, and how much longer do you think will be needed?

11 MR SUMMERS: Well, can we ask for the rest of the day? I am conscious that you want to
12 have statements read and progress made, but I think I can say that it is more likely to occur if
13 the process continues for the rest of the day.

14 JUDGE BARAITSER: If you are unsuccessful then I am going to carve out some time in
15 which to do this case management exercise and I would rather, of course, that the two of you
16 managed it between you. That is you and Mr Lewis.

17 MR SUMMERS: Can I ask until 4 o'clock?

18 JUDGE BARAITSER: Do you think you can – I appreciate there is no one from the
19 prosecution team here, but I do not think there is anything that has been said which is
20 controversial.

21 MR SUMMERS: No.

22 JUDGE BARAITSER: Do you think by 4 o'clock, you will have something useful to say
23 because there is no point in you coming back if the answer is no?

24 MR SUMMERS: I suspect we will have useful progress to report to you, whether that
25 involves the reading of statements is perhaps a different issue, but the reading of statements,
26 in reality, does not take very long. It is the process of getting there that does.

27 JUDGE BARAITSER: Are you willing to report this conversation back to Mr Lewis and the
28 team?

29 MR SUMMERS: Absolutely.

30 JUDGE BARAITSER: 4 o'clock it is then.

31 MR SUMMERS: Thank you, madam.

32 (Short adjournment)

33 JUDGE BARAITSER: Thank you. Please sit down. What progress?

1 MR FITZGERALD: Very considerable progress, my Lady, in respect of witnesses and we
2 hope we will be able to give you a list. Some witnesses will be read, some witnesses we are
3 still in discussion about whether they need to be called at all, and we think we can shorten the
4 list of witnesses quite considerably by agreement with my learned friend.

5 JUDGE BARAITSER: When can I receive that list please?

6 MR FITZGERALD: I would have thought we could do it by tomorrow.

7 MR SMITH: Yes, my Lady, there is one witness that is going to take a while to go through
8 but we can have a list absent that one witness, it is Miss Peirce, it is just that there a number
9 of witness statements and we need to consider evidence.

10 JUDGE BARAITSER: Yes.

11 MR SMITH: But absent Miss Peirce, I would have thought we could have a list by
12 tomorrow.

13 JUDGE BARAITSER: Tomorrow first thing?

14 MR SMITH: I would ask for last thing.

15 JUDGE BARAITSER: Tomorrow last thing. All right. Well, that certainly reassures me.
16 Thank you very much.

17 MR FITZGERALD: So, my Lady, the position is that my learned friend, Mr Smith, has
18 agreed that Cassandra Fairbanks can be read subject to both of us making a brief statement as
19 to the significance of the evidence as we see it but that will not alter the fact that it can be
20 read. We really are trying to achieve what you suggested which is a pragmatic solution.

21 JUDGE BARAITSER: All right.

22 MR FITZGERALD: So, you reach it.

23 MR SMITH: My Lady, the basis the government consents to the reading of Miss Fairbanks'
24 evidence is that firstly, the truth of what Miss Fairbanks was told by Arthur Schwartz is not
25 within her direct knowledge and secondly, so far as the remainder of the evidence is
26 concerned it is relied on by the defence, not challenged but not accepted by the prosecution,
27 the prosecution will feel free to comment on her partiality as is apparent on the face of her
28 statement, and it will be a matter, my Lady, for you as to the weight to be attached to it.

29 JUDGE BARAITSER: Thank you very much indeed.

30 MR FITZGERALD: And, my Lady, in response we say that what she says is reliable and
31 true. Secondly, what Schwartz told her is a good indication of the intention of the US
32 government, and you will see from the statement she refers to the fact that Schwartz was an
33 associate of Trump and Grenell, the former NSA Chief. And we will in due course invite you
34 to rely on this evidence as supporting a pre-concerted plan at the top level including Trump

1 and Grenell to take Julian Assange out of the embassy, to extradite him, prosecute him, and
2 also to compel Manning if possible to give evidence against him. That is what we will be
3 inviting you to infer from what she says Schwartz sent her in the particular context.

4 JUDGE BARAITSER: So, just dealing with Schwartz then, you accept that she cannot speak
5 to the truth of what he told her but you are going to ask me in due course to make inferences
6 from that?

7 MR FITZGERALD: Yes. Sorry, my Lady, obviously first of all as my learned friend and I
8 have discussed, strict rules of hearsay do not apply when it comes ---

9 JUDGE BARAITSER: Yes.

10 MR FITZGERALD: --- to political motivation, see *Re B* ---

11 JUDGE BARAITSER: Yes.

12 MR FITZGERALD: --- and secondly, yes, as your Ladyship, we will say in all the
13 circumstances, if one looks at the whole picture, you can infer that what she says Schwartz
14 told her was the intention was the intention.

15 JUDGE BARAITSER: Yes. And you are content for a comment on her partiality,
16 notwithstanding the fact that she has not been directly challenged?

17 MR FITZGERALD: Yes, but it is as appears from the statement. That is just merely, she
18 declares that she is a supporter of Julian Assange.

19 JUDGE BARAITSER: Yes, but that will be commented upon and you are forewarned of that
20 and the rest of the evidence, well, you accept that it is not accepted but it has not been
21 challenged, puts it in an unusual status, what do you say about that please?

22 MR FITZGERALD: My Lady, we say that her evidence is evidence of the intentions, the
23 declared intentions are of those at the top who planned the prosecution and the eviction from
24 the embassy. We say further that a declaration of intention is an exception to the hearsay rule
25 and in any event the hearsay rule does not apply. And we say that my learned friend is
26 perfectly permitted to say oh, you have to bear in mind the fact that she is a supporter of
27 Julian Assange and weigh that into the factor but we can say look at the content and believe
28 it.

29 JUDGE BARAITSER: I see. So, it is really a question of comment on her account.

30 MR FITZGERALD: Yes. Yes, exactly.

31 JUDGE BARAITSER: Yes? Well, that seems a perfectly reasonable way forward.

32 MR FITZGERALD: My learned friend reserves the right to say well, because she is a
33 supporter of Julian Assange you must take that into account in weighing her evidence but we
34 say it is true.

1 JUDGE BARAITSER: Yes. And of course the difficulty is the witness has not had an
2 opportunity to comment on that accusation ---
3 MR FITZGERALD: Yes.
4 JUDGE BARAITSER: --- but both of you accept it is not necessary in this case.
5 MR FITZGERALD: No. And it is not as if they are relying on anything extraneous in the
6 statement. She herself declares I am a supporter of Julian Assange.
7 JUDGE BARAITSER: Yes. Well, that is acceptable as far as I am concerned.
8 MR FITZGERALD: We are very grateful.
9 JUDGE BARAITSER: And are you going to summarise the gist of the statement?
10 MR FITZGERALD: Yes. Yes. So, what Cassandra Fairbanks says - oh, I understand that it
11 cannot be heard.
12 JUDGE BARAITSER: Ah. I am assuming the public gallery is open although empty?
13 COURT USHER: Yes, it is, madam. There was a problem but I am told that it is open.
14 JUDGE BARAITSER: And in relation to the press link, what can we say? We do not seem
15 to have any technicians at all here now.
16 COURT USHER: It is working. I have been through. It is working. They can hear you.
17 JUDGE BARAITSER: On what basis do you think it is not?
18 MS IVESON: It was not, madam, but it appears to be working now.
19 COURT USHER: It is now then.
20 JUDGE BARAITSER: Lovely. Good.
21 COURT USHER: So, do we still think the press gallery is closed because I have been told
22 that both courts is open? Are there people actually waiting to go into the gallery do we think?
23 JUDGE BARAITSER: Well, we will just carry on and can you make the enquiries that you
24 need to?
25 COURT USHER: Yes.
26 JUDGE BARAITSER: First of all, perhaps public gallery, make sure it is open ---
27 COURT USHER: Yes.
28 JUDGE BARAITSER: --- and then move on to the press.
29 MR FITZGERALD: Well, my Lady, you have our basic submission. We say what she says
30 is reliable and true and a good indication of the intention of the US government at the highest
31 level. She says ---
32 JUDGE BARAITSER: Are you content to proceed in this way or would you like to make
33 sure the public gallery is open before you proceed?

1 MR FITZGERALD: Well, perhaps we should just see because it is of some importance to
2 our case. Though I understand it was not switched on when we were making our exchange so
3 perhaps we had better go back, my learned friend better say what he has to say on the matter.

4 MR SMITH: Certainly, my Lady, and I am not sure that there are any microphones near me
5 so ---

6 MR FITZGERALD: Do you want to come up here?

7 MR SMITH: Perhaps if Mr Lewis could pass the blue microphone, the other one, which does
8 not have a wire and we can – thank you. So, with luck this is now more audible. My Lady,
9 the basis upon which the American government is content for this statement to be read is that
10 firstly, the truth of what Miss Fairbanks was told by Arthur Schwartz is not within her direct
11 knowledge, and secondly, so far as the remainder of the evidence is concerned, it is relied on
12 by the defence, not challenged but not accepted by the prosecution. The prosecution will feel
13 free to comment on the witness’ partiality as is apparent from the face of her statement and it
14 will be a matter for my Lady as to the weight to be attached to it.

15 JUDGE BARAITSER: Thank you very much, Mr Smith.

16 MR FITZGERALD: Yes, and so if I could just make clear our position, my Lady. We say
17 that what she says is reliable and true. The fact that she declares that she is a supporter of
18 Julian Assange does not invalidate the truthfulness of her statement. Secondly, what
19 Schwartz told her, we say is a good indication of the intention of the US government at the
20 highest level and obviously speaking of intention that is evidence.

21 Schwartz was an associate of Trump and Grenell, the NSA chief. We will invite you
22 in due course to rely upon her evidence as supporting a pre-concerted plan at the top level
23 including Mr Trump and Mr Grenell to take Julian Assange out of the embassy, to extradite
24 and prosecute him, and to compel Mr Manning to give evidence, and all those matters are
25 referred to in the statement.

26 My Lady, just summarising, you can see at paragraph 2 she sets out I am a working
27 journalist in Washington DC. My areas of work involve online commentary on current
28 affairs with particular focus on politics and social issues throughout the time period to which
29 this statement relates. I was employed by the Gateway Pundit, a news organisation based in
30 Washington DC.

31 Until I began with the Gateway Pundit approximately three years ago, I was involved
32 in similar areas of work. The Gateway Pundit is regarded as generally a pro-Trump
33 organisation. I have myself endorsed his presidency over a number of years. I have and
34 believe I am known to have an interest in a wide range of issues which include strong support

1 for the principles of free speech and an interest in and support for Julian Assange and for
2 WikiLeaks. My professional history has involved the investigation and promotion of many
3 liberal and libertarian causes.

4 She then refers to the fact that in addition to her work for Gateway Pundit she was
5 party to a direct message group which included Arthur Schwartz, a wealthy GOP donor who
6 communicates with the Ambassador Grenell and works as an informal adviser to Donald
7 Trump Jr.

8 She then deals at paragraph 5 onwards with the fact that, “People frequently post links
9 to things they wish to share in this group and I have long admired the plight of WikiLeaks as
10 part of my commitment to free speech. So, on October 30, 2018, I posted an interview with
11 WikiLeaks’ publisher, Julian Assange’s mother, Christine Assange, hoping that someone
12 would see it and be moved to help.” That was in the run-up to the US mid-term elections.

13 Then she records that only 10 minutes later after she shared the article, she received a
14 phone call from Arthur Schwartz who was outraged at what she had done. “I did not agree
15 that our conversation was off the record, though he did tell me not to tell anyone about the
16 call. He was extremely angry. The record of behaviour towards journalists is widely
17 documented, as are his close ties with the Trump administration. Arthur Schwartz warned me
18 that people would be able to overlook my previous support for WikiLeaks because I did not
19 know some things which he claimed to know about, but that they would not be so forgiving
20 now that I was informed. He brought up my nine year old child during these comments,
21 which I perceived as an intimidation tactic.

22 “He repeatedly insisted that I stop advocating for WikiLeaks and Assange, telling me
23 that, ‘A pardon isn’t going to fucking happen’. He knew very specific details about a future
24 prosecution against Assange that were later made public and that only those very close to the
25 situation then would have been aware of. He told me that it would be the Manning case that
26 he would be charged with. It would not involve Vault 7 publication or anything to do with
27 the DNC. He also told me that they would be going after Chelsea Manning.

28 “I also recollect being told, I believe, that it would not be before Christmas. Both of
29 these predictions came true just months later. He also told me that the US Government would
30 be going into the Embassy to get Assange. I responded that entering the embassy of a
31 sovereign nation and kidnapping a political refugee would be an act of war, and he
32 responded, ‘Not if they let us’. I did not know at the time that Ambassador Grenell himself
33 had that very month, October 2018, worked out a deal for Assange’s request with the
34 Ecuadorian Government”.

1 JUDGE BARAITSER: Now you are reading this verbatim and I appreciate why thus far, but
2 can you summarise, please, the bits that are in quotations.

3 MR FITZGERALD: Yes. Well, then you see that Schwartz is softening his tone and saying
4 that Assange would probably only serve life in prison and his tone on this would later change
5 in text messages. This, I think is - “He told me the US Government had said they will not
6 pursue the death penalty, something that would have prevented the UK and Ecuador from
7 extraditing him here”. And so that is really going to the veracity.

8 Then, if one goes on, she is concentrating on the sequence of events and deals with
9 visiting on January 7th 2019 and speaking to Julian Assange and that, “Although I was shaken
10 up by the call from Arthur Schwartz, I went to visit Assange. I know he was concerned about
11 being overheard or spied on and he had a little radio to cover up the conversation”. And,
12 then, just going on, paragraph 14, “Although I believe the information to be true and stated to
13 Assange when I told him, I could not understand Arthur Schwartz’s role in this at the time.
14 When later Assange was, in fact, charged with the Manning 2010 case, and Chelsea Manning
15 was put in front of a Grand Jury, I understood that the information Schwartz had had come
16 from accurate and official resources”. So that we say is relevant for your Ladyship’s
17 consideration.

18 “I visited Assange again on 25 March 2019. Although the January visit was difficult,
19 and Assange and I had to take steps to communicate with each other to try not to be within
20 the sight or hearing of surveillance cameras or microphones, I had been able to tell him about
21 the US plans. This visit was very different. I was shocked at the way in which both Assange
22 and I were treated and I wrote about it for an article published in The Gateway Pundit on the
23 following day, March 26th 2019”.

24 And then she deals with the way in which they were treated in the Ecuadorian
25 Embassy and the way in which it was said by President Moreno in an interview with El Pais
26 that his ideal solution is that Assange may enjoy being extradited if the UK promises that the
27 US will not kill him, and then she goes on to say that they were told that they had to speak in
28 the conference room and only two minutes were left. About that time, and roughly two
29 weeks prior to his arrest, WikiLeaks began to sound the alarm. They were told by someone
30 in the Ecuadorian Government that Assange was soon going to be kicked out of the Embassy.

31 “Since Schwartz seemed to know so much about what was going on and had close
32 proximity to the White House, I messaged him on March 29th 2019 and asked him if he knew
33 anything about the rumours that Assange was soon to be kicked out of the Embassy and if
34 this was what he had told me was going to happen back in October 2019. Schwartz called

1 and informed me that he knew I had told Assange what he had told me and that there was
2 now an investigation into who leaked me the information that I had told Assange in person in
3 October 2018”. So, obviously, that goes to the question of being bugged in the Embassy.

4 “When we had passed notes and a radio had been playing during the meeting,
5 apparently those measures had not been enough to ensure that my conversation with Assange
6 was private. Schwartz said that, because I had warned Assange, he could no longer trust me
7 with information relating to WikiLeaks and, although he knew things, he was not going to
8 share them with me. I said that I had been treated badly, like a prisoner, when I had visited
9 Assange in the Embassy three days before. He said he knew some of the back story on that
10 too”.

11 The call then ends and then, on April 11th 2019, Assange was arrested. “I was
12 devastated by this news. I considered it to be a blow to press freedom. I asked Schwartz
13 again if he knew anything. He responded with a series of messages about how Assange
14 deserved a lethal injection and how both he and Manning should die in prison. Soon, ABC
15 News reported that Ambassador Grenell had, indeed, been involved in the deal to arrest
16 Assange back in October when I got that first call from Schwartz. I sent a screenshot of the
17 news report to Schwartz and asked him if this was how he knew everything that he had told
18 me.

19 “He sent me lots of messages about how everyone involved with WikiLeaks deserved
20 the death penalty. I noted in our conversation that it had been reported that Grenell only got a
21 verbal agreement that there would be no death penalty, nothing in writing. But Schwartz’s
22 response to this was to send me a shrug emoji and he continued his tirade about how Assange
23 deserved to die. I could not understand why the German Ambassador, Grenell, was involved
24 in a case involving the US, UK and Australia”.

25 This provoked a response from Ambassador Grenell after she tweets on that, “He
26 messaged my boss attempting to get me in trouble and tried to get my boss to force me to
27 delete the tweet. I refused”. And, then the next exchange with Arthur Schwartz occurred on
28 September 10th 2019 when President Trump announced that he had fired his National
29 Security Adviser, John Bolton. “Grenell’s name was being floated everywhere as a very
30 likely candidate to take over the position, including by many who support WikiLeaks. I
31 posted a tweet on Twitter that Grenell was involved in Assange’s arrest and had attempted to
32 get me fired for tweeting about it. Within hours, I received another phone call from Arthur
33 Schwartz. This time he was frantic. He was ranting and raving that he could go to jail” - and
34 we have do have the transcript of that.

1 “I did not understand this because I had read the information in the public source. I
2 repeatedly told him that everything I said was from the ABC News article. He did not calm
3 down. I told him I would delete the tweet, which I archived. On having listened since to the
4 call, which I recorded, I believe he probably considered that the reminder of my interest in
5 Assange’s case and knowledge that he and I spoke would confirm that it was he who warned
6 me of Assange’s future extradition from the Embassy”.

7 And perhaps this is important, my Lady, “Schwartz informed me that in co-ordinating
8 for Assange to be removed from the Embassy, Ambassador Grenell had done so on direct
9 orders from the President. I believe this connected President Trump to those that had been
10 reported as having secured the deal to arrest Assange. I believed Schwartz’s statement to be
11 correct because of his close personal ties to both President Trump and Grenell are well-
12 known. I produce the transcript of the telephone call”. And you can see from the transcript,
13 it is about three-quarters of the way down which is over the page, “Taking orders from the
14 President, OK, so you’re going to punish me because he took orders from the president”. So
15 that ---

16 JUDGE BARAITSER: So are you reading from the transcript now?

17 MR FITZGERALD: Yes, yes, my Lady. We may have to play that in closing submissions
18 but you will see that there is an express reference to taking orders from the President. The
19 other persons who Schwartz said - I am so sorry, I texted - yes, so paragraph 31, “I have been
20 asked if I can provide any further information as to how all of the above different characters
21 and actions fit together. I have tried to understand but can only confirm the following: that
22 when in October 2018 I learnt from Schwartz that there was a plan to take Assange out of the
23 Ecuadorian Embassy and charge him with the Manning releases, and this later proved to be
24 exactly what happened, Schwartz’s information must have come from official sources.

25 “When on March 19th 2018, I texted Schwartz to ask if he knew more about
26 WikiLeaks, he called and said he knew I had told Assange what he, Schwartz, had told me.
27 When he said there was now a State Department inquiry into who had told me about what
28 must have been a monitored meeting, I believe it must have been an official US enterprise to
29 spy on the meetings in the Embassy. The other person who Schwartz said might also be
30 affected included individuals whom he described as life-long friends. Arthur Schwartz is
31 very well-known and is publicly reported to be a right-hand man or fixer for Donald Trump
32 Jr. and part of a circle extremely close to the White House which includes Richard Grenell,
33 Sheldon Adelson and the others.

34 “I am aware that Schwartz has frequented the White House all the time. His presence

1 is recorded on many videos there and is extremely close to the inner circle of people who are
 2 very close to the President. Looking back at the last visit I made to the Embassy in March
 3 2019, when extreme steps were taken by Embassy staff concerning the conditions under
 4 which the meeting could be held, I now consider those steps were being taken because of
 5 knowledge of the previous meeting I had with Assange during which I had given him
 6 valuable information. I believe that the contents of that meeting had been fed directly back to
 7 the US authorities and those with close connections, including Arthur Schwartz. I made this
 8 information known for an extremely limited number of people. I have had significant
 9 concerns, not least because of my previous experiences with Ambassador Grenell which gave
 10 me cause for concern. Grenell had personally attempted to get me fired from my job in April
 11 2019.

12 “Having been asked by the UK lawyers for Julian Assange whether I might reconsider
 13 my ongoing reluctance to provide formal confirmation of the events described in the
 14 statement, I agreed to do so after very careful thought in the hope that it could contribute to
 15 some understanding of the complicated close relationships and related actions that I have
 16 observed professionally and privately that operate under the present administration and
 17 especially within a small circle very close to the President himself. Having agreed to provide
 18 a statement in the ongoing proceedings if it could assist in clarifying some issues in the case,
 19 one of the few individuals aware of this took steps to make the information, and in particular
 20 the recordings, public without my consent and without any surrounding explanation. In
 21 consequence, and reluctantly, I took the decision for the first time to publicly briefly explain
 22 what I knew. This statement contains what I believe to be an accurate as account that I can
 23 provide”. And you have the transcript, my Lady, then of the conversation.

24 JUDGE BARAITSER: Can you, please, tell me where that is exhibited because it is not in
 25 this bundle, CB2.

26 MR FITZGERALD: Oh, well, I have it just behind that but I can provide you with it now.

27 JUDGE BARAITSER: Thank you. Since we are on this topic, I do not have the statement of
 28 Dr Kate Humphreys either, can the defence provide it to me?

29 MR FITZGERALD: Yes, yes.

30 JUDGE BARAITSER: That is referred to, I know, in the statements but I do not have the
 31 actual statement.

32 MR FITZGERALD: Oh, OK.

33 JUDGE BARAITSER: Electronic provision will be fine.

34 MR FITZGERALD: Yes, we will and what is agreed, my Lady, in respect of that is the test

1 themselves.
2 JUDGE BARAITSER: I see. Is she not going to be called then?
3 MR FITZGERALD: No.
4 JUDGE BARAITSER: Ah.
5 MR FITZGERALD: That is where the agreement comes in.
6 JUDGE BARAITSER: But I do need a copy of her statement.
7 MR FITZGERALD: Yes, that is the subject of agreement.
8 JUDGE BARAITSER: All right, but I need a copy of it.
9 MR FITZGERALD: Oh, yes. Can I just see if we can provide it right now.
10 JUDGE BARAITSER: Yes. In fact, I have just seen it. For some reason ---
11 MR FITZGERALD: It is tab 79.
12 JUDGE BARAITSER: Yes, I do have it.
13 MR FITZGERALD: Yes.
14 JUDGE BARAITSER: And for some reason I did not notice it earlier.
15 MR FITZGERALD: Well, shall I ---
16 JUDGE BARAITSER: Maybe it was in the hard copy bundle but not in the electronic
17 bundle.
18 MR FITZGERALD: Shall I tomorrow ---
19 JUDGE BARAITSER: No need, I have it now.
20 MR FITZGERALD: --- at an appropriate moment. What my learned friend has agreed is
21 that part of it where she recounts the test and the conclusions from the test is admissible. The
22 part of it where she is describing wider things is not. I think that is fair, but we can indicate
23 the exact paragraphs.
24 JUDGE BARAITSER: Are you going to edit it?
25 MR FITZGERALD: Yes.
26 JUDGE BARAITSER: Lovely, all right.
27 MR FITZGERALD: Yes.
28 JUDGE BARAITSER: Yes, anything else for this afternoon?
29 MR FITZGERALD: No, my Lady, that is the statement of Cassandra Fairbanks and it may
30 be that we will play the actual tape at some stage.
31 JUDGE BARAITSER: All right.
32 MR FITZGERALD: My Lady, those are the matters we have agreed and, as my learned
33 friends have indicated, we may be able to give you indications of a number of statements
34 where the prosecution have agreed we can read.

1 JUDGE BARAITSER: So, just to recap then, 48 hours at the time we agreed for the revised
2 timetable, please, including not only witnesses but also provision for submissions.
3 MR FITZGERALD: Well, yes ---
4 JUDGE BARAITSER: Tomorrow morning, you are going to give me an account of the
5 agreed statements, if that is my understanding, tomorrow morning.
6 MR SMITH: I would ask for the end of tomorrow.
7 JUDGE BARAITSER: The end of tomorrow.
8 MR FITZGERALD: Yes.
9 JUDGE BARAITSER: Absolutely right, tomorrow, by close of play.
10 MR FITZGERALD: Professor Kopelman is coming tomorrow.
11 JUDGE BARAITSER: Thank you, close of play for the agreed statements. And in terms of
12 the witness order for tomorrow, it is Professor Kopelman first, is it?
13 MR FITZGERALD: Yes.
14 JUDGE BARAITSER: And then?
15 MR FITZGERALD: Well, he is the whole day.
16 JUDGE BARAITSER: He is the whole day.
17 MR FITZGERALD: Can I just understand from my learned friend how long he proposes to
18 be.
19 JUDGE BARAITSER: At the moment, it is three hours.
20 MR LEWIS: I will probably be about four hours.
21 MR FITZGERALD: Well, my Lady, I ---
22 JUDGE BARAITSER: Any issues taken with that?
23 MR FITZGERALD: Well, I think we should try and stick to these predictions, particularly if
24 we are being ---
25 JUDGE BARAITSER: Well, I have given the prosecution an opportunity if they wish to
26 revise it. He said four hours. I am very happy to hear anything you have to say about that
27 four hours before I make my decision.
28 MR FITZGERALD: Well, provided I have sufficient time to re-examine him.
29 JUDGE BARAITSER: I think that is the only point, Mr Lewis, we probably need to finish
30 that witness in the day.
31 MR LEWIS: Yes.
32 JUDGE BARAITSER: 30 minutes, as we know, for examination in-chief should take us to
33 10.30 because there is two and a half hours in the morning.
34 MR LEWIS: An hour and a half in the afternoon. That will be 3.30. Mr Fitzgerald will have

1 an hour to re-examine. It seems ample.

2 JUDGE BARAITSER: Or an hour and a half if need be. That will be sufficient, will it?

3 MR FITZGERALD: I think that will be enough time to re-examine.

4 JUDGE BARAITSER: In that case, you can have your four hours. I suspect you will not use
5 it, but you can have it if you need it.

6 Alright, good, thank you. I am going to resume tomorrow morning at 10 o'clock.

7 Thank you very much. You remain in custody. As always, back in the morning, please.

8

ADJOURNED AT 16.17 UNTIL TUESDAY, 22nd SEPTEMBER 2020

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