

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

25th SEPTEMBER 2020, 10.03-15.04

1 JUDGE BARAITSER: Thank you very much. Please sit down, Mr Assange. Nice to see
2 you back, Mr Summers.

3 MR SUMMERS: Thank you, madam. A bout of man flu I think it is. It is what it was.
4 Madam, there is an application before we start this morning.

5 JUDGE BARAITSER: There is.

6 MR SUMMERS: At 11.30 last night, we received from the prosecution their cross-
7 examination bundle for Mr Eller. It was seen by us this morning. The witness has not had
8 time to look at it. It is 5 am now in the US and the witness has agreed to give evidence at 5
9 am in order to assist us but the implications of that I hope are obvious. He has not yet had the
10 chance to review these materials and will not if we start immediately.

11 Now, madam, the bundle is small in page number but significant and can I tell you
12 why? Madam, Mr Eller's evidence was served nine months ago in these proceedings in
13 January. It advances two essential propositions. Firstly, the alleged passcode hash
14 conspiracy was impossible at paragraphs 29 to 35 but secondly, even if it were possible it was
15 of no possible utility to the purpose being attributed to it.

16 Mr Kromberg months later responds to Mr Eller's evidence, you have that at tab 8,
17 madam, of the prosecution bundle, I think it is his fourth or fifth affidavit. He takes in that
18 affidavit no issue at all with the first proposition. The issue he takes is with the second and
19 the purpose said to be attributed to the conspiracy alleged.

20 What is clear now, by now I mean from 11.30 last night or when I saw it early this
21 morning, is that there is a challenge now mounted to his first proposition. Can I just show
22 you please page 4?

23 JUDGE BARAITSER: Yes.

24 MR SUMMERS: This is a 1999 article from somewhere dealing with the SysKey
25 programme, that is the encryption programme then present on Windows. The ---

26 JUDGE BARAITSER: Can I just interrupt you? I am assuming Mr Eller is currently looking
27 at this, we are not wasting any time?

28 MR SUMMERS: Yes, well, yes ---

29 JUDGE BARAITSER: Because all of these submissions ---

30 MR SUMMERS: --- yes, he has it.

31 JUDGE BARAITSER: --- relate to ---

32 MR SUMMERS: He has it.

33 JUDGE BARAITSER: --- his having time to look at this ---

34 MR SUMMERS: Yes, absolutely.

1 JUDGE BARAITSER: --- but if you spend an hour considering whether he should have
2 time, I would hope he would be using that time gainfully.

3 MR SUMMERS: It is 5 am, madam, yes, he has had some minutes to look at it and well, I
4 suspect now he is ---

5 MR LEWIS: I wonder if my learned friend can confirm he has spoken to Mr Eller? It is such
6 a short point. Mr Eller, if he is an expert, he will look at it in five minutes.

7 MR SUMMERS: I wonder if I could finish before Mr Lewis responds?

8 JUDGE BARAITSER: Well ---

9 MR SUMMERS: But the answer, madam ---

10 JUDGE BARAITSER: --- you go into any great detail, have you spoken to him and asked
11 him how long he would like to consider these documents?

12 MR SUMMERS: Madam, he has been spoken to 15 minutes ago and he would like some
13 time to look at this.

14 JUDGE BARAITSER: What does "sometime" mean please?

15 MR SUMMERS: Well, I am asking for an hour in the first instance and can I just explain
16 why?

17 JUDGE BARAITSER: Well, no, Mr Summers, because it is going to take you half an hour
18 to explain why and I am willing to give you the hour in any event. It is hopefully the first 10
19 minutes, presumably you do not object in any great detail to this? Presumably he has already
20 had 10 minutes so another 50 minutes, there are other things that this court can be getting on
21 with, with counsel whilst he reads through those documents. So, can contact be made with
22 him so that he has his hour and we will make contact with him at 11 o'clock? That deals with
23 that.

24 MR SUMMERS: Madam, in the event that before or at 11 o'clock he conveys to us that he
25 would need more time to look into this issue, then I will be applying for his evidence to go
26 back further and possibly beyond today. I see your reaction, madam, but the usual way of
27 dealing with expert evidence, especially technical expert evidence, is for the prosecution to
28 respond to it in the usual way, preferably with their own expert, and for Mr Eller to have
29 opportunity to consider their position and potentially meet with their expert and agree a way
30 forward.

31 JUDGE BARAITSER: Let us cross that bridge ---

32 MR SUMMERS: This is not the way we deal with expert evidence.

1 JUDGE BARAITSER: Let us cross that bridge when we come to it. Give him his hour, see
2 if he can manage within that time and try and resume at 11. Hopefully contact has already
3 been made, that is in hand.

4 MR SUMMERS: Thank you.

5 JUDGE BARAITSER: The next issue relates perhaps to you, Mr Summers, in relation to
6 two statements I received last night. I do not know if it is a matter for you or Mr Fitzgerald?

7 MR SUMMERS: No, those are not my aspects.

8 MR FITZGERALD: It is – yes.

9 JUDGE BARAITSER: Are you applying for those statements to be adduced into evidence?

10 MR FITZGERALD: My Lady, yes.

11 JUDGE BARAITSER: Right.

12 MR FITZGERALD: If necessary under section 202 if we have to go through the formalities
13 but as we have observed ---

14 JUDGE BARAITSER: Just pause for a moment, is it objected to, Mr Lewis, if you are
15 dealing with it?

16 MR LEWIS: I have not even seen them, madam. I have no idea.

17 JUDGE BARAITSER: Have you been served with them?

18 MR LEWIS: I literally opened my computer now and I see there is an email which has been
19 forwarded to me from my instructing solicitor so I ---

20 JUDGE BARAITSER: I see. Well, Mr Fitzgerald, I think we will give Mr Lewis an
21 opportunity ---

22 MR FITZGERALD: Yes, yes. I think ---

23 JUDGE BARAITSER: --- to read. It is not really 202 as in the method ---

24 MR FITZGERALD: Yes.

25 JUDGE BARAITSER: --- of their admission but the fairness of their late admission, that is
26 the issue ---

27 MR FITZGERALD: Yes.

28 JUDGE BARAITSER: --- you are going to need to address.

29 MR FITZGERALD: My Lady, they respond to Leukefeld who ---

30 JUDGE BARAITSER: Well ---

31 MR FITZGERALD: --- and they are both psychologists.

32 JUDGE BARAITSER: I hear what you say. You will have to make a submission in relation
33 to that and I will have to give you my decision in due course. Mr Lewis, how long will it
34 take for you to marshal your thoughts on this area?

1 MR LEWIS: Without opening them, madam, I am not sure. I am sure we will be able to deal
2 with it today. We could of course – I do just wish to say this in relation to my learned
3 friend’s point. We do not even know, Mr Eller may completely agree with my questions on it
4 and I may not need to show him any exhibits at all.

5 JUDGE BARAITSER: Yes, well let us wait and see, shall we?

6 MR LEWIS: We wait and see. So, it is impossible to pre-empt it because he does not know
7 what I am going to ask.

8 JUDGE BARAITSER: No, that is true but it is fair to give him an opportunity to read the
9 documents so we will do that.

10 MR LEWIS: Yes. I am more than happy to do that.

11 JUDGE BARAITSER: Whilst ---

12 MR LEWIS: We could deal with the ---

13 MR FITZGERALD: Journalist.

14 MR LEWIS: --- journalist matter, madam?

15 JUDGE BARAITSER: The agreed? Oh, the journalist matter. What I am going to do on
16 that is hear submissions. I need to reserve my judgment until Monday but I am very happy to
17 hear submissions on that issue. I would also like to hear submissions on this month-long
18 request to prepare closing so I will do that now and I will give you my decision in due course
19 and admissibility today, you will have to marshal some thoughts today in relation to that.

20 MR LEWIS: Yes, certainly.

21 JUDGE BARAITSER: Good. So, perhaps if we deal with the journalist issue now?

22 MR FITZGERALD: Yes. The journalist, or the adjournment?

23 JUDGE BARAITSER: The journalist issue ---

24 MR FITZGERALD: Oh yes.

25 JUDGE BARAITSER: --- by which I mean the disclosure of the psychiatric and
26 psychological ---

27 MR FITZGERALD: Have you seen our submissions, my Lady?

28 JUDGE BARAITSER: No, I have not. I have seen Mr Lewis’ but not yours.

29 MR FITZGERALD: Well, my Lady, here they are and we have got the Cape International.

30 JUDGE BARAITSER: Do you think you have sent them to me?

31 MR FITZGERALD: What?

32 JUDGE BARAITSER: Do you think you sent them to me?

33 MR FITZGERALD: I hope we did but ---

34 MS IVESON: They were sent this morning, my Lady.

1 MR FITZGERALD: They were sent this morning, I am so sorry.

2 JUDGE BARAITSER: Ah.

3 (Counsel conferred)

4 MR FITZGERALD: This has got everything in it, my Lady.

5 JUDGE BARAITSER: I see, 9.27 this morning.

6 MR FITZGERALD: Yes.

7 JUDGE BARAITSER: Yes.

8 MR LEWIS: Have you got authorities for me? I just ---

9 MR FITZGERALD: Yes, I have got Cape, yes.

10 MR LEWIS: Cape. Just ---

11 MR FITZGERALD: I mean, I am content for my learned friend to go first since he supports
12 us in this respect ---

13 MR LEWIS: Yes.

14 JUDGE BARAITSER: Yes, either. Either of you.

15 MR FITZGERALD: --- but my Lady, if you would just see we say that it would be entirely
16 consistent with the open justice principle that those matters, there be no further disclosure of
17 the report from that which has taken place in open court and that is because the expert report
18 sought by the journalist contains sensitive information involving detailed medical history of
19 not just Mr Assange but of his extended family, his former partners, and his children, and
20 intimate details about their family relationships and they all have independent article 8 rights.
21 We say there has been very extensive, four hours of cross-examination of course, where all
22 the relevant matters that the world should know have been brought out by my learned friend -
23 --

24 JUDGE BARAITSER: Just before you carry on, I am rather thinking about the format of this
25 hearing. Now, I seem to think that Mr Lewis believes there is no procedure for this although
26 I do think that rule 5 does seem to be relevant, I know you refer to rule 5, I am just wondering
27 about the format before I hear your ---

28 MR FITZGERALD: Yes.

29 JUDGE BARAITSER: --- actual submissions.

30 MR FITZGERALD: Well, we say it is under the inherent jurisdiction of the court and that is
31 covered by the ---

32 JUDGE BARAITSER: I do not have the rules in front of me. Does rule 5 not assist in terms
33 of the hearing? Whether it can be public or private?

34 MR LEWIS: I am sorry, my Lady, rule 5 of what?

1 JUDGE BARAITSER: The Criminal Procedure Rules.
2 MR LEWIS: Ah.
3 JUDGE BARAITSER: Can we turn them up? Anyone have them? I just want to make sure
4 that the press have a fair opportunity to respond and just because ---
5 MR FITZGERALD: Oh, you mean how we conduct this ---
6 JUDGE BARAITSER: Yes.
7 MR FITZGERALD: Oh, I am so sorry, my Lady.
8 JUDGE BARAITSER: That is exactly what I meant.
9 MR FITZGERALD: I appreciate, yes, I think they must be given an opportunity to respond
10 if they ---
11 MR LEWIS: They should really be heard ---
12 JUDGE BARAITSER: Yes.
13 MR LEWIS: --- on all the solutions.
14 JUDGE BARAITSER: Yes.
15 MR LEWIS: Madam, it may be we could outline our position and then if there is any
16 members of press who want to – if they are not present, they may be present in the other
17 court.
18 JUDGE BARAITSER: Well, I think someone should be present in this court, ---
19 MR LEWIS: Yes, I do, yes.
20 JUDGE BARAITSER: --- I think they should hear what you have to say and they should be
21 provided with this bundle.
22 MR LEWIS: Exactly, madam, that would be right.
23 COURT USHER: Shall I go and get a representative then, madam?
24 JUDGE BARAITSER: Please. And is everybody content for this hearing to take place in
25 open court?
26 MR LEWIS: Yes.
27 JUDGE BARAITSER: Is there any reason not to do that?
28 MR LEWIS: No.
29 MR FITZGERALD: No, because ---
30 JUDGE BARAITSER: So be it.
31 MR FITZGERALD: --- we are dealing with general principles I think you have to do it.
32 JUDGE BARAITSER: Let us wait to see if we can get a member of the Press Association
33 into court. It may be that before you make submissions they will want to read them so that

1 they can respond to them. It may be that we cannot deal with this straightaway until they
2 have seen what it is you have to say. Let us ask a member and find out.

3 MR FITZGERALD: My Lady, yes. It is a very short submission that we have, my Lady. It
4 is right at the front.

5 JUDGE BARAITSER: Yes, but of course you have attached a significant amount of
6 supporting case law.

7 MR FITZGERALD: Well, they are just the leading authorities. *Cape* is – or I think *Dring* it
8 is called is a leading one, but really it is all very shortly summarised in three and a half sides.
9 That is right at the front and you will see it is inherent jurisdiction and ---

10 JUDGE BARAITSER: Just a minute. Do you represent the Press Association today?

11 MS PENNINK: Yes, my Lady. May I say I was not the reporter who submitted our
12 submissions the other day; he is not available today, but my own comment would be it would
13 be useful for us to see the initial submission so we can see it and are fully appraised.

14 JUDGE BARAITSER: Yes, I think that is only fair. Ms Iveson, can you forward them
15 directly? Can you have a word with Ms Iveson and give her an email address and then she
16 will forward them to you. We will give you an opportunity to read them. I will hear what
17 you and the lawyers have to say on the issue and then make my determination on Monday
18 probably.

19 MR FITZGERALD: We can give you this straightaway.

20 JUDGE BARAITSER: How long do you think it will take you to read that? I appreciate it is
21 your best guess.

22 MS PENNINK: I can read them during the course of today.

23 JUDGE BARAITSER: So by the end of the day you would want to make your submissions
24 then. All right. So be it. Thank you very much. Good. So we cannot deal with that issue
25 quite yet. Perhaps the last of these issues relates to the timetable for your closing.

26 MR FITZGERALD: Yes. My Lady, can I tell you, we have given the matter some thought.

27 JUDGE BARAITSER: Yes.

28 MR FITZGERALD: And can I just tell you ---

29 JUDGE BARAITSER: Of course.

30 MR FITZGERALD: --- the problem we have is – and I think my learned friend supports us
31 on this – that we would wish, for your assistance obviously and in the interests of justice, to
32 have an opportunity to put our summary of the evidence in writing to discuss it with our
33 client and to put it before you. Ideally, of course, we would like to come back and address
34 the court, but from the point of view of Mr Assange the most important thing of all is that the

1 written submissions be complete, that he have an opportunity at least to see them and because
2 there is a lot of materials which are in documents that have not been referred to in the oral
3 evidence that we have an opportunity, for example, in relation to bundle M, we have an
4 opportunity to deal with those.

5 If it were necessary in order to assist the court so that we have time to put things in
6 writing we would need, we respectfully submit, a month to do that because my learned friend,
7 Mr Summers, and I have really pressing other engagements in the immediate future. We
8 would forgo making oral submissions in order to have time to put that in and my learned
9 friend to reply. My learned friend has indicated that he would support us in that, but, my
10 Lady, obviously ideally we would want to, after putting them in, come back and address you
11 orally and have an opportunity to deal with it in that way, but we are content, following my
12 learned friend's suggestion to you, which seemed to have some appeal, or initial appeal, to
13 your Ladyship, we would be content for that matter, provided, my Lady, we are given
14 sufficient time, having dealt with all the other pressing engagements because obviously we
15 were anticipating a four-week hearing only, to deal with that.

16 My Lady, that is the predicament we find ourselves in and we obviously wish to assist
17 the court, we obviously wish to do justice, most important of all, to Mr Assange, and we have
18 taken express instructions on the matter. Obviously ideally we would come back and address
19 you and I know appealing to common practice is one thing, you have to deal with the
20 particular case, but it has been a practice that I think has been found to be helpful in other
21 cases to come back, but if in order, because of the problems of getting a court and all that, we
22 cannot have a further oral hearing, then we would be content if that is the only way we can
23 ensure time to put in full written submissions to do it that way.

24 JUDGE BARAITSER: That is very helpful. Thank you. The alternative, of course, is if you
25 wish to close, making oral submissions, it is for you to do so on Thursday and Friday of the
26 fifth week because time is available on Thursday and Friday of the fifth week, not next week.

27 MR FITZGERALD: Yes.

28 JUDGE BARAITSER: But the week following, and, of course, I would hope that this case
29 would take priority over even your pressing professional engagements unless, of course, it is
30 the Court of Appeal or a higher court than that.

31 MR FITZGERALD: I know that my learned friend has real problems with that, but, my
32 Lady, that is our respectful submission and perhaps would it assist if you heard what my
33 learned friend says first and then if I can take instructions on your alternative suggestion?

34 JUDGE BARAITSER: Thank you.

1 MR FITZGERALD: But I anticipate, because we have obviously canvassed the various
2 possibilities, that the most important thing is that we be given that four weeks to put it in
3 writing. That is the most important thing of all.

4 JUDGE BARAITSER: I will hear what Mr Lewis says.

5 MR LEWIS: Madam, we think written submissions is a very sensible course and we would
6 endorse it. However, we would firmly say they should be written only, subject to my Lady's
7 helpful suggestion it could be done in the fifth week, but other than that we should not come
8 back for some other time because by then there will be more evidence, things will have
9 developed in different areas. There must be finality to it. So we would respectfully say that
10 we endorse the position that it should be written submissions only and there should be no
11 further oral argument, subject to my learned friend taking up my Lady's offer on that.

12 JUDGE BARAITSER: Do you have a view about the fifth week, Thursday and Friday,
13 coming back for oral submissions?

14 MR LEWIS: It is very difficult for counsel, madam. I am not sure – we all have professional
15 difficulties.

16 JUDGE BARAITSER: I appreciate that, but of course this case is ---

17 MR LEWIS: And we would have to rearrange.

18 JUDGE BARAITSER: Yes.

19 MR LEWIS: But we would rather not. We would simply like to make written submissions.
20 That would be the prosecution's position.

21 JUDGE BARAITSER: All right. Thank you.

22 MR LEWIS: We would also like any timetable my Lady sets down, and I think my learned
23 friend has agreed to this, for us to obviously be responsive. We have to know what they are
24 saying.

25 MR FITZGERALD: That would be four weeks for us and then two weeks for you.

26 MR LEWIS: Yes.

27 JUDGE BARAITSER: That would be the case in any event in any appeal hearing.

28 MR LEWIS: I just wanted to make that abundantly clear that we would be responsive. And
29 we do understand my learned friend's professional difficulties and, of course, Mr Assange
30 must be in the interests of justice given sufficient time, and we take into account what we
31 have heard from the psychiatrists in this matter, so that that may entitle him, in order for it to
32 be fair, to have a little extra time to make sure that he is content with all the submissions
33 which have been made in writing on his behalf.

1 So in those circumstances, we would not say that four weeks is anything other than
2 reasonable in all the circumstances. We would ask for two weeks after that, or at least seven
3 days, my Lady.

4 JUDGE BARAITSER: Yes.

5 MR LEWIS: But it should be responsible, we will need to, in order to assist the court,
6 because there may be matters we need to refer to authorities on in order to deal with any
7 points which are brought up.

8 JUDGE BARAITSER: Thank you. Mr Fitzgerald, I am concerned about a four-week
9 timeframe. As you know, this case was opened 18 months ago. It began in February, but for
10 the global pandemic it would have concluded in May. There has been a significant amount of
11 time made available to the defence to prepare their case.

12 MR FITZGERALD: Well ---

13 JUDGE BARAITSER: And most of the evidence, well, at the beginning of this September,
14 the bi-vacated hearing, a 200 page skeleton, if I can call it a skeleton submission ---

15 MR FITZGERALD: Well, it was called, “Written submissions”, not skeleton.

16 JUDGE BARAITSER: It clearly was not a skeleton.

17 MR FITZGERALD: No, we did not call it that.

18 JUDGE BARAITSER: But submissions in any event were made to the court. Therefore, all
19 the arguments have been marshalled in some detail already. Thereafter, all of the evidence,
20 nearly all of the evidence in the case has been called by the defence. They can therefore have
21 not been surprised by the evidence that has come before the court since those submissions
22 were made, and therefore one would imagine only relatively small adjustments would be
23 needed to the lengthy arguments already made in the case. And therefore I am considering
24 that four weeks is a period of time which is unnecessary. All the while, of course, your client
25 remains in custody, which is a consideration I must take into account.

26 MR FITZGERALD: Well, my Lady, obviously if the court grants him bail that would solve
27 that problem, but, my Lady, can I just respectfully say this? We are going to have real
28 problems doing this and you have heard about the professional problems we have, finding the
29 time to do it, then at least discussing it with Mr Assange fully. My learned friend has said
30 that he considers it in the interests of justice that we be given that time. You will recall, my
31 Lady, that at one stage we were being offered November for the hearing and we went for
32 September instead to try and ensure that there was – so if we had taken the November offer of
33 a hearing we would not have even been concluded before December. And so, my Lady, if

1 one looks at the overall history, it is actually not atypical if one looks at cases like the
2 Rwanda case, not atypical at all.

3 And, secondly, in our respectful submission, we have been handicapped by the virus.
4 You know we were not even able to get in and see our client at all. The first time I saw him
5 in the flesh, as it were, was at the beginning of this hearing. We have done our best. We
6 have had the problems of the second superseding indictment which was landed on us at very
7 short notice. We are doing our best to accommodate everything, but we do respectfully
8 submit, and we have tried by forgoing oral submissions, to meet all the concerns of the court
9 about not prolonging the oral hearing, but we respectfully submit that in terms of the
10 irreducible minimum we should be given sufficient time. Obviously my learned friend, Mr
11 Summers, is dealing with certain parts, I am dealing with certain parts, as you will have seen,
12 but both of us need that time, my Lady, and so does Mr Assange and so do our instructing
13 solicitors who have been working flat out throughout.

14 My Lady, in those circumstances I would respectfully submit we have done
15 everything we can to meet the court's concerns halfway, but given that we were going to
16 have a hearing in November at one stage, and that was offered by the court, we are actually
17 ahead of schedule on that. And it is not atypical of these big cases and it is not Mr Assange's
18 fault that there has been this lockdown which has prevented him having the normal access.
19 So we would respectfully submit that it would be fair and reasonable, as my learned friend
20 says, in the interests of justice, that we be given those four weeks. My Lady, those are my
21 respectful submissions.

22 JUDGE BARAITSER: I am just pulling up a calendar to see where that would take us.

23 MR FITZGERALD: I think it would be Friday, 23rd, 31st is it?

24 JUDGE BARAITSER: Four weeks from today, you are not taking it from today, of course.
25 Four weeks from the end of the case would be the 30th, Friday, 30th.

26 MR FITZGERALD: Yes. Well, my Lady, if you would give us that and then whatever time
27 you give the prosecution and then I mean we could obviously liaise with the prosecution as to
28 the broad outline of it and then perhaps if we could have 48 hours to respond to anything they
29 say. If we know in advance that that is the thing, then we will obviously try and find time.

30 JUDGE BARAITSER: Well, that will take us to 20 November if I gave the prosecution two
31 weeks.

32 MR FITZGERALD: Well, perhaps if you could give us 72 hours because I suppose we just
33 do not know quite where we will be, if it is over a weekend, but we will endeavour to respond
34 swiftly and ensure that we are free in order to respond swiftly.

1 JUDGE BARAITSER: Of course, that means your client is not going to get a decision until
2 the New Year, you understand that and he appreciates that.

3 MR FITZGERALD: My Lady, he does appreciate – we were able to discuss it with Mr
4 Assange last night and I have taken instructions this morning and he is concerned that this is
5 our only, as it were, hearing before a tribunal of fact and that the evidence be marshalled and
6 assembled for your assistance that fully does justice to him. That is his concern. He is aware
7 of the consequences.

8 JUDGE BARAITSER: Now, Mr Lewis makes a good point. He is concerned about finality.
9 I am going to, in due course, deal with further late evidence served at 10 o'clock last night.
10 As this case is delayed, and I have not yet given an indication about the length of the delay,
11 the risk is that additional evidence will be sought to be adduced within this hearing. What do
12 you say about that?

13 MR FITZGERALD: Well, my Lady, what I say is, we can almost take the Navadunski test.
14 If something really absolutely major happens, obviously the court has to look at the situation
15 as it is, but the court can say, “You had the opportunity to deal with anything which is
16 systemic and general.” I mean, supposing Trump says, “I’m going to execute journalists,” or
17 something like that, then obviously, we would be entitled to draw that to the attention of the
18 court, but it would have to be, we accept it would have to be something fairly dramatic.

19 JUDGE BARAITSER: Well, you are on record saying that, Mr Fitzgerald.

20 MR FITZGERALD: Yes, yes. I agree it would have to be something dramatic, but my Lady,
21 I cannot – so, as it were, if it were something systemic which has always been there, and the
22 only other problem is the second superseding indictment. In relation to that, my instructing
23 solicitor is going to set out the efforts we have made to deal with that and he is going to set
24 out what we would ideally have hoped to have put before the court and it may be that there
25 will be submissions in the light of that as to what the fair course would be in dealing with the
26 additional allegations in the second superseding indictment. That is the best we can do on
27 that.

28 I mean, you are aware that we have not had a full opportunity to deal with those, but
29 the course that we propose to adopt is that my instructing solicitor, Gareth Pearce, will set out
30 what we have done, what we have managed to do so far and what the problems are about the
31 court proceeding on the basis of the second superseding indictment and that can be done, I
32 think, by Monday.

33 JUDGE BARAITSER: What impact on your case, say you, will the elections which are
34 ongoing in America have?

1 MR FITZGERALD: Well, they may have an impact.

2 JUDGE BARAITSER: Well, that is one of the concerns that I have in relation to the finality
3 of these proceedings.

4 MR FITZGERALD: Yes.

5 JUDGE BARAITSER: What do you say about that?

6 MR FITZGERALD: My Lady, given – can I just say this respectfully that inevitably – well,
7 it seems very unlikely you would be able to give judgment before November the 4th, even if
8 we were to give our submissions, and in any event, in giving your judgment, you would have
9 to bear in mind that there is an election and the future is uncertain. Much of what we say
10 about Mr Trump personally goes to the history of why this was initiated and that will all
11 remain good. Much of what we say about the fate that awaits Mr Assange remains good
12 because it is about systemic problems in the prisons and his underlying condition, but I accept
13 that there are some elements of our case which it will be all the worse if Mr Trump is there
14 and we will make that point because we are dealing with real risks.

15 JUDGE BARAITSER: You talked about something needing to be dramatic for further
16 evidence to be sought to be adduced. Do you envisage a change in administration as being a
17 dramatic event that is likely to result in further evidence?

18 MR FITZGERALD: Well, it might depend what is said but all I can say, my Lady, at this
19 stage is this, that there are tests laid down because, of course, the High Court, for example,
20 can reopen the case and the test is a high one, we accept, Navadunski, but they give some
21 examples of where, because the court has to look at the situation as it actually is at the time it
22 makes the order – supposing you heard the submissions in the fifth week and then adjourned,
23 one, you would have to take into account the fact that there is an election, it is an uncertain
24 fate, but two, if you gave judgment after the election, you would then know so we cannot
25 really avoid that political fact, I think, whichever way we play it, if I can respectfully put it
26 that way. It is a fact.

27 JUDGE BARAITSER: Alright. Well, I agree with you that one way or the other, my
28 decision is likely to come after election in the United States. Alright, well, with that in mind,
29 then, I have seen no reason not to give you your four weeks and you require a further two. Is
30 that right?

31 MR LEWIS: My Lady, yes.

32 MR FITZGERALD: Could we then have 72 hours to reply.

33 JUDGE BARAITSER: The reply, presumably, is limited to points of law and nothing else.

34 MR FITZGERALD: Yes. Well, yes, I think that is right, yes.

1 JUDGE BARAITSER: Alright, so if we just get those dates down firmly. 30th of October,
2 13th of November, your 72 hours on points of law takes you – you said over the weekend –
3 16th of November.

4 Now, I do not want today to give you the return date for judgment. Presumably, court
5 time will need to be found for that, and I have not yet made any enquiries about it and so, I
6 hope at the end of next week, when this case concludes, certainly the evidence, then I can
7 give you a judgment date then.

8 MR FITZGERALD: Yes.

9 JUDGE BARAITSER: Alright. Is there anything else I can deal with. Is there any agreed
10 evidence since we have 25 minutes or so?

11 MR FITZGERALD: Oh yes. My learned friend, Ms Iveson, has very kindly volunteered to
12 read it, but she has not had time to gist it, so she will have to read it in full.

13 JUDGE BARAITSER: Which statement is this?

14 MR FITZGERALD: Augstein's statement.

15 MS IVESON: Madam, tab 32, court bundle 1.

16 JUDGE BARAITSER: Alright, thank you. I will have it then. Sorry, I am not sure what Mr
17 Assange is doing speaking to someone in the way that he is. Perhaps he needs to sit down in
18 the usual way as defendants – Mr Assange, it is just not appropriate to speak in that way.
19 You have lawyers in front of you. If you wish to give instructions, then, of course, you can.
20 I do not know where Ms Pearce is. Would you like us to wait until Ms Pearce is back?

21 MR FITZGERALD: I will go if I may.

22 JUDGE BARAITSER: Thank you.

23 MS IVESON: Can I just pause for a moment just in case there are instructions about this
24 particular piece of evidence?

25 JUDGE BARAITSER: Ms Iveson, would you just make sure that that conversation does not
26 relate to Mr Augstein's statement.

27 MS IVESON: Madam, yes. Do you have at tab 32 the statement dated February the 12th
28 2020 of Jakob Augstein. "I have been working as a journalist since 1992. I have been with
29 on the daily Süddeutsche Zeitung and the weekly Die Zeit. For several years, I have been a
30 regular contributor and columnist for Der Spiegel and Spiegel online. Currently, I am
31 publisher and the editor in chief of the German weekly, Der Freitag.

32 "I have been asked to provide my recollection of a number of events in 2011
33 concerning Julian Assange. An article outlining these events published at the time on August

1 25th 2011 appeared in Der Freitag, a weekly newspaper published in Germany of which I am,
2 and was at the time, publisher and editor.

3 “The article detailed and commented upon a constellation of circumstances involving
4 the Australian national, Julian Assange, and the organisation WikiLeaks and a German
5 national, Daniel Domscheit-Berg and an organisation OpenLeaks. It described information
6 of which Der Freitag had become aware and subsequent interactions prior to the publication
7 of the article, including interaction on my part with Julian Assange. I confirm that the
8 information I and Der Freitag were aware of at the time was correctly reflected in the article
9 of August 25th 2011.

10 “We did not identify the original source of any information that led to our
11 investigation, but confirm we were satisfied that what we were being informed of was an
12 authentic account.

13 “The article describes ‘a leak at WikiLeaks.’ The question drawn to our attention had
14 been the security of the platforms upon which data previously considered to be disclosable
15 only via a closely guarded password had become vulnerable. As a result of the information
16 we received and the investigation we thereafter conducted, we discovered that an obscure file
17 on the internet containing US state department documents that had come into the hands of
18 WikiLeaks in the previous year, was exposed in its unedited form to potentially universal
19 access since. As Der Freitag reported, ‘The password required to decrypt the file can also be
20 researched via the internet.’

21 “The article pointed out that the separate password was available and could be
22 identified by, ‘Those who know the subject.’ The further comment by the article’s author
23 was, ‘This is exactly what should have been prevented, an uncontrolled opening of highly
24 sensitive data.’

25 “The background having been, ‘WikiLeaks had cooperated with major international
26 media in the publication of embassy cables lasts year. Der Spiegel, the Guardian and the
27 New York Times were supposed to guarantee that no one would play fast and loose with the
28 sensitive information. So far, only filtered data sets had been published in which references
29 to persons whose lives and limbs could be in danger are missing.’

30 “In commenting that this leak at WikiLeaks had rendered this back up obsolete, we
31 outlined the previous history that the answer to the question of responsibility lay, ‘In the
32 thicket of WikiLeaks’ past.’ Since the autumn of 2010, a named individual, a German
33 national whose name is cited above, Daniel Domscheit-Berg, among others, left the whistle
34 blower platform and, ‘in their luggage, they take the electronic mailbox with all its contents,’

1 which we describe as, ‘A treasure trove of data of immense value for any disclosure platform,
2 potentially, of course, for Open Leaks.’

3 “We summarised the history and we understood a serious disagreement, attempts
4 and/or offers to have the data returned to WikiLeaks, the intervention of a mediator and the
5 provision to that individual of a back-up copy of the WikiLeaks file server shortly after
6 which, ‘This data was found on the internet for download.’

7 “The article contains a description of a refusal by Daniel Domscheit-Berg to lawyers
8 acting for Assange to hand back to the materials again. The above summarises the
9 background and circumstances for which I and colleagues have been made aware and which
10 we considered appropriate to outline for public consideration. I believe it to have been the
11 knowledge before the publication date of our intended publication of the article that led to a
12 telephone call to me from Julian Assange in the week preceding August 25th 2011. I
13 confirmed the account in the article is correct, that the purpose of the telephone call with Mr
14 Assange was as a result of what he had learned was the imminent publication by Der Freitag
15 and as the article described, ‘The reason for the call and its emphasis by Assange was that he
16 feared for the safety of informants.

17 “I, in turn, as was reported, assured Assange that Der Freitag would not publish any
18 information that could be dangerous to American informants and asked him to comment
19 publicly on the events described in the article, which invitation he declined. It was as a result
20 of that exchange the comment was made in the article, “The concern of the WikiLeaks’ boss
21 was not entirely unjustified” and in the phrasing in the sentence that follows relating to Der
22 Freitag’s discovery of the existence of the file and of the existence of the password required
23 to decrypt the file”. Madam, that is the statement

24 JUDGE BARAITSER: Thank you very much indeed. That has been read. Any other
25 statements that can be read by way of agreement?

26 MR FITZGERALD: My Lady, not that I know of at the present. My Lady, could we adjust
27 the 72 hours to five days, please, because we would need, obviously, to see what they say, to
28 see if there are any things we have to correct and also to take instructions. So just that slight
29 adjustment, if you could give us five days.

30 JUDGE BARAITSER: So the last date is a Friday.

31 MR FITZGERALD: Yes.

32 JUDGE BARAITSER: You can have until Tuesday, so it gives you two working days and
33 the weekend.

34 MR FITZGERALD: Oh, right, okay, thank you very much.

1 JUDGE BARAITSER: There are matters being put back and back again and again, I think ---

2 MR FITZGERALD: No, no, my Lady, I am very obliged, so just if you could just give that
3 backdate then.

4 JUDGE BARAITSER: Yes, all right.

5 MR FITZGERALD: Thank you.

6 JUDGE BARAITSER: I will make that adjustment to my note.

7 MR FITZGERALD: Thank you, my Lady.

8 MR LEWIS: Madam, we could deal with this new evidence which has arrived. I have had a
9 glance at it.

10 JUDGE BARAITSER: Good, all right. Well, let us deal with that next. So I will hear from
11 perhaps ---

12 MR LEWIS: Yes.

13 JUDGE BARAITSER: --- Mr Fitzgerald as to why he thinks it should be admitted. Just in
14 principle, do you object?

15 MR LEWIS: Absolutely, strongly object.

16 JUDGE BARAITSER: Yes, all right, I understand that. Yes.

17 MR FITZGERALD: My Lady, Leukefeld is the psychologist in the prison who gives
18 evidence as to the adequacy of the provision for medical care. We have now provided
19 evidence from Kucharski, who is a psychologist in response to Leukefeld and we have also
20 provided evidence from another expert, who is an expert, a psychologist again with
21 experience of the prison system and he can deal with the question of ADX. Otherwise, we
22 are hamstrung by the fact that it can be said, well, you do not have people with knowledge of
23 how the psychologist services work. And they also obviously respond to Kromberg. The
24 point I would respectfully make ---

25 JUDGE BARAITSER: Just pause for a moment. Ms Iveson, can you sit at the back because
26 I am sure your client wants to contact or communicate with you or somebody. Thank you.

27 MR FITZGERALD: Yes. So, my Lady, what we have respectfully submit is Kromberg and
28 Leukefeld have put in evidence. They are not being subjected to cross-examination at all.
29 We are perfectly entitled, in our respectful submission, to respond to that with people of
30 equivalent status, one of whom is a psychologist who worked in the Bureau of Prisons. They
31 need not be called for problems of time but the experts who are giving evidence can refer to
32 their evidence.

33 In these hearings, as we know from *Schtraks*, particularly when dealing with political
34 motivation and human rights, any evidence is admissible. The prosecution do not have a

1 divine right to cross-examine every witness in every situation with us having no right
2 whatsoever to cross-examine their witnesses. We respectfully submit that these responses to
3 the evidence, Haney on ADX and Kucharski, are of equivalent status to Leukefeld from
4 people with knowledge from inside.

5 We accept that there is almost certainly not going to be time for them to be called and
6 cross-examined, but Kromberg and Leukefeld are not going to be called and cross-examined
7 and *Schtraks* makes it absolutely clear that evidence of all sorts - we can even put in a
8 newspaper article by one of these people. Instead of which, we are putting a tailored report.
9 So we respectfully submit that it is perfectly proper for us to put it in and, indeed, it would be
10 unfair to the defence for us not to have an opportunity to provide evidence from psychologists
11 who would have knowledge of the inner workings of the prison system as to what the
12 situation is.

13 My Lady, that part of *Schtraks* has been approved in the case of *B* where my learned
14 friend, who was for the prosecution, conceded that the normal rules of evidence do not apply
15 in respect of political motivation and human rights. So this is material that we wish to put
16 before the court. It responds to Leukefeld that came in in August and it responds from
17 someone, it is not that easy to find, who has experience as an insider in the psychologists and
18 the Bureau of Prisons. Otherwise, we are handicapped by them saying, well, we know what
19 the system is and we know how it works and no one else does.

20 So, my Lady, we say we should at least be able to put this evidence in to show that
21 there is another side to the coin. Even if it is not called and cross-examined, it is material
22 which we would invite you to take into account.

23 JUDGE BARAITSER: Thank you. Mr Lewis.

24 MR LEWIS: My Lady, we strongly object to these further two expert reports which are on
25 the same issues which have previously been opined upon, Dr Kucharski and Dr Haney.
26 Dr Haney runs to 174 pages. He is going to be cross-examined, as I understand it, in other
27 extradition cases. My Lady, if you are to consider these, we would wish to have an
28 adjournment. We need to consider them and we would wish to file rebuttal evidence and
29 cross-examine. This will necessitate another hearing.

30 We would also need to consider whether we need an expert on the ADX. My Lady,
31 can I just ask you to go back to some sentiments we expressed in our written submissions for
32 this hearing. Can I ask you to turn up in the prosecution core bundle, I know you have read it
33 but I think it should be said in open court at paragraph 13 and following, tab 14 of the bundle.
34 I think it has got an index on the front.

1 JUDGE BARAITSER: Ah, yes. Which tab did you say, please?

2 MR LEWIS: It is tab 14, my Lady.

3 JUDGE BARAITSER: 14, thank you. Yes.

4 MR LEWIS: And this is on case management. My Lady made a series of orders that the
5 defence case was served prior to that hearing in February. My Lady will remember I fired a
6 warning shot at some oral hearing that I expected further evidence to be served and my Lady
7 said that Mr Fitzgerald had a warning on that that it should only be properly reply evidence.
8 That was months ago.

9 At the beginning of this hearing, we get another affidavit from another in exactly the
10 same position from a warden called Baird who we had not properly had the time to deal with
11 but, for the sake of dealing with it, we did not make a fuss at the beginning of this hearing, to
12 serve an expert witness on the first day of the hearing is not right.

13 When you look at the history of this case, it needs a firm hand to now be placed and
14 enough is enough. That is our absolute position. My Lady, if you are going to let in, we wish
15 to put in rebuttal evidence. We wish to cross-examine. We will have to have another
16 hearing.

17 JUDGE BARAITSER: Okay.

18 MR LEWIS: And my learned friend has misstated the position in *Schtraks*. Lord Reid said
19 in *Schtraks* under the 1870 Act that because there was a co-existing jurisdiction between the
20 Secretary of State and the court on political offence, it was only right that the magistrate
21 could see the same material that the Secretary of State saw in relation to a political offence
22 which might be very difficult to prove. In that case, and I think it is 1971 or around then
23 under the 1870 Extradition Act, he said it was only fair in that type of material on political
24 offences.

25 We do not accept on prison conditions, which is this is an expert opinion, is anywhere
26 near that category at all. But, in any event, it does not matter because my learned friend
27 needs your leave. My Lady, we, therefore, say that we strongly urge my Lady to refuse leave
28 and that should be the end of the matter. This just simply cannot go on or this case will never
29 end if the defence can just put in evidence whenever they like.

30 JUDGE BARAITSER: Thank you.

31 MR FITZGERALD: My Lady, just very briefly. The case of *B* reaffirms that evidence is not
32 bound by the normal rules and, indeed, otherwise, we could just comply with section 202,
33 which is what Kromberg has done. My learned friend says we have a right to cross-examine.
34 We have no right to cross-examine. Kromberg can say anything he wants and we have no

1 right to challenge him. We have no right to challenge Leukefeld. Leukefeld put her
2 statement in in August, Kromberg on 3 September, dealing with prisons.

3 They have no divine right to put in the last word. We wish to respond. With great
4 respect, we think we have the right to respond on the question from a psychologist. Craig
5 Haney is a psychologist and a specialist in this area. Kucharski is a psychologist who worked
6 in the Bureau of Prisons. They refute the picture that is presented as to conditions in isolation
7 both on SAMs and in relation to ADX, which are both important issues in this case.

8 We respectfully submit we are not saying that they have got to be called. We are
9 saying that our experts are entitled to refer to them as supporting material. Supposing they
10 just wrote an article, they could refer to the article and say, "I have just seen this article from
11 Craig Haney which deals with this thing. I adopt it. I have just seen this article by Mr
12 Kucharski". That is perfectly permissible because what *B* says is there is freedom in the
13 materials that an expert can refer to and that is why you can have even a press cutting referred
14 to by an expert.

15 We want our experts to feel free to refer to the expert evidence of the chief
16 psychologist who worked in the Bureau of Prisons; system and from a distinguished professor
17 of psychology, Craig Haney, who has been to ADX on numerous, numerous occasions. He
18 has personally toured and inspected conditions of confinement at ADX on a number of
19 occasions, and Kucharski who has worked within the system. We respectfully submit we are
20 entitled to respond.

21 It is not easy to get inside evidence of what actually goes on. We have done our best
22 to do it. We have got the statement from Maureen Baird. Now we have got statements from
23 psychologists. We respectfully submit it is in the interests of fairness. Of course, you are the
24 mistress of your own procedure. You can say that it can only go in in writing. We cannot
25 call them, but that is better than this area simply being left untouched. We respectfully
26 submit that it is in the interests of fairness.

27 For my learned friend to say we have the right to cross-examine, we have no right to
28 cross-examine his submissions from Kromberg and no right to cross-examine the submissions
29 from Leukefeld. They simply go in as material to which you give such weight as you choose.
30 My Lady, that is our respectful reply.

31 JUDGE BARAITSER: Thank you. Well, last night at around 10 o'clock, I received two
32 additional witness statements from the defence. Both had been signed on Monday 23
33 September. They came as a complete surprise to the court as leave had not been sought for
34 directions to be amended for time to obtain this evidence and, subsequently, to serve it.

1 This is not the first time in these proceedings that late evidence has been obtained and,
2 subsequently, served outside of directions made by the court. Dr Leukefeld's statement was
3 served on 24 August and Mr Kromberg's statement on 3 September, just before this hearing
4 began, and Ms Baird's statement in response was served on 11 September. I have previously
5 raised my concerns about this issue with both parties but decided to admit the evidence as
6 neither side raised objection to it.

7 This provided the Government with an opportunity to deal with Mr Assange's
8 conditions of detention and available treatment in the form of Dr Leukefeld's statement and
9 Mr Kromberg and a fair opportunity for the defence to respond to this in the form of Ms
10 Baird's statement. These latest statements from Mr Haney and Mr Kucharski provide yet
11 further response to the Government's evidence on these issues.

12 In my view, and as a matter of fairness, a line must be drawn so that each side can
13 know and understand the parameters of this case. The defence have been aware for some
14 time where Mr Assange is likely to be held both pre-trial and the possible conditions in which
15 he will be held both pre-trial and, if it comes to this, post-trial. They have also been aware of
16 the issues relating to Mr Assange's mental and physical health for some time. They have had
17 a fair opportunity to investigate both the conditions of his detention and the available
18 treatment at these institutions.

19 Adducing evidence during this, the third week of a final hearing, is likely to result in
20 delay. One of these statements is lengthy running with exhibits to 174 pages and it will
21 inevitably require time for the CPS to consider it, take instructions, and respond. Mr
22 Fitzgerald identifies that if these had been articles they could have been referred to but they
23 are not. These are further witness evidence commenting on facts of this case. The timetable
24 is likely to be affected with the possibility of the government wishing to adduce, rebuttal
25 evidence, and likely to cause delay.

26 In addition, expert psychiatric and psychological evidence from both sides has already
27 been heard to its conclusion, the possible conditions of Mr Assange's detention in the United
28 States including his access to treatment and the likely impact of these conditions on his
29 physical and mental health have already been explored with these witnesses. Adducing late
30 evidence on these same issues will also likely cause delay if these witnesses need to be re-
31 called and re-examined. Meanwhile, Mr Assange is in custody awaiting the outcome of this
32 already delayed hearing.

1 In my view, and for the reasons given, it is not in the interests of justice to allow
2 further evidence on this issue to be adduced by the defence and therefore I do not give leave
3 to do so.

4 Now, that takes us to 11 o'clock. Mr Summers, what is the position regarding Mr
5 Ellis?

6 MR SUMMERS: We are ready to proceed, madam.

7 JUDGE BARAITSER: Thank you very much indeed. Can we make contact please?

8 COURT USHER: Did you say Ellis?

9 JUDGE BARAITSER: Eller. I beg your pardon. My mistake.

10 COURT USHER: Good morning, Mr Eller, can you hear me?

11 WITNESS: Yes, sir, I can.

12 COURT USHER: Lovely.

13 PATRICK ELLER, Affirmed

14 JUDGE BARAITSER: Just before we start, the five or so lever arch files which relates to the
15 statements are just outside the court door. Will I need them for the purpose of this evidence?

16 MR SUMMERS: No, madam, you will not. You ought to still have a reduced version of
17 those bundles that we produced for you during opening submissions.

18 JUDGE BARAITSER: Now, ---

19 MR LEWIS: I do not have it.

20 JUDGE BARAITSER: --- I think I need to go and retrieve those then in preparation for this.

21 MR SUMMERS: Yes, it is a small ---

22 JUDGE BARAITSER: Yes.

23 MR SUMMERS: --- file that looks like this. I am sure we can provide another copy of it but
24 during the February week we produced a slimmed down version of the eight files.

25 JUDGE BARAITSER: You did and I recall that. Would you like me to try and locate mine
26 or are you going to ---

27 MR SUMMERS: Well, if you have marked your copy then I think that would be of some use
28 to you.

29 JUDGE BARAITSER: I think I did. I am going to go and find it.

30 MR SUMMERS: Thank you.

31 JUDGE BARAITSER: Mr Eller, I am just going to take a moment to make sure I have all
32 the relevant information before me whilst you give your evidence. It will not take me more
33 than a few minutes. If you will just wait there patiently please?

34 A. Yes, OK.

1 (Short adjournment)

2 JUDGE BARAITSER: Can I just check, it begins with the Metadata Forensics?

3 MR SUMMERS: Yes. That is the statement, madam, which you will also find in the core
4 volume, tab 17.

5 JUDGE BARAITSER: Thank you.

6 Examined-in-chief by MR SUMMERS

7 Q. Mr Eller, you are I understand the CEO of Metadata Forensics?

8 A. Yes, sir.

9 Q. Whose work centres around digital investigation and forensic examinations?

10 A. That is correct.

11 Q. Thank you. And you are an Adjunct Professor at the University of Maryland?

12 A. Yes.

13 Q. And you have previously served as a digital forensic expert witness instructor to the
14 US Army Judge Advocate General Law School in Charlottesville, is that right?

15 A. That is correct.

16 Q. And you served for 20 years in the US Army as a criminal investigator and supervisor
17 of investigations relating to digital evidence?

18 A. Yes. I served 20 years in the military, all the years were law enforcement based.

19 Only half of that time was in the Army criminal investigation, it never happened as a military
20 placement.

21 Q. Thank you. And until 2019, were you command digital forensic examiner at
22 Quantico, Virginia?

23 A. Yes, I was.

24 Q. All right. Have you been asked in this case to examine firstly a Jabber chat log
25 containing reference to a passcode hash conversation?

26 A. Yes, I have.

27 Q. And have you produced as your exhibit 7 – madam, your tab 7 – the 16 messages
28 within that much longer Jabber chat on 8 March that pertained to the passcode hash?

29 A. Yes, I did.

30 Q. Yes. And were you asked to examine the court martial records pertaining to Chelsea
31 Manning and tell us what you could of what they disclosed pertinent to the passcode
32 conversation?

33 A. That is correct.

1 Q. Can I ask you a couple of preliminary questions please about the conversation at tab
2 7? Firstly, did that tell you anything on its face about the use or possible use that this hash
3 cracking was going to be put to?

4 A. No, it did not.

5 Q. Did it tell you anything about the computer to which it related?

6 A. No, it did not.

7 Q. Did it even tell you that it related to a government computer?

8 A. No, it did not.

9 Q. So far as Nathaniel Frank is concerned, that is the person who is not Bradley Manning
10 in this conversation, did you see or discover anything within this Jabber chat to indicate to
11 that person that the hash cracking that they were being asked about pertained to a government
12 computer?

13 A. No.

14 Q. Do only government computers have SAM files?

15 A. No, sir. Every Microsoft computer in the world has a SAM file.

16 Q. All right. Now, you can see at 16.04.14 that the person who is not Bradley Manning
17 is provided with a hash value.

18 A. Yes.

19 Q. Can you tell us please whether that alone without the encryption key for it would be
20 sufficient to hash crack the password that was thus encrypted?

21 A. In my opinion it would not, at that time.

22 Q. All right. Let us just deal with this briefly, encryption programmes on computers take
23 a password and do what to it to obtain a hash value?

24 A. I am trying to understand the question.

25 Q. All right. So, if I have a computer and I have a password on it and I run an encryption
26 programme in respect of it, what does that encryption programme do to my password?

27 A. It hashes the password. It turns a (inaudible) password into a hash value and then
28 stores it.

29 Q. All right. So, it runs it through some sort of algorithm does it and changes it into a
30 hash value?

31 A. It does.

32 Q. And in order to change it back one would need what?

33 A. So, you would need - in this particular instance, you would need the SAM file and the
34 system file.

1 Q. And from your examination of both this conversation and the court martial records,
2 are you aware of whether Manning had the SAM file or the relevant part of the SAM file or
3 the system file?

4 A. From my review of the documentation, not the entire portion that would be required
5 was obtained.

6 JUDGE BARAITSER: Not the entire portion would be required?

7 MR SUMMERS: Not the entire portion that would be required. With that hash value, could
8 you re-construct the key necessary to change it back into a password, Mr Eller?

9 A. Not in my opinion, no.

10 Q. All right. Well, you may be asked about the specific encryption programme that was
11 running on this computer but I will leave you to answer those questions. But we are talking
12 about, just please remind us, 2010 and a computer running what version of Windows?

13 A. I believe it was Windows XP at that time.

14 Q. OK. Now, I want you to assume please that we are wrong about what you have just
15 said and that what was being discussed in your exhibit 7 was for the sake of argument
16 feasible. What I want to discuss with you today please is the use to which this hash cracking
17 could have been put. Now, firstly, Bradley Manning operated a computer within the SCIF of
18 her forward operating base, is that right?

19 A. That is correct.

20 Q. And on that computer she had her own account?

21 JUDGE BARAITSER: Sorry, presumably the two of you understand each other but the word
22 "SCIF" has not been used in documentation that I have seen.

23 MR SUMMERS: OK. I think it has.

24 JUDGE BARAITSER: Do you want to refer me to it?

25 MR SUMMERS: Can you just tell us please, Mr Eller, what the SCIF is?

26 A. It is a secure facility.

27 JUDGE BARAITSER: Can you elaborate because I do not follow?

28 MR SUMMERS: Secure facility. What does SCIF mean? S-C-I-F. I do not want to give
29 the evidence.

30 A. It stands for Sensitive ---

31 MR SUMMERS: Yes, I know what it is.

32 JUDGE BARAITSER: Can you just say what it is please?

33 A. Sorry, it is Sensitive Compartmented Information Facility.

34 MR SUMMERS: It is a secure room, madam.

- 1 JUDGE BARAITSER: Secure room?
- 2 MR SUMMERS: Secure room in which systems analysts such as Bradley Manning worked.
- 3 Q. On her computer in the SCIF, Bradley Manning had her own account, is that right?
- 4 A. Toward the domain, yes, that is correct.
- 5 Q. Her own domain account. This hash value pertained to what account please?
- 6 A. According to the documentation and from the transcript, FTP user account.
- 7 Q. FTP user. What does FTP stand for please?
- 8 A. File Transfer Protocol.
- 9 Q. Thank you. And that was another domain account on her computer?
- 10 A. No, it was not. That is a local account on the computer.
- 11 Q. So it was a local account that would have given her access to the domain?
- 12 A. No, it would not.
- 13 Q. All right. It is a local account specific to the computer?
- 14 A. Yes, that is correct.
- 15 Q. With no access to the wider network within the SCIF?
- 16 A. That is correct.
- 17 Q. All right. Now just put that to one side for a moment and go back, please, to Bradley
- 18 Manning's own domain account. By March 2010 are you aware that she had used her own
- 19 domain account to download various materials, classified materials, onto her computer?
- 20 A. Yes.
- 21 Q. In fact, the detainee assessment briefs, the war diaries, the rules of engagement,
- 22 amongst others?
- 23 A. That is correct.
- 24 Q. If Bradley Manning had managed to gain access to the FTP local user account on her
- 25 computer, would she have been able to get into the place where the rules of engagement were
- 26 located using that account?
- 27 A. So that FTP user account would not have had access to the T drive, which is stored on
- 28 the domain, so in that sense, no.
- 29 Q. Thank you.
- 30 COURT USHER: Sorry for interrupting, I think there is a feedback coming through.
- 31 MR SUMMERS: Yes.
- 32 COURT USHER: We think we might be able to cure that.
- 33 MR SUMMERS: That would certainly help me because I can hear myself now.
- 34 COURT USHER: Do you agree with that, madam?

1 JUDGE BARAITSER: Yes.

2 COURT USHER: I think we think it might be the problem at his end. He perhaps needs to
3 use earphones rather than a speaker. Could you just rise briefly while we get this sorted out.

4 JUDGE BARAITSER: Yes. It does not interrupt your flow?

5 MR SUMMERS: Yes, please. I mean I have to say it is not easy to conduct examination like
6 this.

7 JUDGE BARAITSER: No. All right. Thank you. I will rise. Can you come and find me as
8 soon as it is fixed.

9 COURT USHER: Of course, yes.

10 (Court adjourned due to a technical issue)

11 JUDGE BARAITSER: Thank you. Please carry on.

12 MR SUMMERS: Thank you, madam, I think I have had four minutes.

13 JUDGE BARAITSER: Yes, of course.

14 MR SUMMERS: Thank you. So, Mr Eller, can you still hear me?

15 A. Yes, I can. Can you hear me, sir?

16 Q. I can indeed. I am sorry this has been so disjointed, but we can certainly hear you
17 clearer now, so let us see if we can carry on. Just before we pick up where we were, can I
18 just return, please, to the hash code that we were talking about and confirm that the code was
19 never cracked at all, was it?

20 A. No, it was not.

21 Q. In fact, the discussion about cracking it was never returned to.

22 A. No, it was not.

23 Q. No. And just to be absolutely clear, what I am asking you now then is hypothetically
24 had it been possible and had it been done, what would have been the result of it?

25 A. Had it been done it would have resulted in the potential, if both parts were available in
26 full it would have resulted in a password for the FTP user account.

27 Q. All right. And again just to cover something I mentioned before, Chelsea Manning
28 already had access to her own account on her computer. That is right, is it not?

29 A. Yes, it is.

30 Q. And that was called Bradley.Manning? That was the name of that account, was it
31 not?

32 A. Yes, it was.

33 Q. All right. So just to be clear, please, we all know that Bradley Manning has
34 transitioned gender and she is known as Chelsea Manning, but where we need to refer to the

1 name Bradley because that at the time was the name she was using and the name of her
2 domain account.

3 A. That is correct.

4 Q. All right. Now, if Chelsea Manning had logged on to the local FTP user account on
5 her computer in the SCIF would that have given her access to the T drive, the network within
6 the SCIF?

7 A. No, it would not.

8 Q. And where is the active directory located, please, Mr Eller?

9 A. The active directory is the domain.

10 Q. Which is on what drive?

11 A. Well, so the active directory is what controls all the domain accounts, which would
12 provide access to the T drive and also send your email. On a local account you would not
13 have access to that.

14 Q. All right.

15 A. You would have to use your domain credentials.

16 Q. Thank you. So no email and no access to the domain.

17 A. Not from the FTP user account.

18 Q. Thank you. And could she have had access to the internet from the FTP user
19 account?

20 A. Yes.

21 Q. And are we talking about the internet in the way that we all know and use it, or are we
22 talking about something different within the SCIF?

23 A. Well, these computers were on the SIPRNet, which is the secret internet protocol that
24 is used for classified information at the level of secret and it would have provided access to
25 things, data, such as Intelink

26 JUDGE BARAITSER: Such as?

27 MR SUMMERS: Interlink.

28 A. Or Intelink.

29 Q. So the FTP user account would have granted access to the SIPRNet.

30 A. Yes. The entire network itself the military called the SIPRNet.

31 A. Thank you. And on the SIPRNet are there sites that you could go to but would
32 require a password, or a login information to proceed into?

33 A. Yes, I am sure there are.

- 1 Q. And are there, on the contrary, sites where once you are on the SIPRNet you can go to
2 without login information or passwords?
- 3 A. Yes, that is also true.
- 4 Q. All right. So far as those sites are concerned, can you name a few?
- 5 A. One would be using the Intelink to get to Intellipedia. Another would be the
6 Netcentric site.
- 7 Q. What about the Sydney site?
- 8 A. I believe that the Sydney site was on the domain side from my understanding of how
9 the network was set up.
- 10 Q. OK. So no access to that at all you think?
- 11 A. I do not believe so.
- 12 Q. All right. Now just coming back then to Netcentric and Interlink, could have got into
13 those without a password, but could she have downloaded materials from those sites without
14 possibility of being traced?
- 15 A. I do not believe so. Those sites when you download a document, or you access those
16 sites, the IP address of the computer that was accessing it at that time was tracked.
- 17 Q. And tracked using what?
- 18 A. The log files, using the IP address.
- 19 Q. And the IP address is peculiar to what?
- 20 A. The individual computers that were connected on that SIPRNet.
- 21 Q. All right. Now at paragraph 63, you call this a matter of basic technical knowledge.
22 Is that your evidence?
- 23 A. Yes.
- 24 Q. And are you aware of any information that indicates either way whether or not
25 Chelsea Manning was aware that downloads from sites such as this were tracked by an IP
26 address?
- 27 A. I do believe that I was aware on reading the chat conversation that happened with Mr
28 Adrian – I do not know how to pronounce – Lamo, in which computer address and the use of
29 IP addresses were discussed during that chat.
- 30 Q. All right. Madam, that is your exhibit M499.
- 31 JUDGE BARAITSER: Thank you. I will find it.
- 32 MR SUMMERS: And it is page 37 of that exhibit where Chelsea Manning speaks about her
33 knowledge of downloads being tracked by IP addressed.

- 1 Q. All right. Can I then dig into those general answers, please, in slightly more detail? I
2 want to ask, please, firstly about the detainee assessment briefs. If Chelsea Manning had
3 access to the FTP local user account on her computer, she could have gone to the SIPRNet
4 you have told us.
- 5 A. That is correct.
- 6 Q. And from there she could have entered the Intelink site.
- 7 A. That (inaudible).
- 8 Q. I think he said, "That is correct." Would that Intelink site require a password or a
9 login information?
- 10 A. No, there were no credentials needed for that site, no user name or passwords.
- 11 Q. And within that site was the Intellipedia database, is that right?
- 12 A. That is correct.
- 13 Q. Which contained the Guantanamo detainee assessment briefs. Yes?
- 14 A. Yes.
- 15 Q. Yes. And if Chelsea Manning had downloaded more assessment briefs from there,
16 would she have been anonymous?
- 17 A. No.
- 18 Q. Why not?
- 19 A. Because it was being tracked by the IP address to the computer that was being used at
20 that date and time.
- 21 Q. And this is information you have derived from the government's evidence in the court
22 martial, is that right?
- 23 A. That is correct.
- 24 Q. Thank you. We can look at it in more detail if we have to, but you explain, I think,
25 the evidence upon which you have based these conclusions in detail in your report.
- 26 A. Yes, sir.
- 27 Q. All right. The cables. Netcentric. So using the FTP user account, one could get onto
28 the SIPRNet with ease. Is that right?
- 29 A. Yes, that is correct.
- 30 Q. And then go to the Netcentric site?
- 31 A. Yes.
- 32 Q. Which required account or login information, did it?
- 33 A. No, it did not.

1 Q. So could Chelsea Manning have downloaded more cables from the Netcentric site
2 using this local account anonymously?

3 A. No, it would have been tracked in the same manner using the IP address.

4 Q. And to your knowledge was Chelsea Manning aware of that?

5 A. Yes.

6 Q. The war diaries were on the Sydney database. Is that right?

7 JUDGE BARAITSER: Sorry. "To your knowledge", that comes from the transcripts does
8 it?

9 MR SUMMERS: It comes from, yes, the Lamo transcript. What happened, madam, just so
10 you know is that Chelsea Manning revealed what she had done online to somebody called Mr
11 Lamo, who then contacted the authorities, and the transcript of her conversation with Mr
12 Lamo has been made public and that is what you have at exhibit 10, 499.

13 JUDGE BARAITSER: Thank you.

14 MR SUMMERS: The war diaries, please, Mr Eller, were on the Sydney database.

15 A. That is correct.

16 Q. But I think you have told us today that was accessible only via the domain.

17 A. That is correct, to my knowledge of the review of the documentation.

18 Q. Thank you. And so if Chelsea Manning had gained access to the FTP user account on
19 her physical computer, would that have given her access to the Sydney database?

20 A. Not to my knowledge, no.

21 Q. The rules of engagement were where, please?

22 A. They were on a T drive I believe, or in the Sydney database.

23 Q. And I think you have told us the T drive is the domain.

24 A. That is correct. It is connected to the domain. It is a shared drive amongst all of those
25 using the SIPRNet computers in the T SCIF.

26 Q. Thank you. And the FTP local user account would or would not have granted access
27 to the T drive?

28 A. It would not.

29 Q. OK. And ---

30 A. Or should not have.

31 Q. Why do you say should not have rather than would not have?

32 A. The architecture of that drive that is set up at that time, the administrators would have
33 been able to set up how that is accessed, but it should require the domain credentials to get
34 into the drive at that point.

1 Q. All right. Now ---

2 JUDGE BARAITSER: You mean if they had done it properly then it would have.

3 MR SUMMERS: Yes, yes.

4 Q. Is there anything that you are aware of from the transcripts in the court martial, or
5 indeed anywhere that suggests that it was not set up in that way?

6 A. No, nothing that I found.

7 Q. OK. Now your report has been the subject of response by Mr Kromberg and he points
8 out - so this is, madam, your tab 8 of the Government's bundle, paragraphs 10 to 17 in
9 particular and at paragraph 12, he points out that there were four stages that Chelsea Manning
10 needed to go through in order to extract materials from these classified databases. Firstly,
11 extracting them from the database; secondly, moving them then on to a Government
12 computer, her SCIF computer; thirdly, exfiltrating them - that is his words - onto a non-
13 Government computer; and, then, fourthly, transmitting them up to the WikiLeaks site. Your
14 evidence, as I understand it, Mr Eller, is that stages 1 and 2 could not have been achieved
15 anonymously, even through the hash value conversation to which you have been referred, is
16 that right?

17 A. That is correct.

18 Q. What about stages 3 and 4 though, exfiltrating material from your Government
19 computer onto your personal computer and then sending it to WikiLeaks, would the FTP user
20 account have enabled her to do that anonymously?

21 A. I do not feel anonymously because who was using the account in the SCIF at that time
22 on that computer would have been known by who was working on that shift at that time. I
23 also would think that in - that there were much easier ways that were available to do that if
24 you were trying not to be traced and they were available to Chelsea Manning at that time as
25 they were utilised when obtaining that hash value that was provided.

26 Q. OK. Can I just explore that answer and break it into two. So the first is anonymity.
27 If Chelsea Manning had used the FTP user account to move materials from her SCIF
28 computer onto her personal laptop and then used the personal laptop to upload it to
29 WikiLeaks, would the original download onto the SCIF computer still be traceable to her?

30 A. Yes.

31 Q. And I think the second part of your answer was that - and if I mis-paraphrase it, please
32 tell me - there were other ways already available to her to do that, namely anonymously move
33 documents from the Government computer to her own, is that what you were saying?

34 A. That is correct.

1 Q. All right. Can I ask you to look at your paragraph 64, please, where you make
2 reference to booting a Linux CD, is that what you were talking about?

3 A. Yes, sir.

4 Q. Can you please explain what you mean?

5 A. Yes, sir. So having the ability to proof a link to the distribution provides you access
6 to all of the files on the computer by bypassing all of the Windows security features and
7 allows you to mount the drive and access the files that are on the drive, and we know that that
8 was done based on that is how the sound file was accessed using that exact method.

9 Q. So, in order to accomplish Mr Kromberg's stage 3, she could have used the Linux
10 CD?

11 A. That's correct.

12 Q. That would have granted real anonymity?

13 A. Well, it would have - yes, it would have allowed her to utilise that computer without
14 having to use an account at all.

15 Q. And we know that she already had used the Linux CD in order to get the sound file?

16 A. That is correct.

17 Q. And is this something that the Government's own experts spoke about in detail in the
18 court martial?

19 A. Yes, sir, that is correct.

20 Q. Is that Mr Shaver at your Exhibit 3?

21 A. Yes, sir, that is correct.

22 MR SUMMERS: All right. OK. Madam, I am not sure how long I have left?

23 JUDGE BARAITSER: Well, I have been generous because it is a complex witness. I will
24 give you five minutes.

25 MR SUMMERS: Thank you very much. I just want then, please, to turn, finally, to the issue
26 of music and films. The local - well, let me deal with it another way. In your review of the
27 court martial evidence, did you come across Government evidence pertaining to the issue of
28 installation of unauthorised programmes onto the SCIF computers?

29 A. Yes, I did.

30 Q. Such as?

31 A. Such as media players that were used to view music, that was used to - or, excuse me,
32 used to listen to music, view videos, play games.

33 Q. All right. And, at least initially, where did the people in the SCIF upload or install
34 those programs to?

- 1 A. They were either being ran from a disk as an executable or they were on the T-drive
2 and a short cut was being utilised to access them.
- 3 Q. So the programs were on the T-drive and, in order to watch the films, the individual
4 computers had short cuts to the T-drive?
- 5 A. That is correct.
- 6 Q. And did there come a time, as you understand the evidence, where people wanted the
7 programs directly on their machines?
- 8 A. Yes, that is correct.
- 9 Q. And were they able to do that?
- 10 A. They were not able to do that on their own, no.
- 11 Q. Why?
- 12 A. Because they did not have local administrator privileges.
- 13 Q. OK. And did Mr Millerman, therefore, assist them to do it using his administrator
14 privileges?
- 15 A. Yes, he did.
- 16 Q. Now help us, please, with the FTP local account, what can you tell us about the nature
17 of that, or what else can you tell us, please, about the nature of that account?
- 18 A. I can tell you that if it is a local account, it would be assumed - if it is a local account
19 on a computer, it is using domain accounts, so it could be assumed because it is a file transfer
20 protocol account that is typically used by administrators that that account could possess
21 administrator privileges.
- 22 Q. Thank you. And, so, if somebody wanted to add unauthorised programs, films et
23 cetera, to their computer rather than the domain, how - what use would the FTP user account
24 have been to them?
- 25 A. It would provide you access to the local system to be able to install files.
- 26 Q. All right.
- 27 A. And programs.
- 28 Q. And, finally, please, Mr Eller, are you aware from the evidence that you have
29 reviewed from the court martial that days before the Jabber chat log - so the Jabber chat was
30 8 March - days before that Chelsea Manning's computer had been reimaged?
- 31 A. Yes, that is correct.
- 32 Q. Which means what?
- 33 A. That means that all of the data that was on the computer was removed and a fresh
34 operating system was placed on the computer, basically starting over.

1 Q. And would that have included any previously installed unauthorised programs and the
2 like?

3 A. No, it would not because it would be from the baseline of approved software that
4 image would install.

5 MR SUMMERS: Thank you very much. Thank you, that is all I ask for the moment. There
6 may be some more questions for you.

7 Cross-examined by MR LEWIS.

8 Q. Good morning, Mr Eller. Thank you for getting up early. I am going to ask you some
9 questions on behalf of the Government.

10 A. Yes, sir.

11 Q. Can you hear me OK?

12 A. Yes, it is a little bit lower than what I could hear previously.

13 Q. Shall I try that, is that better?

14 A. That is much better.

15 Q. OK. Just an opening remark so I understand, Mr Eller. You said in examination in-
16 chief that, as a fact, the password had not been cracked, how do you know that?

17 A. Based upon the conversation that was provided in all the documentation, I found no
18 evidence to show that it had been.

19 Q. Right. So let us be more precise, shall we. You have not seen evidence that it has
20 been cracked, you do not know whether it was cracked?

21 A. That is correct.

22 Q. Thank you. Now I just want to set the scene for the agreement to attempt to crack or
23 crack the password for FTP user. Now, Mr Eller, if we go to the extract from the Jabber log
24 in your report, and I would rather use it from your report than in tab 7 because you associate
25 names to the different parties which Mr Summers was careful not to, so if we go to your
26 report at page 10, paragraph 36, do you have that?

27 A. I do.

28 Q. Paragraph 36 is a long paragraph and you use little Roman numerals within it and if
29 we go to page 10 we have, in fact, the extract from the Jabber logs that Mr Summers took you
30 to at page - tab 7 of that bundle.

31 A. Yes, that is correct.

32 Q. And, in fact, you - if we look at (xiii) you have agreed that, in fact, Nathaniel Frank is
33 Mr Assange?

34 A. Based on my review of the entire documentation, yes.

1 Q. Thank you. So, if we just look at this, we see the conversation on 8 March and we
2 pick it up and I will use their names because nobody is, in fact, Chelsea Manning, that is
3 right, is it not?

4 A. Yes, it is.

5 Q. So we have got - and forgive me, if I just use her surname, "Manning" at the top of
6 the page, Manning to Assange, "Any good at LM hash cracking?" Assange, "Yes". And,
7 drop down a couple of lines at 16.02, Mr Assange, "We have rainbow tables for LM". And,
8 then, again, Mr Assange, we see at 16.10.19, "It's from a SAM", so a SAM file, that is a
9 security access manager, is it not?

10 A. Yes, which is on every Windows computer.

11 Q. Absolutely. Manning says, "Yeah". Mr Assange, "Passed it to our LM guy".
12 Manning, "Thanks. And a little later, two days later on the 10th of March, Mr Assange sends
13 a text, "Any more hints about this LM hash?" But Manning does not seem to reply, so half
14 an hour later, Mr Assange says, "No luck so far." That is correct.

15 A. Yes.

16 Q. I just wanted to set the scene.

17 A. Yes.

18 Q. Now, the hash Mr Manning sent came from the SAM file and if we look at your
19 paragraph 36.9, which is the page before, actually on page 9, we can see the screenshot of the
20 hex dump. And we see the hexadecimal there which has been highlighted in black and
21 against user FTP user and that is, in fact, we can see the same hexadecimal that was texted in
22 the Jabber account, so if we just flick over to the middle of the Jabber texts, you will see we
23 have got the same hexadecimal. It begins with 80C and ends with 351C, which is the same as
24 the dump which has come from the SAM file. I am just setting the scene here, Mr Eller, so
25 you understand.

26 A. That is correct.

27 Q. I just need to do some basics. Now, you will know this inside out, so I am going to
28 try and take it slowly and correct me if I get it wrong about passwords. So, let us just start at
29 the beginning. What does LM stand for?

30 A. LAN manager.

31 Q. Thank you. Do you know when it was introduced?

32 A. Not off the top of my head I do not.

33 Q. Well, let me help you. 1990.

34 A. (Inaudible).

- 1 Q. 1990. Would that sound about right?
- 2 A. Yes.
- 3 Q. And to create a LAN manager, an LM hash, Windows does a number of things and I
4 will attempt to run through them and see if you agree. This is the LM hash, not LMNT. You
5 are clear, yes?
- 6 A. That is what they did, correct.
- 7 Q. Yes. So, it is an LM hash. First of all, the user can put in an alphanumeric password
8 in plain text upon to 14 characters. Do you agree?
- 9 A. Yes.
- 10 Q. Then, that password is in fact, the computer in Windows converts it to upper case,
11 correct?
- 12 A. Yes.
- 13 Q. Then, the password in upper case is converted to ASCII characters, correct?
- 14 A. Yes.
- 15 Q. And then, I will use the correct phrase, but I will explain it, because if the password is
16 less than 14 characters, it is something called null-padded so what that means is if it was only
17 seven characters, you had another seven zeros to it to bring it up to 14. That is right, is it not?
- 18 A. That is correct. It would add the additional zeros to the ---
- 19 Q. Yes, so if your password was ten characters long, it would null-padded by adding four
20 more zeros, for example.
- 21 A. Correct.
- 22 Q. And just so we all understand, one character is one byte.
- 23 A. Yes.
- 24 Q. Good. So, then what the computer does with its 14 bytes is it splits it in half into two
25 seven byte chunks. That is right, is it not?
- 26 A. That is correct.
- 27 Q. And then, what it uses is what is called the DES algorithm. Do you know what that
28 stands for by the way, Mr Eller, DES algorithm?
- 29 A. Yes, it is the ---
- 30 Q. It is not a memory test, data encryption standard.
- 31 A. Yes, data encryption. I have it as data encryption scheme, but yes, data.
- 32 Q. Because the next one up is the AES. It used to be DES, it is now AES encryption
33 which is the advanced encryption standard. So, we use the, and it is a fairly old system, I

1 think it was begun by Richard Nixon. He issued a competition to find a DES algorithm. It
2 has been about a long time. Yes, I see you nodding. I am sorry, Mr Eller.

3 A. Oh, sorry, yes. I did realise that was a question.

4 Q. It is my fault. So, we have got the two halves, the two seven byte halves, and then we
5 run the DES key to encrypt them. It is on a set value and we need not worry about that, and
6 that produces hash 1 and hash 2 because with DES 17 ---

7 A. That is correct.

8 Q. And the other seven byte and we add the two hashes together to make a 16 character
9 LM hash.

10 A. 16 character.

11 Q. It is. There are two parity bits added, two parity bytes, so it is 16 characters.

12 A. That is correct, that is correct.

13 Q. And so that is what we are talking about, the LM hash, so the password which the
14 user puts in is converted by that system into an LM hash. Now, is it not right that Microsoft
15 realised it is fairly easy to break an LM hash by brute force attacks, dictionary attacks or
16 rainbow tables?

17 A. Today, yes.

18 Q. Thank you. And just so we understand, a brute force attack is really we just generate
19 all possible passwords, calculate their hashes, compare them to the hash we have got on the
20 SAM file and see what it is. That is a computer intensive brute force attack.

21 A. That is correct.

22 Q. And if we were doing a dictionary attack, we have already got a database of every
23 word in the dictionary which we have hashed and then we see if that comes up, equates to
24 any of the hashes in the SAM file.

25 A. That is correct.

26 Q. And the final way of doing it is rainbow tables which is where we have set out logical
27 tables of hashes in order to get there more quickly.

28 A. That is another way, yes.

29 Q. And in fact, if we just look back into your statement and we look at page 10 and look
30 at the text which went between Mr Assange and Ms Manning and we pick it up fifth, sixth
31 item down, Mr Assange at 16.02:23, "We have rainbow tables for LM." So, that means that
32 Mr Assange was saying, "We've got rainbow tables which we can use to crack LM." That is
33 right, is it not?

34 A. That is what it sounds like, yes.

1 Q. Thank you. Now, your evidence was very carefully worded on this, because contrary
2 to what may have been said to the court on other occasions by Mr Summers, you do not say it
3 is impossible to crack the password. At paragraph 34, you quite carefully say, if we could
4 look at your paragraph 34, final sentence, you are careful about this, hidden in the body of
5 your report, you say, final sentence, “At the time, it would have not been possible to crack an
6 encrypted password hash.” That was your opinion.

7 A. That was my opinion, yes.

8 Q. Yes, so I want to see if you might change that opinion by showing you one or two
9 items. Now, if we just have a look at the small clip which was sent to you, 18 page clip, and
10 first of all, I just want to show you at page 4 of that, on the internet, it is security advisory.
11 Pen testers use this type of website.

12 A. Mmm hmm.

13 Q. And just, a pen tester is a penetration tester, not someone who writes. That is right, is
14 it not, Mr Eller?

15 A. That is correct.

16 Q. So, a pen tester and vulnerability in Windows in NT. NT is a predecessor of
17 Windows XP.

18 A. That is correct.

19 Q. And we agree with you the computer that Ms Manning was using was, in fact, using
20 Windows XP. Now, if we just look at this, this is dated 1999. Do you see that?

21 A. Yes I do.

22 Q. And this, I have highlighted it in yellow if you have coloured copy in front of you,
23 overview, “SysKey does not fully protect the SAM from offline attacks, specifically
24 dictionary and brute force password cracking are still possible, even when SysKey is enabled
25 and the attacker is not in the possession of system key.”

26 If we go over, because my understanding of your evidence was that the LM hash itself
27 absent the SysKey would have made it, at that time, 2010, in your opinion impossible to
28 crack. Is that right?

29 A. Yes.

30 Q. So, if we then just move on in this, go over the page to page 5 and deal with the
31 analysis, it sets out, “All we have is the encrypted obfuscated password hashes.” Now, that is
32 exactly the same as what was sent by Mr Assange, by Ms Manning to Mr Assange. Do you
33 agree?

34 A. Yes.

1 Q. And the rest of the article then sets out in matters which are far beyond me, but
 2 probably you understand, how the mechanics work and then, if we go to page 8 of that
 3 bundle, we see that Windows – this is, in fact, it is much more recent, but it deals with the
 4 fact that SysKey utility is no longer supported because of weaknesses and if we just move in
 5 the bundle – so that is Microsoft’s own announcement and if we just go to an article on
 6 hashing, it is page 10 and I just want to show you passage at page 11 of that bundle, at the
 7 bottom of the page where it says, “Window hashing basics. You really need to know the
 8 following three basic concepts before extracting Windows hashes. LM has,” which is what
 9 we are talking about, “LM hash is an old and weak Windows technique for creating hash
 10 passwords which has been disabled by default in current Windows environment. Can still be
 11 enabled manually on current systems.”

12 If we go over the page to page 12, “The reason why LM hash is easier to break is
 13 because passwords are not case sensitive.” Do you remember we went through the system,
 14 you have to put it into upper case first? “Password length is a maximum of 14 characters and
 15 more importantly, because it breaks the text into two halves of seven characters before
 16 hashing them separately and concatenating.” That means just adding them together. “So, if
 17 your password is less than seven characters it should be a breeze for a hacker to guess the
 18 password.”

19 Now, am I right in thinking, Mr Eller, that is why we were always told you used to
 20 have to have a password of at least eight characters in length because then you would get into
 21 the second set of bytes of the DES encryption.

22 A. Yes, military passwords require nine steps or much longer than that.

23 Q. Sure. But they were still, if they are caught by LM, there was a maximum of 14
 24 characters?

25 A. That is correct.

26 Q. Thank you. And just finally on this point, just take you to page 15, there is a recent
 27 article, well, I say recent, April 2016. This in fact tells you how to crack both LM and the
 28 more difficult Windows 10 LMNT passwords. Now, if I just show it to you so you
 29 understand what I am talking about before I ask the question. So, we see at page 15,
 30 “Introduction”, it in fact does not even go as far back as Windows XP but it says, “Within the
 31 family of Windows Operating Systems, mostly use Windows 7, Windows 8, and the latest
 32 Windows 10, the security account manager database was used to store user’s login
 33 information or passwords encrypted by NT hash. It was previously LM hash.”

1 And then on the second column on page 15 it talks about the security account
2 manager, and then at page 16 in section 6 on the right hand side, “Obtain account information
3 and clear password from SAM database”. It then goes through what exactly you need to do if
4 you are technically able.

5 And then if we go to page 17 at (c), “Cracking Windows Passwords, There are a few
6 ways to crack Windows passwords. They are mostly ways of brute force, dictionaries”, et
7 cetera, and just dropping down to the conclusions, “In this paper we first analysed the
8 structure of SAM, discussed the encryption algorithm used in Windows”, then makes an
9 experiment to show how to obtain the user account information from SAM database to crack
10 the account password. “By using the method what I mentioned above, we can crack almost
11 all the Windows account passwords including Windows 7, Windows 8, and Windows 10,
12 which is the latest Operating System.”.

13 Now, I accept, Mr Eller, that is 2016. I accept that is 2016.

14 A. Yes.

15 Q. But what I want to go back to is your paragraph 34 when you say in your opinion at
16 the time it would not have been possible to crack an encrypted password hash. Would it be
17 as high as that given the matters I have just shown you, would it not be better to say it might
18 not have been possible or it might have been very difficult? Can you honestly still hold the
19 opinion that it was impossible in 2010 to crack that password?

20 A. I would like to explain that if I may?

21 Q. Certainly.

22 A. So, the 1999 piece that you provided in your clip appeared also in Microsoft’s
23 security bulletin, MS99-056, which was also posted December 16, 1999, which provided a
24 patch for that security vulnerability regarding the SysKey and it stated that it strongly puts the
25 hash password information in the same database in order to protect it against offline password
26 cracking attacks. And it says the patch eliminates the (inaudible) vulnerability and makes it
27 computationally infeasible to mount a brute force attack against the SAM database when
28 SysKey has been unblocked.

29 Q. Right. Rather than debate the issue with you, Mr Eller, can we at least agree on this?
30 In any event, the participants of the chat we have looked at, Miss Manning, and Mr Assange,
31 thought they could crack the password and agreed to attempt to crack the encrypted password
32 hash. That is what the Jabber ---

33 A. The hash for – a hash was provided and they said they had rainbow tables for it. It
34 never stated where that hash was from and I also – I did not finish my previous point that the

1 government's own expert witness in the court-marshal stated that that was not enough for
2 them to actually be able to do it which was what I gave the court-marshal hearing.

3 Q. Right. But are you aware Mr Assange has publicly boasted he is fantastic hacker?

4 A. I am not.

5 Q. And would you agree that a skilled hacker can sometimes break even the strongest
6 encryption?

7 A. Yes.

8 Q. Thank you. Right, let us just move to something else then. Next topic.

9 A. But that is also when all the data is provided.

10 Q. Let us just move to the next topic which is about whether the FTP account could be
11 useful in hiding evidence of criminal activity. Now, your report points out that most of the
12 databases on the SIPRNet, that is the S-I-P-R net will only identify a user by an IP address.
13 Now, we agree with that. That is correct, is it not?

14 A. Once that is utilised, yes, that is correct.

15 Q. And just so there is no doubt, the S-I-P-R net, we just colloquially call it the SIPRNet,
16 do we not?

17 A. Yes.

18 Q. The NIPRNet is the non-classified net. This is the SIPRNet.

19 A. That is correct.

20 Q. And ---

21 A. That is correct.

22 Q. --- there was a slight slip if I may say when Mr Summers was talking about the access
23 to the internet, the SIPRNet is in fact an infranet, is it not?

24 A. It is.

25 Q. Thank you. And an infranet means it is completely closed. There is an air gap
26 between the SIPRNet and the internet for security reasons.

27 A. Yes.

28 Q. Thank you.

29 A. Yes.

30 Q. So, we have already agreed that an IP address will only identify a specific computer,
31 not an individual user. You have already said that and we agree.

32 A. That is correct. Yes.

33 Q. And on a specific computer you can log on to that specific computer either as a
34 domain user or as a local user. That is correct, is it not?

1 A. That is correct.

2 Q. Right. And do you accept that the evidence at Miss Manning's trial was that she
3 logged on as a user on the computer in her name and with her domain user profile
4 "bradley.manning"?

5 A. Yes.

6 Q. And in fact the user profile "bradley.manning" account contained forensic evidence
7 that was used against her at her trial.

8 A. That is correct.

9 Q. And just to bring that to life in a small clip I have done, for instance, at Miss
10 Manning's trial the government offered evidence purporting to show that "within the user
11 profile "bradley.manning" there was a folder called "bloop" and within there, there were
12 files.zip and the zip files contained 10,000 complete Department of State cables.". If we go
13 to page 1 in this, what I have done, what I have done, Mr Eller, because you produced a lot of
14 the transcripts from the Manning trial it is a bit unwieldy. So, I have just extracted some of
15 your exhibits. You follow? This is a page, this is page ---

16 A. Yes.

17 Q. --- 8,347. I have repaginated it page 1 but we do not, just so you understand, if you
18 want to look at your original exhibit you are more than happy, it comes from, well, we have it
19 as volume H, file 1 of 5, but you recognise it? You can flick it up if you want but that is your
20 exhibit. Have you got it?

21 A. Yes, I have the piece from your clip.

22 Q. Thank you. Well, I just want to make good that point I have just put to you. Let us
23 just read it. This is from Miss Manning's trial. Picking up at line 6, question, "Did you find
24 any" – second sentence- "Did you find any files that seemed to be at odds or at least were
25 pertinent to the investigation as you knew at that point?" "Yes, sir.". "What did you find?".
26 "Within the user profile "bradley.manning", there was a folder called "bloop" and within
27 there, there were files.zip. The files.zip contained 10,000 complete Department of State
28 cables.". So, that was forensic evidence found in the user profile "bradley.manning". That is
29 correct, is it not, Mr Eller?

30 A. Yes. But only in this.

31 Q. Well, this is the, you have been relying on all the transcripts.

32 A. Yes.

33 Q. Let us just go to the next ---

34 A. The reason I ---

1 Q. --- let us just to go the next one which is my bundle page 2, exhibit page 8,354, and
2 what we see here is there were two files in the Windows 10 folder. I am just going to read
3 just to show you. In fact, I have got these in the wrong order for some obscure reason. The
4 Windows 10 folder is the next one, it is my bundle page 3, exhibit page 8,355. And under the
5 “bradley.manning” user profile, in a temp file, there were found Department of State
6 information. And then just going back to our page 2, the one I originally took you to, 8,354,
7 there is a little script called “wget”, w-g-e-t. And is it right that the “wget” script was found
8 in the “bradley.manning” user profile?

9 A. That is correct.

10 Q. And just so we all understand, a script is a tiny little programme, in fact, which Miss
11 Manning wrote in order to fetch all these files because you cannot just download 10,000 files
12 very easily so what you do is you write yourself a little script and it automatically downloads
13 all the files. That was the purpose of “wget”, was it not?

14 A. Yes, but it is – it is a programme that you can download, yes.

15 Q. And it was found, as we say, in her profile. Now, would you agree with this. You
16 have read all the Bradley Manning trial stuff. There was a great deal of testimony at the
17 Manning court martial about a Regedit script that Ms Manning allegedly used to automate the
18 process of bulk downloading the State Department cables from a Net-Centric Diplomacy
19 database, was there not?

20 A. Yes, there was a lot of discussion on that.

21 Q. And one of the ways that the Government tied the Regedit script to Ms Manning was
22 through evidence contained on the bradley.manning domain user profile, that is correct?

23 A. Yes.

24 Q. And, in fact, if we look at - well, I am just on page 2 of my little clip, it is talking
25 about the prefetch files which run on the locations within the profile. Now will just put this
26 to you, Mr Eller, but I could not find the pages in your exhibits but they are mentioned in Mr
27 Kromberg’s evidence. Madam, for your note, that is the prosecution core file, tab 8, Mr
28 Kromberg’s third supplemental declaration. I have been calling it GK4, page 6 and 7,
29 paragraphs 12 to 14. Within that, Mr Eller, there are some other examples of using in a
30 forensic manner the Bradley Manning domain profile. For example, we will see at the
31 bottom - if you have it, the not I will just read it to you, 10,638, “Did you find a folder in
32 Private First-Class Manning’s SIPR computer that contained a batch file and associated files
33 pulled using we get?” “I did”. “Where did you find that?” “Within the Bradley Manning
34 user profile”. Now I do not actually have - I do not I think you exhibited it in this case pages

1 10,638. I could not find it. I might be wrong, but just for completeness I am putting that to
2 you.

3 A. I am yet to find that page.

4 Q. OK. Well, I think we can just leave it for the moment because the point I want to
5 make to you, would you agree that the ability to interrogate Ms Manning's user profile, namely
6 bradley.manning, was of considerable forensic use in proving what she had done?

7 A. Yes.

8 Q. OK. Now if you use, if you access the same computer or use the same computer
9 using a local unidentified account such as the FTP user account, you could hide all that
10 activity without it being traceable to your domain user profile account, could you not?

11 A. That is correct.

12 Q. I want to mention this, you talk a lot about the databases from which the classified
13 documents were stolen, but is it not true that the computers with which the documents are
14 stolen can also be a key source of forensic evidence?

15 A. Yes ---

16 Q. Yes.

17 A. --- that is correct.

18 Q. Yes. So does it come to this, Bradley Manning accessed and exfiltrated classified
19 documents using an account on the SIPR computer. I think that is - I am making a statement.
20 I think you will find that is correct?

21 A. Yes.

22 Q. Yes. That that account was assigned to her, yes? And that account ---

23 A. Yes.

24 Q. --- was the bradley.manning account?

25 A. Yes.

26 Q. But if she had used the FTP account, she could have accessed, for example, the Net-
27 Centric Diplomacy database from the FTP account rather than from the bradley.manning
28 account, that is right, is it not?

29 A. That is correct.

30 Q. Yes. And, in fact, you make that very point in your report at paragraphs 39, 42 and
31 55. So ---

32 A. Yes.

33 Q. Yes. And any forensic evidence of activity on the FTP account would not be visible
34 in an image of the bradley.manning user account, would it?

- 1 A. It would not. It would be available in the image of the computer itself.
- 2 Q. Exactly.
- 3 A. Which is contained within that.
- 4 Q. And the FTP user account was not assigned to Bradley Manning, was it?
- 5 A. No, it was not.
- 6 Q. So we would say, would you agree with this, there is a clear and tangible benefit for
7 Ms Manning to access the databases through an anonymous FTP user account?
- 8 A. If that is what she was intending to do, yes.
- 9 Q. Thank you. I have got to move to my next topic, which is whether the account would
10 have been useful in downloading other things, the FTP account. Now it is right, is it not, Mr
11 Eller, that you have not seen the Government evidence against Mr Assange in this case?
- 12 A. That is correct.
- 13 Q. And your report says it was common for soldiers to crack administrative accounts so
14 they could circumvent rules against downloading music and movies? I think ---
- 15 A. That is correct.
- 16 Q. Yes. And, in fact, you say that at paragraph 14, if we just turn it up, 14, in your bullet
17 points. And you have already said it in-chief, and you were taken to your paragraph 73, that
18 there is evidence in the court martial transcripts that shows there were other occasions when
19 soldiers cracked the administrator password in order to install programs. Now ---
- 20 A. That is correct.
- 21 Q. Your paragraph 22, the hash we are talking about, you say it was, in fact, a
22 Government computer and you do say it was the Manning one, contrary to what may have
23 given the impression in-chief because you say this refers to the password hash which
24 Manning sent - we have looked at that - which was for an FTP user account on one of the
25 computers which Manning used. Now ---
- 26 A. Right, and I refer to that based on the affidavit by David Brown from the Federal
27 Bureau of Investigations ---
- 28 Q. Sure, but that ---
- 29 A. --- who stated that, yes ---
- 30 Q. But that is the Government ---
- 31 A. And what was stated by the Government on it.
- 32 Q. Yes, that is the Government case on it. Now it does appear, or has appeared in this
33 court, that one defence theory is that Ms Manning wanted to --- could have wanted to have
34 cracked the FTP account so she could override rules against downloading music and movies

1 and that is - you have made that same point as a speculation at your paragraphs 79 and 82,
2 that is right, is it not?

3 A. Yes.

4 Q. Now ---

5 A. Yes.

6 Q. Now you said, if I may say so, Mr Eller, rather surprisingly, because I could not find it
7 in your previous report, you said in-chief that the local account, that is the FTP account, it
8 could be assumed it had administrator privileges. You said that a few minutes ago to a
9 question to Mr Summers.

10 A. I did.

11 Q. Where in your report do you say that the FTP account had administrator privileges?

12 A. I cannot say that it (inaudible) but when you set up a computer on a domain, local
13 accounts are the account that would contain administrator privilege.

14 Q. Yes, but the point ---

15 A. So that is a clarification.

16 Q. But the point is here, Mr Eller, we do not want this to pass by, by sleight of hand, you
17 do not know and we would say we have not looked - we would say it is almost certain it did
18 not that the FTP account had administrator privileges?

19 A. I do not understand how you can say that you are almost certain it did not without
20 looking at the Government's evidence and referring back again to the Government's digital
21 forensic expert who discusses the FTP account also does not state that it did or did not.

22 Q. Well, the trouble ---

23 A. In his testimony.

24 Q. The trouble was ---

25 A. That was the content.

26 Q. The trouble was it got reimaged, which wiped off ---

27 A. It did.

28 Q. --- the position, did it not, Mr Eller?

29 A. I do not - I do not know that it did.

30 Q. All right, well ---

31 A. I do not know that because, what I am explaining is, according to the Government's
32 own expert was that an FTP user account was another local account and during the
33 examination, which they had the computers to examine of computers that were connected to
34 the .22 and .40, they did not explain if that account, at least in the court martial, whether that

1 account was still present on that media and that what the access level was. They did not ---

2 Q. OK.

3 A. --- they did not - they did not - so you assume that they did not.

4 Q. But let us understand why it is important, Mr Eller. The reason it is important, and no
5 doubt the defence will want to make this submission opposite to the Government's
6 submission, because if it did not have local administrator privileges it could not be used to
7 install programs and download music, et cetera, could it?

8 A. That is correct.

9 MR LEWIS: So it is essential to know. Thank you. Right, would you just give me one
10 moment, my Lady.

11 JUDGE BARAITSER: Yes, of course.

12 MR LEWIS: Thank you very much indeed, Mr Eller. I do not ask anything else.

13 JUDGE BARAITSER: All right, thank you.

14 MR SUMMERS: Thank you. May I have 10 minutes to take instructions.

15 JUDGE BARAITSER: Yes, of course. Can you come back at 10 to and you might complete
16 in 10 minutes after that.

17 MR SUMMERS: Yes.

18 JUDGE BARAITSER: All right, 10 to then, please. Sorry, Mr Eller, just if you will bear
19 with us, instructions need to be taken. Back in 10 minutes. You are welcome to leave the
20 room. Please make sure you are available by 10 to 1. Thank you.

21 (Short adjournment)

22 JUDGE BARAITSER: You need more time, Mr Summers?

23 MR SUMMERS: Please, madam, yes.

24 JUDGE BARAITSER: Yes, I appreciate. It is a difficult area. Now, Mr Eller, are you
25 available at our time, 2 o'clock, in about an hour and 10 minutes?

26 WITNESS: Yes, your Honour, I am available all day.

27 JUDGE BARAITSER: All right. I am going to give Mr Summers a little bit more time with
28 his client, which will mean going over the luncheon adjournment, so I am going to ask you to
29 come back at 2 o'clock then, please.

30 MR SUMMERS: I think Mr Fitzgerald for the prosecution does not object.

31 JUDGE BARAITSER: You do not object.

32 MR FITZGERALD: No, I entirely agree with my learned friend.

33 JUDGE BARAITSER: Really. Perhaps we can carry on in this manner for the rest of the
34 hearing.

1 MR FITZGERALD: I am in this unaccustomed position.

2 JUDGE BARAITSER: Can you let Mr Lewis know at 2 o'clock then, please. Thank you
3 very much indeed.

4 MR SUMMERS: Thank you.

5 JUDGE BARAITSER: Thank you.

6 MR SUMMERS: Thank you, madam.

7 (Luncheon adjournment)

8 JUDGE BARAITSER: I understand Mr Lewis is not coming back.

9 MR SMITH: I am so sorry, my Lady, I should take my mask off. I am afraid not, but I am
10 here and happy to continue.

11 JUDGE BARAITSER: All right. Have you instructions now, Mr Summers?

12 MR SUMMERS: Yes, thank you.

13 JUDGE BARAITSER: Thank you very much for re-joining us, Mr Eller. You remain on
14 oath as before. I am going to hand you back to Mr Summers in case he has some more
15 questions for you.

16 MR SUMMERS: Thank you.

17 Re-examined by MR SUMMERS

18 Q. Mr Eller, can I just take you please to paragraph 36 of your report, or just remind you
19 of the point that was made in relation to it and, in particular, subparagraph 11, talking about
20 the Jabber log. Let us look at page 10, the log itself attributes one of the users the name
21 "Nobody". We know that is Chelsea Manning, do we not?

22 A. Yes.

23 Q. Because she says as much in her court martial. Nathaniel Frank, however, were you
24 asked to investigate whether Nathaniel Frank could be properly attributed to anyone in
25 particular?

26 A. No, I was not.

27 Q. Did you search out or look at evidence on the issue of attribution of who that might
28 be?

29 A. No, I did not.

30 Q. So when on pages 9 and 10 you used the word "Assange" for Nathaniel Frank, had
31 you seen evidence that linked Mr Assange to that identity?

32 A. No, I did not.

33 Q. So why use the name "Assange", please?

34 A. Because it is provided throughout the documentation.

- 1 Q. Thank you.
- 2 A. Or what was assumed, forgive me.
- 3 Q. Yes. So are you aware, for example, of who sat at the other end of whatever
4 computer terminal Nathaniel Frank was using?
- 5 A. No, of course not. I could not have that personal knowledge.
- 6 Q. Or whether it was even the same person each time?
- 7 A. No, sir.
- 8 Q. Or whether Nathaniel Frank's IP address has been investigated?
- 9 A. I do not know that, sir.
- 10 Q. All right. Thank you. Can I then just move back then, please, to your paragraph 34
11 because you were asked a number of questions about it. Some general questions first. At the
12 time, the time being 2010, your report said it would not have been possible to crack an
13 encrypted password hash, such as the one Manning obtained. Do you stand by that
14 assessment?
- 15 A. Yes, I do.
- 16 Q. Thank you. You were taken to a prosecution article from 1999 that suggested that
17 vulnerabilities within the encryption software had been exposed, but you told us that that had
18 been solved by Microsoft in 1999.
- 19 A. That is correct, sir.
- 20 Q. And that their assessment was that it was computationally infeasible for a hash code
21 such as that now to be cracked.
- 22 A. That is correct, that is what it said.
- 23 Q. And I think you told us about a patch that had been put in place by Microsoft to
24 achieve that computational infeasibility.
- 25 A. That is correct.
- 26 Q. And that software remained in place, did it, on all Microsoft Windows applications
27 for the next two decades?
- 28 A. That is also correct.
- 29 Q. And by computational infeasibility, would a skilled hacker be able to perform
30 something that is computationally infeasible?
- 31 A. I would assume no.
- 32 Q. Thank you. So without the relevant system file information, or the relevant SAM file
33 information, do you resile in any way from your assertion that it would have been impossible
34 at that time to do what the prosecution allege?

- 1 A. No, I do not change my opinion and my opinion again aligns with the opinion of the
2 government's expert in the court martial.
- 3 MR LEWIS: What the prosecution allege is an intent, so perhaps we need to be careful about
4 what the prosecution allege and the conduct which has been put to this witness.
- 5 JUDGE BARAITSER: Yes, I think that is a fair point, Mr Summers.
- 6 MR SUMMERS: And it was in 2016, was it, that doubts began to emerge about vulnerability
7 of the Microsoft software, such that it was removed from service in 2019?
- 8 A. That is correct.
- 9 Q. Yes, but the period we are talking about is 2010, and that is the time period ---
- 10 A. Yes.
- 11 Q. --- that you are talking about when you assert that which you do at paragraph 34?
- 12 A. Correct. That is what I stated at that time.
- 13 Q. Thank you. Now, moving to the next area, that is what would have happened had it
14 not been impossible, you were asked about the SIPRNet and asked to confirm that it was an
15 intranet, not the internet.
- 16 A. That is correct.
- 17 Q. That is right, is it not? How many people have had access to this intranet?
- 18 A. Anyone, I would imagine, who has been tasked with using a secret computer
19 throughout the US government and military.
- 20 Q. Just by way of numbers, how many people roughly are we talking about?
- 21 A. I do not know. Probably millions.
- 22 Q. Thank you.
- 23 JUDGE BARAITSER: Probably in the millions?
- 24 MR SUMMERS: Yes.
- 25 Q. Now, one of those people, of course, was Chelsea Manning in 2010, and we know ---
- 26 A. That is correct.
- 27 Q. --- that logging on with her domain account, Bradley.Manning, she had by the time
28 we are talking about already downloaded 10,000 cables?
- 29 A. That is correct.
- 30 Q. Amongst other things. And to do that she had used the programme Wget.
- 31 A. That is correct.
- 32 Q. Is Wget an unusual programme?
- 33 A. It is not part of the baseline, but it is used to capture data from websites.

1 Q. Now, if Chelsea Manning had cracked the hash code and managed to log in to the
2 FTP local user account, she would not, as I understand it, have had access to any domain
3 areas, would she?

4 A. That is correct.

5 Q. So no T drive, no Sydney database.

6 A. That is correct.

7 Q. Would she have had access to Wget?

8 A. Not – with Wget, that would be in her Bradley.Manning profile name. Now had they
9 had access to – yes, if you had access to the FTP user account – maybe I need to understand
10 the question better.

11 Q. If she had logged in to the FTP local account, would Wget have been preinstalled in
12 that account?

13 A. It would not be preinstalled, but if that account had administrator privileges you
14 would be able to access the programme later on in that computer anywhere.

15 Q. And we know, because Mr Lewis confirmed, that everybody agrees that the activities
16 on that FTP local account accessing Intelink and the like would be traceable via IP address.
17 Yes?

18 A. That is correct.

19 Q. That is your evidence and ---

20 A. Yes.

21 Q. --- you understand that that is agreed. And the IP address ---

22 A. Yes, I do.

23 Q. --- would identify the specific computer that was being used?

24 A. That is correct.

25 Q. From your review of the court martial transcripts and evidence, how many people
26 used each SCIF computer terminal?

27 A. From my review of the evidence there was a day shift and a night shift and there were
28 two individuals that were using each computer.

29 Q. So the IP address logs, such as we have seen at your exhibit 10 and 11, would narrow
30 us down to the computer, the machine, that was being used and it would give us a time,
31 would it not?

32 A. Yes, it would.

33 Q. It would specify the time.

34 A. Yes, it would.

- 1 Q. From which ---
- 2 A. That is correct.
- 3 Q. --- one could then work out presumably who was on shift?
- 4 A. That is correct.
- 5 Q. All right. Now, you have agreed that using the FTP user account would have
6 provided some anonymity for the task of exfiltrating materials from the government machine
7 onto a non-government machine, stage 3 of Mr Kromberg's analysis?
- 8 A. Yes, that is correct.
- 9 Q. Now that anonymity, was that anonymity that Chelsea Manning did not already have
10 with the Linux CD?
- 11 A. No, the capability could have been provided by the Linux CD as well.
- 12 Q. So the advantage that ---
- 13 JUDGE BARAITSER: Sorry. The capability could have been provided by?
- 14 MR SUMMERS: By the Linux Live CD.
- 15 JUDGE BARAITSER: Thank you. Sorry for interrupting.
- 16 MR SUMMERS: No, no, not at all. Thank you.
- 17 Q. So the benefit that Mr Kromberg suggests could have been obtained from getting into
18 the FTP user account was already available, you say, to Chelsea Manning because she had
19 the Linux Live CD?
- 20 A. That is correct.
- 21 Q. And that would have allowed her to access documents anonymously and store them
22 anonymously. Is that right?
- 23 A. To install potentially what, to access them and retrieve them? Yes. So the way that
24 works is that Linux CD allows you to mount the drive and view every document and access
25 documents that are both in that mounted drive on that local computer.
- 26 Q. But coming back to the FTP user benefits, would it have achieved anything by way of
27 disguising the activity of accessing documents from the databases originally?
- 28 A. No, it would not.
- 29 Q. No. Because the IP trail would have led where? The IP address trail would have led
30 where?
- 31 A. Back - back to the same computer.
- 32 Q. And the FTP account was assigned specifically to which machine?
- 33 A. It was found on both machines, the .22 and the .40, according to the court martial
34 documents.

- 1 Q. Yes, those are both of Chelsea Manning's machines, are they not?
- 2 A. Yes, they are.
- 3 Q. Then, finally, this, please, the music issue. In your expert opinion, the FTP user local
- 4 account would or would not have administrative privileges attached to it?
- 5 A. In my expert opinion, a computer placed on a domain that has local accounts installed
- 6 on it would have administrative privileges.
- 7 Q. Remind me, please, what FTP stands for?
- 8 A. File transfer protocol.
- 9 Q. It has been suggested to you that it is speculative to suggest that the FTP account
- 10 would have administrative privileges, do you agree with that?
- 11 A. I do, without being able to review the evidence.
- 12 Q. Just ---
- 13 A. That is my opinion.
- 14 Q. Just help me, it is your expert opinion based on what then?
- 15 A. It is - my expert opinion is based on my knowledge of computer systems and using
- 16 computer systems that are connected with domains and understanding domain accounts
- 17 versus local accounts.
- 18 Q. So how then would that be speculation?
- 19 A. When I say that I agree that the speculation portion is that I cannot say for sure that
- 20 that account did have administrative privileges. I am explaining that, in these scenarios, the
- 21 local accounts on this system looks like it did have administrative privileges.
- 22 Q. Thank you. And that is based on your experience as an expert forensic examiner, is
- 23 it?
- 24 A. Yes, it is.
- 25 MR SUMMERS: May I just turn my back, please.
- 26 JUDGE BARAITSER: Yes, of course.
- 27 MR SUMMERS: Thank you.
- 28 JUDGE BARAITSER: Thank you very much. There are no questions from me, which
- 29 means that concludes your involvement in this case, Mr Eller. Thank you very much for
- 30 getting up so early to attend these proceedings. We are going to sever the link now. Thank
- 31 you very much indeed.
- 32 WITNESS: Yes, your Honour, thank you.
- 33 JUDGE BARAITSER: Thank you.
- 34 (The witness withdrew)

1 JUDGE BARAITSER: You are on your feet, Mr Smith. No, you were just moving.
2 MR SMITH: Madam, I was just moving to the other end of the bar because it may be that I
3 will be in due course making some submissions.
4 JUDGE BARAITSER: Is that going to relate to the release of the reports?
5 MR SMITH: It is, yes. I think that is what we most naturally come to next.
6 JUDGE BARAITSER: Yes.
7 MR SMITH: Unless there are any further statements that can be read.
8 JUDGE BARAITSER: Are there any statements that can be read?
9 MS IVESON: Not at present, no, my Lady.
10 JUDGE BARAITSER: All right. Now do we have the member of the Press Association
11 back in. Let us see if we can find her.
12 MS PENNINK: My Lady, I am here.
13 JUDGE BARAITSER: Yes. Are you in a position now to deal with this part of the hearing?
14 MS PENNINK: I have consulted with my colleague who sent in the original submissions.
15 He has not had a chance to write some additional submissions, but I have had a brief
16 conversation with him over the lunch break and I am content, if you are content, just to
17 outline what we would also add having read the updated submissions.
18 JUDGE BARAITSER: Thank you. That is very helpful. Now, before you get to your feet, I
19 think this is an application probably from the newspaper.
20 MR SMITH: It is. I simply wondered whether it would assist for the member of the press
21 present to hear a brief outline of the legal principles which I think we are agreed at the bar
22 pertain to the application because it may assist in focusing the submissions which the court
23 receives.
24 JUDGE BARAITSER: Madam, let me take a note of your name, so I know who I am
25 speaking to. It is Ms?
26 MS PENNINK: It is Emily Pennink from the Press Association.
27 JUDGE BARAITSER: Pennink from the Press Association, all right. Did you hear what Mr
28 Smith said and would it help you to understand the legal principles ---
29 MS PENNINK: It certainly would, if he would.
30 JUDGE BARAITSER: --- that are agreed apply in this case.
31 MS PENNINK: Yes, thank you.
32 JUDGE BARAITSER: Lovely, thank you very much, Mr Smith.
33 MR SMITH: So, madam, without rehearsing authority which may be familiar to the court,
34 the best synopsis of the law that applies is to be found in the Supreme Court judgment in the

1 case of *Dring*. My Lady, I hope I can fairly summarise it as follows. The relevant
2 paragraphs are paragraphs 41 to 46. At paragraph 41, the Supreme Court confirmed that this
3 court, and indeed all courts, have an inherent jurisdiction to determine what the open justice
4 principle would require in terms of access to documents or other information placed before
5 the court.

6 At paragraph 42, the court confirmed the purposes of the open justice principle. They
7 are twofold, principally. The first is to enable public scrutiny of the way in which courts
8 decide cases and so to hold judges to account for the decisions they make and to enable the
9 public to have confidence in those decisions. The second, paragraph 43, goes beyond the
10 policing of individual courts and is to enable the public to understand how the justice system
11 works more generally and why decisions are taken. In order for that second principle to be
12 upheld, the public must be in a position to understand the issues and the evidence adduced in
13 support of the parties' cases.

14 So, my Lady, two overlapping principles which underscore the open justice principle:
15 number 1, to allow individuals to understand the arguments advanced in this case, the rulings
16 given in due course and to have confidence in that ruling; and, number 2, more broadly, to
17 understand the issues and the operation of the courts. My Lady, in considering whether the
18 open justice principle is advanced by acceding to the application made by the press - I am
19 going to continue, if I may, madam.

20 JUDGE BARAITSER: Yes, please do. I am not sure why two people need to be on their
21 feet.

22 MR SMITH: The court must consider, first of all, why the open justice principle is advanced,
23 having heard from the applicant - that will be Ms Pennink in due course - and, in so doing,
24 must carry out a balancing exercise, on the one hand, the purpose of the open justice principle
25 and the potential value of the information in question in advancing that purpose must be
26 considered; on the other, there is the risk of harm which disclosure may cause to the
27 maintenance of an effective judicial process or the legitimate interests of others.

28 So the court must balance those two competing interests, on the one hand, the open
29 justice principle, having first of all considered how powerful that interest is; on the other, the
30 risk of alarm to the legitimate interests of others, and the Supreme Court recognised that there
31 may be very good reasons for denying access. The obvious ones they pointed out were, for
32 example, national security, the protection of the interests of children or mentally disabled
33 adults, or privacy interests.

34 My Lady, in this case it is Mr Assange's privacy interests which are most obviously

1 engaged. Those are the principles and, ultimately, this court will have to consider the
2 strength of the application by reference to the open justice principle and, the counterbalancing
3 factor, the harm to Mr Assange's privacy interests, his privacy interests being particularly
4 keen in the context of medical records.

5 JUDGE BARAITSER: From the bar's point of view, obviously, it is slightly unusual that
6 you are ---

7 MR SMITH: Yes.

8 JUDGE BARAITSER: --- supporting this application in the way that you are but, from your
9 perspective then, are there particular areas in all of the reports that I have seen which you
10 consider require redacting or not disclosing?

11 MR SMITH: Well, my Lady, I am not just dodging the bullet but I think it really is best if I
12 leave my learned friends to address that position because we are simply not in a position ---

13 JUDGE BARAITSER: No.

14 MR SMITH: --- to identify those parts which are of most concern to Mr Assange.

15 JUDGE BARAITSER: Yes, I am not surprised to hear that.

16 MR SMITH: The position of - well, in fact, it is of the prosecution rather than of the
17 American Government, I am almost in an amicus position here, is that an independent and
18 impartial and fair-minded onlooker would be able to follow proceedings perfectly properly
19 from having heard the evidence given in open court. The extent to which any further
20 understanding of the evidence on this subject is advanced by access to the full report is
21 minimal and, when balanced against the harm to Mr Assange's privacy interests, we consider
22 and we support my learned friend's application that that outweighs any open justice principle.

23 JUDGE BARAITSER: Thank you. Before I hear from the press, I wonder if you could help
24 me with this and it may well be that the hearing needs to become a private hearing for you to
25 assist me. But what I would like you to do is identify which aspects of the report you
26 consider do not require disclosure in light of the test I have just heard read out?

27 MR FITZGERALD: We respectfully submit, my Lady, that there is no need for anything
28 further to be disclosed. Our submission, in line with what the prosecution have just said, is
29 that the principle of open justice will not be advanced by any further disclosure. There have
30 been two full days in which there has been full discussion of all the parts both that the
31 defence and the prosecution consider need to be revealed in order for there to be a full
32 discussion of the legal issues, which is the only purpose of it. Therefore, we submit they
33 have not made out the first thing.

34 They have not made out that it is necessary for the purposes of open justice that there

1 be further disclosure and it is, as is clear from the discussion in the *Dring* case, at paragraph
2 45, “Although the court has the power to allow access, the applicant [that is the press] has no
3 right to be granted it ... it is for the person seeking access [that is the press] to explain why he
4 needs it and how granting him access would advance the open justice principle”.

5 So what my learned friend has just said, and what we endorse respectfully, is they
6 have not shown how the open justice principle would be advanced by revealing any more
7 than has been fully revealed with both parties in an adversarial system putting before the
8 court what they consider is necessary for the legal issues to be determined. So if you apply
9 the test in *Dring* at paragraph 45, the press would have to satisfy you against the submissions
10 of both my learned friend and ourselves that it is necessary to advance the open justice
11 principle any more than what it was fully exposed there - and, of course, they have seen the
12 skeleton arguments too - is required. That is the first step. We do not even get on to the
13 balance ---

14 JUDGE BARAITSER: Can I ask you a question about this.

15 MR FITZGERALD: Yes.

16 JUDGE BARAITSER: You must appreciate I have not yet read the case law on which you
17 rely. When each of the witnesses began their accounts, they adopted their statements.

18 MR FITZGERALD: Yes.

19 JUDGE BARAITSER: As to stand in as their evidence in-chief.

20 MR FITZGERALD: Yes.

21 JUDGE BARAITSER: Is it not correct that, in an ideal world, they would have read out
22 verbatim, word for word, the content of their report and that is how it would usually get
23 before the court and by way of short-cut they adopt it and is, therefore, that evidence not in
24 the public domain by virtue of them adopting it in that way?

25 MR FITZGERALD: Well, I would question whether that is necessarily the case. For
26 example, very often you get a probation report and the probation officer comes into the court
27 and says, “I adopt my report” and then a few key questions are asked, but you do not hand out
28 the probation report to the ---

29 JUDGE BARAITSER: Let me come back at you on that. That is not evidence in a case that
30 has been formally adopted as the evidence of the witness.

31 MR FITZGERALD: No, I appreciate that.

32 JUDGE BARAITSER: That is evidence relied upon by, for example, a sentencing judge to
33 assist them ---

34 MR FITZGERALD: Yes.

1 JUDGE BARAITSER: --- with their sentencing decision. So there is not a parity between
2 the status of those two documents.

3 MR FITZGERALD: Well, in our respectful submission, it would be material on which the
4 judge is then reaching their – the person says, “I’ve set out in the report, I stand by my
5 report,” and then is asked to deal ---

6 JUDGE BARAITSER: Let me ask you this. The status of the information, once it has been
7 adopted on oath, perhaps Mr Smith can help. I ask in a general ---

8 MR FITZGERALD: I see my learned friend.

9 MR SMITH: My Lady, forgive me, I do not wish to interrupt my learned friend, but it may
10 be able to assist, paragraph 43 of *Dring* may assist in this regard. I will read it, or the
11 relevant part, in full before I make my submissions. “In the olden days,” said the Supreme
12 Court, I think it is Baroness Hale, “in the olden days, as has often been said, the general
13 practice was that all argument and the evidence was placed before the court orally.
14 Documents would be read out. The modern practice is quite different. Much more of the
15 argument and evidence is reduced into writing before the hearing takes place. Often
16 documents are not read out. It is difficult, if not impossible, in many cases, especially
17 complicated civil cases, to know what is going on unless you have access to the written
18 material,” so what the Supreme Court was saying in *Dring* was there is now a modern
19 practice by which, contrary to what used to happen, material is often not read out and the
20 focus of the court’s attention needs to be, as per the open justice principle, on whether it is
21 impossible or difficult to understand proceedings or the basis of the decision, absent access to
22 that material.

23 And so, the status of the material is unchanged, it would seem from paragraph 43 of
24 *Dring*. The key issue is does access to that material advance the open justice principle, either
25 limb 1, because it assists the press or the public in understanding the argument, or my Lady’s
26 decision in due course, or limb 2, because more broadly, it enhances confidence in the open
27 justice and the court system.

28 JUDGE BARAITSER: And in terms of who bears the burden.

29 MR SMITH: That is the applicant, my Lady. That is in paragraph 45, I think, of *Dring*,
30 “However, although the court has the power to allow access, the applicant has no right to be
31 granted it, save to the extent that the rules grant such a right. It is for the person seeking
32 access to explain why he seeks it and how granting him access will advance the open justice
33 principle.

1 JUDGE BARAITSER: Thank you. One other issue springs to mind and that is, of course,
2 the difficulty the Press Association will find themselves in not knowing what information is
3 contained in the report, how they can possibly justify access to it in those terms to meet the
4 test.

5 MR SMITH: Yes, and that is always going to be a delicate position because the press or an
6 applicant in these circumstances will necessarily be making an application before it has had
7 sight of the material.

8 JUDGE BARAITSER: Yes.

9 MR SMITH: The way in which one would expect such an application to be made good is
10 through explanation of the gaps in knowledge or the gaps in understanding as to the
11 proceedings before you taking place, so if, madam, you are content that those observing these
12 proceedings are unable to or have been able to understand the proceedings or the argument or
13 in due course, my Lady's decision, then that will make good the open justice principle being
14 applied, but that is not dependent upon knowledge of the contents of the document. It is
15 dependent upon demonstration that observers have been unable to understand proceedings.

16 JUDGE BARAITSER: Thank you. That was very helpful. Anything else you want to say
17 before the application is even made?

18 MR FITZGERALD: Also relevant, my Lady, I was on paragraph 45, and that is what my
19 learned friend said. It is in the bundle we have handed up.

20 JUDGE BARAITSER: I think, I just wonder if I have taken that back downstairs.

21 MR FITZGERALD: I am very grateful to my learned friend to the principles – if you have
22 the first of the authorities, that is to say the *Cape v. Dring* ---

23 MR SMITH: My Lady, I am so sorry, is there a spare bundle. I have just seen that Ms
24 Pennink does not have a bundle. It might be quite hard for her to follow argument without –
25 otherwise, I can hand over my laptop which has a copy of *Dring* if that is the name of the
26 authority.

27 MR FITZGERALD: Yes.

28 JUDGE BARAITSER: I thought a copy was handed over this morning.

29 MR FITZGERALD: I think I have got a copy of *Dring*.

30 JUDGE BARAITSER: Can I just ask, Ms Pennink.

31 MS PENNINK: I have not received a copy of the bundle. I just have this.

32 JUDGE BARAITSER: I thought that is what I was trying to arrange first thing this morning.
33 What did you receive in that case?

34 MS PINNOCK: I have this judgment.

1 JUDGE BARAITSER: That is the judgment you are referring ---

2 MR FITZGERALD: Here is *Dring*. I think they cite it themselves.

3 MS PENNINK: And I have the submissions.

4 MR SMITH: Well, it is a copy of *Dring*.

5 MR FITZGERALD: Yes, *Dring* is the key document. The only other one is the *City of*
6 *Westminster*.

7 JUDGE BARAITSER: So you do have that.

8 MS PENNINK: Yes, thank you.

9 MR FITZGERALD: Yes, so my Lady, really, with a helpful background at paragraph 43, it
10 is the paragraph 45 which both my learned friend and I have already cited to you that
11 although the court has the power to allow access, and that includes access to matters which
12 have not been read out, the applicant – that is the press – has no right to be granted it. It is for
13 the person seeking access to explain why he seeks it and how granting him access will
14 advance the open justice principle, so as my learned friend has indicated, though we have to
15 say, “Okay, we have heard the psychiatrists saying what their diagnoses is. We have heard
16 them saying what the basis of their diagnoses is. We have heard them explaining how that
17 relates to the issue of risk if returned, but we still cannot understand it because something has
18 been omitted and our respectful submission is they have explained their diagnoses. The
19 issues between the parties have been fully explored. There is, in fact, no need for any more
20 and then that is the first thing, so we do not get the first hurdle and that is paragraph 45 and
21 unless they pass that first hurdle, you do not go on to a balancing exercise.

22 But on the other hand, the next point is will any risk of harm which its disclosure may
23 cause to the maintenance of an effective judicial process or to the legitimate interests of
24 others, there may be good reasons, very good reasons, for denying access, the most obvious
25 one for national security, the protection of the interests of children or mentally disabled
26 adults.” Mentally disabled adults, obviously, it has now been established that Mr Assange
27 suffers from depressive illness. Everybody accepts that. “The protection of privacy interests
28 more generally and the protection of trade secrets,” so the protection of privacy interests
29 more generally, we have really then just developed that, my Lady, after setting out our
30 submissions that the burden, paragraph 3, “The third party applicant has no right to be
31 granted access, they must explain why they need it,” and then, there is the balancing exercise.
32 The expert reports contain sensitive information involving detailed medical history of not just
33 Mr Assange, but of his extended family, his former partners and his children and intimate
34 details about their family relationships.”

1 So, we would say that actually, it is very difficult to disentangle the various strands,
2 but there are intimate details about himself and about the children. To the extent that it was
3 necessary for those to be explored in open court, of course, the press have heard them and can
4 write about them. To the extent that it was necessary for the issues to be explored, that there
5 be quite searching discussions of medical notes and diagnoses and observations. All that has
6 come out in open court, but that should not, in our respectful submission, justify what would
7 effectively be the handing over of the medical notes because, I mean, they adopt the medical
8 notes effectively, because they are almost – the appendices are so voluminous, it is
9 effectively see everything that has been written about Mr Assange and we respectfully submit
10 that that is going too far in terms of intrusion into not just his own privacy interests, but those
11 of his family, his children and his adult family too.

12 So, my Lady, we respectfully agree with the prosecution that they have not got past
13 the first of the hurdles and even if they had, in performing the balancing exercise, it would
14 not be appropriate to hand over any more.

15 JUDGE BARAITSER: Thank you. Now, Ms Pennink, do you want to find a place where
16 you feel comfortable but I can see you? I appreciate it is quite a difficult task for you, you
17 are not a lawyer, probably used to standing up in this environment. Are you able to make
18 your representations?

19 MS PENNINK: Yes, my Lady, if you do not mind me reading from a few notes that I made
20 before.

21 JUDGE BARAITSER: No, go ahead.

22 MS PENNINK: Firstly, I think it would be right to say that we have no wish whatsoever to
23 cause additional grief or anxiety to Mr Assange or his family by making an application. We
24 have no wish to explore private medical details of third parties such as such as children and
25 other family members. In fact, as Mr Smith pointed out, in a way, because we have not seen
26 the reports, we do not really know what we do not know, so we will be guided by my Lady in
27 that respect and your judgment on the matter.

28 I would have to say also that we are guided by national enforcing guidelines which
29 are quite strict on reporting private medical details and also, we are very much alive to the
30 sensitivities around this evidence.

31 However, I would say that our application is really for the purpose of understanding
32 what is a major plank in the defence case and depending on my Lady's judgment at the end of
33 this year or next year, it could turn out to be a rather important piece of evidence in the case
34 and we would want to be able to explain it to the general public and explain as fully as we

1 can what lay behind the evidence that we heard in court and without having access to some of
2 the details in the report, it is a lot harder for us to understand the evidence as it was presented.

3 The only other thing that I would say was, and I think it has been mentioned before, is
4 that it has been suggested that it might be possible to redact certain aspects of the report that
5 my Lady deems overstep the mark and we would suggest that that might be a suitable
6 compromise in the circumstance, but not having sight of the reports, again, we leave that to
7 your judgment and discretion and I think that is all we would say on it, apart from the fact
8 that you have already had our earlier submissions which we would like to rely on.

9 JUDGE BARAITSER: Do you understand that what is being asked of you at this first stage
10 is for you to identify the basis on which you could not understand the evidence that was
11 presented to the court?

12 MS PENNINK: I think, I was not in court when the evidence was presented, but my
13 understanding from my colleague is that in reference to aspects of the report, it was difficult
14 to follow and understand what was being said fully and entirely.

15 JUDGE BARAITSER: Can you elaborate on that because that is, according to the
16 extradition bar, is the first hurdle that you have to overcome?

17 MS PENNINK: Well, it is quite difficult for us to elaborate without knowing what is in the
18 report because what we are seeking to do is understand the evidence that underlies the
19 evidence that we heard in the court, so it is ...

20 JUDGE BARAITSER: Can you identify a particular area from the press in general, I
21 appreciate you were not physically in the court, when you could not understand the argument
22 being presented because you did not have access to the evidence on which it was based?

23 MS PENNINK: My understanding was that there was reference to paragraph, whatever, and
24 from that not having seen the paragraph, it was difficult to understand what it referred to and
25 I think that that may have happened more than once during the evidence, but since I was not
26 present myself, I cannot say which particular paragraph people were struggling with. I can
27 obviously take further temperature from the room next door to see if anyone else had a
28 particular item that they heard that they really could not understand.

29 JUDGE BARAITSER: And even if you do overcome that first hurdle, I am told there is a
30 second hurdle. Is there anything in particular you want to say about the privacy interests of
31 Mr Assange which you think are, I was going to say trumped, but overtaken by your interest
32 in open justice?

33 MS PENNINK: I think the interest in open justice is to understand the central argument that
34 the defence have in this aspect of their case, and, as I say, there will be parts of the report that

1 rely on medical notes that are confidential. However, not having seen the report, I cannot say
2 for sure, but I imagine there were other parts of the report that are not in that bracket and if
3 we could separate the two out, then perhaps we can find a sort of middle ground.

4 JUDGE BARAITSER: All right. Is there anything else you have not said that you would
5 like to say?

6 MS PENNINK: No, thank you, my Lady.

7 JUDGE BARAITSER: I think what I am going to do is I am not going to give judgment on
8 this until Monday. I am going to give you until 5 o'clock to make any written submissions
9 which include the specifics that you have referred to having taken the temperature of the
10 room next door. If you want to put that into writing and send it to me I am very happy to
11 receive it.

12 MS PENNINK: Thank you, my Lady.

13 JUDGE BARAITSER: Is there anything else that either of you want to say ---

14 MR LEWIS: No, thank you.

15 JUDGE BARAITSER: --- that you have not already said?

16 MR FITZGERALD: Well, the only point I would respectfully mention is that when
17 paragraphs were referred to, they arrive at - the key passage was either read out or the expert
18 was invited to summarise what the point was in that paragraph. So, I do respectfully submit
19 that in each case, each of the experts identified what their diagnosis was, each of them
20 explained the basis of that diagnosis, each of them explained what their position was on the
21 issue of risk if extradited and gave examples. So, I do not respectfully accept that we just
22 said look at paragraph so and so. In each case, either that was read out or it was summarised.
23 And so, I do with great respect submit to the press, respectfully submit that they would have
24 known what the broad gist of every point was and the whole question is whether they can say
25 well, we need to see more details in order to understand it and nothing has really been
26 identified.

27 JUDGE BARAITSER: Can I be absolutely clear, this relates to Professor Kopelman's report,
28 Dr Deeley's report ---

29 MR FITZGERALD: Yes.

30 JUDGE BARAITSER: --- Professor Fazel's report, ---

31 MR FITZGERALD: Yes.

32 JUDGE BARAITSER: --- Dr Blackwood's report, also Kate Humphreys' report?

33 MR FITZGERALD: Yes, and then also Sondra - I am so sorry, Sondra Crosby, sorry, I am
34 forgetting.

1 JUDGE BARAITSER: Is that all of the reports?

2 MR FITZGERALD: Yes. Emma Woodhouse was as it was summarised by Professor
3 Kopelman, yes. Yes, so it is all the psychiatrists---

4 JUDGE BARAITSER: Anything else that I have not mentioned? So, I need to look outside
5 the parameters.

6 MR FITZGERALD: Yes.

7 JUDGE BARAITSER: Is there any other report that I have not mentioned that you wish to
8 be withheld?

9 MR FITZGERALD: No, I think it must be the psychiatrists and well, again, it is really for
10 the press to identify what they want.

11 JUDGE BARAITSER: Well, those documents which have not already been disclosed, the
12 ones I have read out, anything else?

13 MR FITZGERALD: Yes, you mentioned the Kate Humphreys' report.

14 JUDGE BARAITSER: Yes.

15 MR FITZGERALD: Yes.

16 JUDGE BARAITSER: OK, good. Thank you. So, that will be Monday morning. Thank
17 you very much both of you, that is very helpful. Now, what else can we do this afternoon
18 please? Anything else at all?

19 MR FITZGERALD: Well, my Lady, if you just give us 10 minutes we can actually see
20 whether there is anything that can be done now but on taking initial soundings I doubt it but
21 can I just see because obviously if there is something we can read out, we will do so.

22 JUDGE BARAITSER: Thank you. 3 o'clock then please.

23 (Short adjournment)

24 JUDGE BARAITSER: Thank you very much. Please sit down.

25 MR FITZGERALD: Yes, my Lady, regrettably we cannot make any further progress in
26 court. I am sure we can make progress in discussions over the weekend but we have not got
27 the full complement here to do the necessary discussions so, my Lady, that is as far as we can
28 go today.

29 JUDGE BARAITSER: All right. Thank you very much. I am going to adjourn the case then
30 until Monday morning at 10 o'clock and, Mr Assange, of course you will remain in custody
31 over the weekend, back please on Monday morning. Thank you very much everybody.

ADJOURNED AT 15.04 UNTIL MONDAY, 28th SEPTEMBER 2020

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