

**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**

**29<sup>th</sup> SEPTEMBER 2020, 10.07-**

1 JUDGE BARAITSER: Yes, thank you. Please have a seat. Public gallery is open I assume?

2 COURT USHER: Yes.

3 JUDGE BARAITSER: All right.

4 COURT USHER: Good morning, madam, can you hear the sound of my voice?

5 WITNESS: Yes, thank you.

6 COURT USHER: OK.

7 MAUREEN BAIRD, Affirmed

8 Examined-in-chief by MR FITZGERALD

9 Q. Are you Maureen Baird?

10 A. Yes.

11 Q. And is this right, Ms Baird, that have you prepared a declaration for this court that is  
12 dated September 11, 2020?

13 A. That is correct.

14 Q. And do you stand by the contents of that declaration as true and as part of your  
15 evidence before this court?

16 A. Yes, I do.

17 Q. And can you help us about this just as to your qualifications and experience? You  
18 have dealt with this in paragraphs 1 and 2. Is this right, you worked in the Bureau of Prisons  
19 for 27 years between 1989 and 2016?

20 A. Yes.

21 Q. And is this right, that you were the warden at Danbury Federal Correctional  
22 Institution between 2009 and 2014?

23 A. That is correct.

24 Q. And then you were a warden at the Metropolitan Correctional Center, New York,  
25 between 2014 and 2016. Is that correct?

26 A. That is correct.

27 Q. And then finally you worked as the Communications Management Unit at Marion  
28 until your retirement?

29 A. A warden at Marion, yes.

30 Q. And by virtue of working at MCC, New York, you have got experience of dealing  
31 with people subject to special administrative measures, is that right?

32 A. That is correct.

33 Q. And you are familiar with the regime of special administrative measures?

34 A. Yes, I am.

1 Q. And dealing with Mr Assange, is it likely that he will be subject to special  
2 administrative measures pre-trial?

3 A. It is likely that he will be subject to SAMs.

4 Q. And why would that be?

5 A. Everything in that way from - United States attorneys' reports suggest that he will be  
6 a SAMs.

7 Q. Right.

8 A. And SAMs will be placed upon him.

9 Q. And you deal with the various bases, one of which is national security. Is that the  
10 relevant basis on which he would be subject to SAMs?

11 A. In this case, yes.

12 Q. Now, you deal with the pre-trial SAMs regime at the Metropolitan Correctional  
13 Center at paragraphs 11 to 12 of your declaration. Can you help us about that? How long did  
14 those subject to SAMs at 10-South in the MCC spend in their cells?

15 A. 23 to 24 hours per day.

16 Q. Were they permitted any communication with other inmates?

17 A. Not at all, no.

18 Q. What recreation were they permitted?

19 A. They had the opportunity to come out of their own cell and go into another indoor cell  
20 that we considered the recreation cell. There was no exercise equipment in that room at all. I  
21 did have an exercise bicycle brought in ---

22 Q. And was that ---

23 A. --- but other than that there was -- it was the same, same type, it was just an empty  
24 cell.

25 Q. Yes. And was that recreation alone?

26 A. Always alone.

27 Q. Now, I want you to help us, in paragraph 12 you deal with a number of matters. How  
28 frequently were they allowed to phone their family?

29 A. They were allowed one phone call a month to an approved family member for 30  
30 minutes or two 15 minute phone calls per month.

31 JUDGE BARAITSER: Just pause for one moment. Can you just put the volume up a little  
32 bit? Is that possible?

33 Q. Sorry, we just pausing for a moment to increase the volume.

34 JUDGE BARAITSER: Thank you very much, please carry on.

1 MR FITZGERALD: Yes.

2 Q. And so, those phone calls would be one for half an hour, is that right? Or two for 15  
3 minutes?

4 A. Correct.

5 Q. And then you deal with the question of remedies but I will come back to that. Just  
6 one final matter on this, you deal with the question of mail at paragraph 14 and you comment  
7 on the suggestion that there was free flowing incoming and outgoing mail that is made by Mr  
8 Kromberg. What do you say about the freedom of their ability to correspond by letter?

9 A. All mail coming in or going out to any special administrative measures assigned  
10 inmate is screened before it ever gets to the recipient. So, it sometimes would take a couple  
11 months, maybe longer, to receive a piece of mail from whichever party, either going out or  
12 coming in.

13 Q. Right.

14 A. So, it is not necessarily free flowing.

15 Q. And just can you help us about this ---

16 A. So, it is not like it ---

17 Q. Yes. I am so sorry. Can you help us about this? With those phone calls that were  
18 permitted either two for half an hour or one for 15 minutes a month, were those phone calls  
19 monitored?

20 A. Those were always monitored by an FBI agent in whatever the language was to be  
21 that the inmate spoke. And they could be arranged, the inmate had to request the call two  
22 weeks before so that that could be set up, as long as all could be set up, and arrange for an  
23 agency available.

24 Q. Right. Now, I want you to help us about this. You have got the experience from  
25 being warden of the MCC. Were there a number of people subject to SAMs detained there?

26 A. We had at any given time upwards of 12/15.

27 Q. And they were subject to SAMs and were they held at a particular section of the  
28 MCC?

29 A. Yes.

30 Q. Where was that?

31 A. They were held in a unit we call 10-South.

32 Q. Yes. Is that some kind of a special restricted unit? What would it be described as,  
33 that unit?

34 A. It was designed after 9/11.

1 Q. Right.

2 A. And it was originally designed for inmates that were at Guantanamo Bay, they would  
3 come up and be housed in that unit. And it evolved into a special administrative measures  
4 unit but also had a lot of terrorists in that unit.

5 Q. Right. Now, I want you to help us about this. You have described the regime at 10-  
6 South which you personally were involved in supervising, you have told us that it is likely  
7 that Mr Assange will be subject to the SAMs regime pre-trial. I want you to go to paragraph  
8 19 and help us. At paragraph 19 you say at the last two sentences, "If Mr Assange is  
9 extradited and is subjected to SAMs, he will be treated similarly to all other prisoners under  
10 SAMs.". OK? Can you help us about this? The regime that you have described, the regime  
11 that you have described at MCC, would that be applied to anyone subject to SAMs in other  
12 detention centres?

13 A. Absolutely, and it is – I think what needs to be understood is SAMs is not a policy so  
14 it is not discretionary. It cannot be changed by a warden or anybody in the Bureau of Prisons.  
15 SAMs is more of a direct thing so it is very black and white, there is no grey area with SAMs,  
16 it is very matter of fact. So, what - if somebody is in pre-trial for terrorism and somebody is  
17 in for a different sort of national security, they would all be subjected to the same measures.

18 Q. Right.

19 A. SAMs is what it is.

20 Q. Now, we know that SAMs is authorised by the Attorney General, is that right?

21 A. That is correct.

22 Q. So, your experience of this post-2001 is that the same regime is applied throughout  
23 the system, is that right?

24 A. Yes. So, I believe it was created after the Oklahoma bombing here in this country  
25 back in around 1996 and it evolved – it really became much more legalised after 9-11 in  
26 2001. So, that is when SAMs really ranked up and it was utilised a lot more.

27 Q. And if you can help us about this, you have said that the same regime is applied in  
28 other detention centres pre-trial, what is the basis of your knowledge of that fact?

29 A. So, in the Federal system I am only aware of MCC, New York, having a SAMs unit  
30 for pre-trial. If anybody is a SAMs inmate, short of being a stage 4 cancer person who needs  
31 round-the-clock medical care, they would be housed at ADX in Florence, Colorado.

32 Q. That is post-conviction?

33 A. Correct. As far as pre-trial I am not familiar with state systems.

34 Q. Yes, but ---

1 A. I believe Mr Assange, it is suggested he will go to Alexandria.

2 Q. Yes, Mr Kromberg has suggested that.

3 A. I do not know what their unit is but he would have to be in an isolated unit where  
4 there is no contact with no other inmates.

5 Q. Yes, so if he is subject to SAMs and we have heard about one other person who is  
6 subject to SAMs but detained at the Alexandria Detention Center, is it your understanding  
7 that that same regime that you have described would be applied to him?

8 A. The same regime, yes.

9 Q. And just following on from that, the suggestion that there is room for variations and  
10 for people being permitted to have double cells, is that your experience in the post-2001 era?

11 A. No, that is not my experience at all. Everybody had the same cell, the same exact  
12 things in the cell.

13 Q. Yes.

14 A. There was no difference.

15 Q. Right. Now, you have dealt also with the question of whether there is any effective  
16 challenge to special administrative measures and you have dealt with that at paragraph 13 and  
17 then further at paragraphs 15 to 17. Mr Kromberg has said that there are ways in which you  
18 can make representations against SAMs. What is your comment on the effectiveness of  
19 making representations against SAMs?

20 A. So, Mr Kromberg suggested when an inmate has his programme review twice a year  
21 he can challenge his stance during that time with a case manager and a unit manager. But  
22 having been a case manager myself, I can tell you that that would be a – nothing is going to  
23 happen in that programme review, the case manager and the unit manager have no authority  
24 to make any changes. They would not even – you know, every case manager that I know  
25 would not go in front and try to fight for SAMs to be changed for an inmate, it is just way  
26 over their pay scale. It is something that really is unheard of.

27 Q. And in terms of ---

28 A. The other way that he can ---

29 Q. Go on.

30 A. He talks about administrative remedy process and how that works. That is an internal  
31 process again and if anybody is going to challenge SAMs, a warden or a chairperson does not  
32 have the authority to make those changes. So an inmate would have to exhaust these  
33 administrative remedies before he could ever take it to court. So nothing is going to happen  
34 during the internal process of that, which is very time intensive and has serving time

1 requirements that somebody has defined otherwise their remedy is denied. Most remedies,  
2 and I used to be the person who answered remedies when I worked in the regional office,  
3 very, very few are ever approved for any reason, and I have never seen one approved in a  
4 SAMs in overturning the SAMs situation.

5 Q. All right. And at paragraph 17 you deal with the fact that Mr Kromberg says that  
6 SAMs are imposed in up to one year increments with the time requirements the same for any  
7 extension beyond one year. Is that right? That is what he ---

8 A. So now they are reviewed every year.

9 Q. But ---

10 A. I do not remember ever being a part of that review and I have never seen anybody  
11 have the SAMs removed. During my time of working directly with the SAMs, they remained  
12 in place.

13 Q. Yes. The authority for the SAMs and its renewal ultimately is with the Attorney  
14 General, is that right?

15 A. That is correct.

16 Q. And the present Attorney General is Mr Barr.

17 A. That is correct.

18 Q. And just help us about this. Your experience based on New York, were you also  
19 aware of the SAMs regime from your training and discussions with other Bureau staff?

20 A. Yes. So, when I got to New York things were a little different than what I had  
21 experienced in Danbury and it was a promotion, it was a higher grade level because of the  
22 complexity of the institution. So we had the SAMs unit, which required a top secret  
23 clearance, and I received training on what a SAMs was all about ---

24 Q. And that was at a national ---

25 A. --- and all the restrictions that applied.

26 Q. Yes, carry on.

27 A. Yes. And we would also go to usually yearly meetings, warden meetings, with other  
28 wardens and it was there that I was able to discuss with other wardens, including the warden  
29 at Florence.

30 Q. Right.

31 A. Similar things that we had in common with our institutions.

32 Q. Right. Now you deal at paragraph 18 with Mr Kromberg says that it is not imposed  
33 for punitive reasons but to minimise a threat to national security or other reasons. You then

1 deal with what your experience was of the effects on those subject to SAMs and what is your  
2 evidence to this court about how it affected those subject to SAMs?

3 A. So, I would agree that it is not supposed to be punitive, but the consequences and the  
4 results very much feel like they are punitive. It is a type of isolation. It is even – and I think  
5 I described it in my declaration that it is very, you know, more isolated than what you would  
6 refer to, or other people would refer to as restricted housing.

7 Q. Yes.

8 A. You know, somebody is housed alone and have no contact with anyone else other  
9 than a staff member walking by their cell to make sure that the person is okay on a regular  
10 basis, but they do not really engage in conversation, the correctional officer does not engage  
11 in conversation with the inmate. Other staff members only have an obligation to make  
12 rounds once a week. The unit team is supposed to make rounds daily, but that does not  
13 happen, that does not always happen.

14 Q. So what is the effect on the prisoner of this level of isolation for an extended period?

15 A. What – and not that I have seen this personally, but I understand that there is ---

16 JUDGE BARAITSER: Well just pause for a moment.

17 A. --- a lot of mental health problems.

18 JUDGE BARAITSER: She has not seen it personally, so on what basis is she answering the  
19 question?

20 MR FITZGERALD: Yes. Sorry. Have you met with prisoners subject to SAMs?

21 A. Oh yes.

22 Q. And I think you have mentioned the case of Mr Mustafa, Kamel Mustafa, who we  
23 know as Abu Hamza. What were the effects on him?

24 A. Yes. It causes severe depression to be in isolation like that. It causes anxiety, it  
25 causes paranoia. It causes in some a weight loss detriment to their physical health, severe  
26 detriment to their mental health.

27 Q. And you have seen people who were subject to that system at the pre-trial stage?

28 A. Yes. I would say I had not seen anyone actively psychotic, but I do understand that  
29 extreme isolation like this has caused others to be extremely psychotic.

30 Q. But you can comment, the other references about depression ---

31 A. Yes, absolutely, anxiety, depression, the physical, the detriment to physical health.

32 Q. Right. And you have dealt at paragraph 19 with the fact that even though Mr Assange  
33 is not charged with terrorist offences, if he is given SAMs, as you believe he will be, on

1 national security grounds, then he will be subject to the same regime as those convicted of  
2 terrorist offences. Is that right?

3 A. Exactly, yes, exact same conditions.

4 Q. Now you have dealt from paragraph 21 onwards with the position in ADX Florence,  
5 Colorado and, again, if he is subjected to SAMs, which you believe to be likely, where is he  
6 most likely to go after conviction?

7 A. The only place for him to go would be ADX Florence, unless there was a severe  
8 change in his medical status.

9 Q. Yes. We know that ---

10 A. Then he would go to a medical centre, but that is unusual.

11 Q. We know that despite his very severe disabilities Mr Hamza is detained at ADX  
12 Florence, Colorado. Is that an indication of how bad you have to be before you do not go to  
13 ADX Colorado if you are subject to SAMs?

14 A. You have to be much worse. You have to be almost dying for lack of another  
15 description.

16 Q. Yes. And you have referred at paragraph 21, at the last sentence, you say you agree  
17 with Mr Sickler's assessment that if convicted Mr Assange could potentially spend the  
18 remainder of his life in H unit where he would be deprived of some very basic human needs.  
19 Is that a real risk?

20 A. Yes, it is if he is sentenced to a lengthy term of imprisonment.

21 Q. And you have cited at paragraph 22 the comments of Robert Hood, the former warden  
22 at ADX that ADX Supermax is not built for humanity. Do you find that a reasonable  
23 assessment from your knowledge of it?

24 A. Yes.

25 Q. At paragraph 23 you comment on Mr Kromberg's claim that inmates in H unit "can  
26 participate in a multiphase programme". What do you understand him to mean? What kind  
27 of a programme could you participate in if you were in H unit?

28 A. So there are two things that he talks about. He talks about - Mr Kromberg talks about  
29 a stepdown unit, which does not apply to the special security housing unit. That is something  
30 that applies to others who are not under the SAMs. And then he talks about these three  
31 phases. So my understanding is the first phase is the basic SAMs, second phase of that is not  
32 a programme, it is where certain changes are made, but very minor changes, maybe once  
33 somebody ever gets to phase 2, they then get to answer phone calls. Phase 3 is something  
34 that he talks about where an inmate would have a certain amount of time amongst a very

1 small group of other inmates, but I do not see where or how that happens because it defeats  
2 the entire premise of what SAMs is.

3 Q. Yes. Just pausing there.

4 A. Restricting communication.

5 Q. Can I just give her Ladyship the reference? This is at paragraph 46 of his fourth  
6 supplementary declaration, which is at page 96 of the bundle.

7 JUDGE BARAITSER: Thank you.

8 MR FITZGERALD: So you are commenting on his three phases at paragraph 46 of his  
9 fourth supplementary declaration. Is that right?

10 A. Yes. He makes the statement that there is a programme in this unit, in this H unit they  
11 call it, but there are not programmes per se. Inmates do not participate in any kind of group  
12 programming and I believe I mentioned in my report that any type of programming for a  
13 SAMs inmate is going to be something alone, so it would be a form of a self-study  
14 programme or something that would still require isolation and no contact with others.

15 Q. Yes. So you have commented on paragraph 46 of his fourth supplementary and then  
16 at paragraph 47 he comments on the stepdown programme. I think you have now dealt with  
17 that. If someone is subject to the full-on SAMs, is he going to be permitted to associate in a  
18 physical way with family and friends or with other prisoners?

19 A. Absolutely not. Not even just in not a physical way but there would not be any type  
20 of communication, only with other inmates. Of course, the phone calls are limited to the ones  
21 we discussed earlier.

22 Q. Right.

23 A. There is never any physical contact, physical touching during that - a family visit.

24 Q. Now you have dealt in your declaration further with communications management  
25 units, but if he is subject to SAMs, would he go to a communication management unit at all?

26 A. No.

27 Q. And you have dealt with the fact that he is likely to be subject to SAMs, just so that  
28 we are clear, is that both pre-trial and post-conviction that that likelihood is there?

29 A. Yes.

30 Q. You have also commented at paragraph 39 to 40 with Dr Leukefeld's claims that  
31 inmates are content at the ADX. Do you have evidence in relation to whether prisoners in  
32 ADX do actually welcome or want the detention in ADX to continue?

33 A. I think the reasoning for her making that statement in my experience is regardless of  
34 what somebody's conditions are, the fear of leaving to go to another place that could possibly

1 be worse in their mind is really, that in itself is anxiety-provoking. Inmates get into their  
2 mindset that something could possibly be worse “and so therefore maybe I should stay with  
3 my current situation”. That has been my experience and the way that I understood Dr  
4 Leukefeld when she mentioned that - made that comment.

5 Q. Is there evidence of prisoners complaining about the conditions in H Unit of those  
6 subject to SAMs at ADX?

7 A. Yes.

8 Q. And indeed does that extend to litigating their terms of detention, both in the national  
9 courts in the US and indeed in the Inter-American Commission?

10 A. That is correct.

11 Q. Have you seen that the Inter-American Commission has just declared admissible a  
12 complaint?

13 A. I did.

14 Q. You have seen that?

15 A. Yes, I have.

16 MR FITZGERALD: My Lady, that is in the defence bundle, the Declaration of Admissibility  
17 is in there.

18 JUDGE BARAITSER: Yes, I have that.

19 MR FITZGERALD: Behind there you will see the petition which includes complaints as  
20 recent as 2018.

21 JUDGE BARAITSER: Thank you.

22 MR FITZGERALD: Finally, you refer at paragraph 46 to the fact that the Bureau of Prisons  
23 does have a robust suicide prevention programme, is that right?

24 A. That is correct.

25 Q. If someone, by reason of mental disorder, is determined to take his life, will it  
26 necessarily prove effective, that suicide prevention programme?

27 A. No.

28 Q. You have experience of that yourself, is that right?

29 A. Unfortunately, yes, I do.

30 Q. I think you set out the way in which someone could say that they are better, get into  
31 less restrictive conditions and then take their life in your comments?

32 A. Yes, unfortunately that happens more often than not when you have suicides, the  
33 reliance on inmates self-reporting is pretty strong and when an inmate fails to report that  
34 unfortunately other signs get sometimes missed and it results in a successful suicide.

1 MR FITZGERALD: My Lady, there was just one further matter which was raised in addition  
2 yesterday; I wanted to invite her to comment on the *El-Hage* case as a supplementary, as it  
3 were.

4 JUDGE BARAITSER: All right.

5 MR FITZGERALD: Ms Baird, I think you are aware that there was a commentary yesterday  
6 on a case of *El-Hage* in 2000 when someone subject to SAMs was originally in solitary  
7 confinement for 15 months and then, after those 15 months, was permitted to have a cellmate.  
8 Do you want to comment on whether that is routine or standard post 2001?

9 A. I would say that that would be a very, very rare instance if that would happen. I have  
10 never seen it myself and I have never heard of that occurring with a SAMs inmate.

11 Q. I think you said that things got a lot tougher after the 2011 catastrophe, is that right?

12 A. Everything changed after 2011. SAMs became even more restrictive.

13 Q. I am very grateful, thank you very much, Ms Baird. My learned friend may now wish  
14 to ask you some questions.

15 Cross-examined by MISS DOBBIN

16 Q. Ms Baird, I am going to ask you some questions on behalf of the Government, if I  
17 may. You said in your witness statement that you are an independent prison consultant. Are  
18 you independent?

19 A. I work for some attorneys, but not directly. I receive cases from other clients.

20 Q. You appear on the list of professional profiles for a specific criminal defence firm, the  
21 Law Offices of Alan Ellis?

22 A. Yes.

23 Q. Are you employed by him?

24 A. On a contract basis.

25 Q. What it says on the website is: "Maureen Baird, formerly a high-ranking US Bureau  
26 of Prisons official, is now consulting with our firm." Is that right?

27 A. I do some consulting for Alan, yes.

28 Q. Do you only act for defendants in the prison system now?

29 A. Yes.

30 Q. What it says on the website is: "The Law Offices of Alan Ellis is a Federal  
31 Sentencing Prison and post-conviction appeal and 2255 motion law firm, representing  
32 Federal criminal defendants and inmates throughout the United States. The firm endeavours  
33 to obtain for its clients the lowest possible sentence, and, if it is long term incarceration, the  
34 best facility possible with release at the earliest opportunity." Can you just explain what role

1 you play in helping that firm achieve those ends for its clients?

2 A. I do not necessarily get involved in pre-sentence for parties that are being sentenced,  
3 other than perhaps where somebody may be designated to, to serve their sentence. A lot of  
4 my involvement with Alan comes after where somebody is trying maybe to get home  
5 confinement. There are a lot of cases currently revolving around Covid. Alan works on a lot  
6 of appeal cases that - - I am not an attorney, I am not necessarily involved in those on a legal  
7 aspect.

8 Q. Do you have any sort of expertise in sentencing, Ms Baird?

9 A. In sentencing matters?

10 Q. Yes.

11 A. In what type of sentencing matters? I have been involved with ---

12 Q. That is what I am trying to get to the bottom of; do you have any expertise when it  
13 comes to sentencing?

14 A. I have been involved with testifying on prison conditions prior to somebody - at  
15 sentencing or prior to them going into prison. I have talked about medical conditions in  
16 prison of pre-sentence.

17 Q. Right; I will come to that. What it says on the website of Alan Ellis is this, in respect  
18 of you: "In her various positions throughout her 28 year career in Corrections, there was a  
19 great emphasis on training of staff whilst simultaneously ensuring the safety of staff and  
20 inmates, managing multi-million dollar budgets, recruitment and retention of staff, staff  
21 discipline, labour management relations, as well as dealing with institution emergencies and  
22 providing guidance to the special operation response teams." Does that accurately set out the  
23 sorts of things that you were responsible for when you were the warden of the prisons that  
24 you worked in?

25 A. Yes.

26 Q. Ms Baird, is it right that ensuring the safety of those detained in those prisons and  
27 those who worked there was your fundamental duty?

28 A. One of my fundamental duties, yes.

29 Q. Moving on to each of those prisons, I think Danbury, that is a low security prison, is it  
30 not?

31 A. It was low security female. In 2013 and 2014 it went through a mission change and  
32 now it is low security male.

33 Q. No one had SAMs at that prison, did they?

34 A. No.

1 Q. You had two years at the MCC, which I will come back to, and you had about a year  
2 at USP Marion?

3 A. Correct.

4 Q. Were you aware of anyone being on SAMs at that prison?

5 A. No.

6 Q. I am going to come back to that, if I may. I think it is right that you have not worked  
7 in prisons for about three years now, correct?

8 A. That is correct, yes.

9 Q. Overall your experience of SAMs was limited to people who were at the pre-trial  
10 phase, is that correct?

11 A. That is correct.

12 Q. Coming back to the MCC, Ms Baird, did you run a safe and humane regime when you  
13 were responsible for the safety and wellbeing of inmates there?

14 A. I did my best.

15 Q. Right. I am going to examine that in a bit more detail, if I may. You said that there  
16 were about 12 to 15 people subject to SAMs, correct?

17 A. Sometimes it was as few as seven, eight, sometimes as many as 12 on that unit. I am  
18 not exactly sure the exact number. Not everybody on that unit was necessarily SAMs.

19 Q. OK. I am not clear about this, but were they all terrorist inmates, Ms Baird?

20 A. No, they were not.

21 Q. What other offences were they facing?

22 A. The other offence that I recall was major drug trafficker out of the Dominican  
23 Republic.

24 Q. What was that person's name?

25 A. Manuel Rodriguez.

26 Q. Was that the only person that you recall who was not a terrorist?

27 A. That is the only other one that comes to my mind, yes.

28 Q. Were any of the people who were subject to SAMs on the unit accused of espionage  
29 offences?

30 A. No.

31 Q. Were any of them subject to SAMs for fear that they would disclose national security  
32 information?

33 A. Not during my time there.

34 Q. Right. Are you familiar with the criteria that has to be met before a SAM can be

1 imposed for reasons related to national defence or classified information?

2 A. How the procedure works or ---

3 Q. What the criteria is, Ms Baird?

4 A. I am fairly familiar with it, yes.

5 Q. You said, on the basis of everything that you had read, you thought that it was likely -  
6 is that right - that Mr Assange would be subject to a SAM?

7 A. What I gained from the Government is that he will very likely be a SAM.

8 Q. All that the Government have said is that it is possible. I am asking you on what basis  
9 you are saying it is likely.

10 A. In my experience with other cases, if it is off the table they would remove it  
11 completely, but it appears to be very much on the table, the SAMs, and Mr Kromberg  
12 references it quite a bit about a SAM, which leads me to believe that the Government are  
13 intent on making the SAMs measures effective in this case.

14 Q. Ms Baird, if you read the affidavit, all that he is doing is saying he is not excluding it  
15 entirely. You do appreciate that he is only saying that it is possible and that it is speculative  
16 that SAMs would be imposed. You do appreciate that, do you not?

17 A. Yes, absolutely.

18 Q. And second of all, you have no experience of the circumstances in which SAMs were  
19 imposed for reasons related to classified information, do you?

20 A. No, I do not.

21 Q. You do understand, do you not, that as regards classified information, they could only  
22 be imposed upon the direction of the Attorney General, yes?

23 A. Yes, that is true.

24 Q. Because they are reasonably necessary to prevent the disclosure of classified  
25 information, correct?

26 A. Correct.

27 Q. And that such an order could only be made upon the written certification by the head  
28 of a member agency of the United States Intelligence Community that the unauthorised  
29 information would pose a threat to national security and that there is a danger that the inmate  
30 would disclose such information, yes?

31 A. I believe the United States Attorney's office are also involved in making a  
32 recommendation along with an intelligence agency.

33 Q. Yes, but Miss Baird, that is the legal criteria that has to be met, is it not?

34 A. Then it goes to officers before it is in operation, yes. It is meant to be (inaudible).

1 Q. And you are not in any position today, are you, to make any sort of judgment about  
2 whether or not Mr Assange might fulfil that criteria?

3 A. My opinion from everything I have read is that he would meet that criteria.

4 Q. Well, can you help me with that? How can you possibly say that Mr Assange - that  
5 there is a risk or a threat that he would disclose national security information or classified  
6 material? How can you say that that risk exists?

7 A. He is being charged for an espionage crime and it is believed that he continues to have  
8 involvement or he is familiar with people that have involvement with disclosing such  
9 classified information, so that would pose him as a risk to national security in the United  
10 States and that would cause concern for officials.

11 Q. Well, it is not about concern. There has to be grounds, does there not? It has to be  
12 reasonably - the SAM would have to be reasonably necessary to prevent the disclosure of  
13 classified information. There would have to be an evaluation, would there not, Ms Baird, of  
14 whether or not Mr Assange had the ability to do so?

15 A. Yes, but I believe that they can make that argument.

16 Q. So, it is a question of argument, Miss Baird, is it?

17 A. I believe that the United States Attorney's Office could present the case that they pose  
18 a threat to national security.

19 Q. Well, Ms Baird, I am suggesting that that is entirely speculative and I do not see how  
20 you could possibly be in a position to make that sort of evaluation.

21 A. I actually take that decision based on what the Government has responded to in this  
22 case mentioning special administrative measures as often as they have.

23 Q. Ms Baird, you do understand they are responding to the defence evidence about  
24 SAMs.

25 A. I think in this case, I was just surprised that they did not say, "We do not have any  
26 plans to present him or apply for SAMs in this case."

27 Q. Well, Ms Baird, all that they have said is that it is possible and speculative. That is  
28 all. It will obviously depend on an evaluation further down the line, will it not?

29 A. That is very unusual to even make that proposal in many cases.

30 Q. How can you say that?

31 A. It is not often - well, this is the first case that I have worked on where there is actually  
32 SAMs on the table being considered since I retired.

- 1 Q. So, Ms Baird, are you familiar with all of the cases that came before the European  
2 Court of Human Rights which proceeded on the basis that it was entirely likely that  
3 individuals would be subject to SAMs?
- 4 A. Are these the ones that were in the prosecution bundle?
- 5 Q. Yes.
- 6 A. I am familiar with some of them. I did not read every single item, but, yes, I did  
7 familiarise myself.
- 8 Q. And in the three years since you have retired, Ms Baird, how many extradition cases  
9 have you given evidence in?
- 10 A. Probably about ten to 12.
- 11 Q. And how many of those cases have concerned national security cases or espionage  
12 cases?
- 13 A. None that I can recall.
- 14 Q. And if we can just focus on this for a moment, the sheer exceptionality of imposing  
15 SAMs is borne out, is it not, by the tiny number of people within the US prison system who  
16 are subject to them, correct?
- 17 A. There is a small number of SAMs offenders, yes.
- 18 Q. How many are there at the moment?
- 19 A. I would guess between 45 and 50.
- 20 Q. I think Mr Kromberg in his affidavit says 46. Do you know how many of them are  
21 subject to SAMs related to espionage?
- 22 A. No, I do not, but I would guess, based on what I had in New York, that the majority  
23 are not there for espionage.
- 24 Q. Yes. Well, I think you are right. I am going to come to on, again I want to ask you a  
25 bit about those individuals in your evidence, but I think that there are about nine people who  
26 have a SAM for espionage. That is out of, how many people are there in the population of  
27 the BOP?
- 28 A. 46.
- 29 Q. Yes, but overall, is it ---
- 30 A. (Inaudible), yes.
- 31 Q. About 110,000.
- 32 A. At least.
- 33 Q. Yes. What you seem to suggest, and again, I am just focusing on the pre-trial period,  
34 is that all SAMs are uniform, that they consist of the same measures. Is that right?

1 A. That has been my experience, yes.

2 Q. So, that is your experience at the MCC. I am going to suggest that you are wrong  
3 about that, that SAMs often vary to take into account the different kind of offender or that  
4 they can be modified or changed dependent on the person. Do you accept that?

5 A. Are you asking me a question?

6 Q. Yes. Do you accept that?

7 A. I would say that modifications are few and far between and if there is a modification,  
8 it is probably very slight and would not affect the isolation part of the restriction.

9 Q. Because you are obviously aware that the provision that allows for SAMs does not lay  
10 down any uniform formula for them, does it? It says that they “may” include certain  
11 measures. Do you agree?

12 A. The measures are fairly the same for everybody. They are pretty steady for  
13 everybody.

14 Q. Right, well, again, I am just going to examine that when we take into account, for  
15 example, ADX, but I think you agree that SAMs do permit people to have family members to  
16 visit before trial, yes?

17 A. Yes. As long as they are on your approved visiting list, immediate family can visit.  
18 Yes, they are allowed two visits per month.

19 Q. And if we look, one of the things that you were very critical of are the procedures for  
20 special - for challenging SAMs by way of the special administrative procedure, yes?

21 A. Yes.

22 Q. And you suggested in your evidence that you had to exhaust administrative remedies  
23 before you could challenge or before you could go to court pre-trial. Is that what you are  
24 suggesting?

25 A. No. The administrative remedy process on the surface, as a whole, is an internal  
26 process. It has to be exhausted before an inmate can go to court. Pre-trial, it is different.

27 Q. Yes. Why did you not ---

28 A. Yes, the administrative remedy process in general, yes, it has to have been exhausted.

29 Q. So, when you were asked the question do you have to exhaust administrative remedies  
30 before you can go to court, the correct answer to that was, well, you might have to after you  
31 have been tried, but actually, pre-trial in New York, you can go before the judge before you  
32 have exhausted administrative remedies.

33 A. Yes. Really, the correct answer to that is that you have to exhaust your administrative  
34 remedies and that is what the policy would say, administrative remedies need to be exhausted

1 before you can go to court. With pre-trial, yes, it is a little different, they are not a sentenced  
2 inmate yet.

3 Q. So, if we look ---

4 A. But on its surface - I am sorry, go ahead.

5 Q. If we look at the prosecution bundle,, which you should have a copy of and we look at  
6 the case of *Hashmi*. Are you familiar with the case of *Hashmi*?

7 A. Is it bundle 1, 2 or 3?

8 Q. I am sorry, it is just in a bundle called prosecution bundle that starts with the Wiley  
9 undertaking.

10 A. Yes.

11 Q. So, the case of *Hashmi* is at page 501. Are you familiar with that case, Ms Baird?

12 A. I would have to refresh my memory.

13 Q. So, this is Mr - it is a case brought by Mr Hashmi and we can see from page 501 on  
14 the right hand side that he was charged with providing material support to Al-Qaeda and a  
15 number of offences related to Al-Qaeda and we can see if we go over to the page at 502 in the  
16 first column, that he was being held at the MCC. He was subject to SAMs, reasonably  
17 necessary to protect persons against the risk of acts of violence or terrorism. That was on the  
18 basis that there was a substantial risk that the defendant, Hashmi's, communications could  
19 result in death or serious bodily injury to others. And then they set out the various reasons  
20 why that was the case and then, if we go over to page 507, there is a section that starts on  
21 exhaustion and then we can see in the first paragraph, "Because the BOP has an  
22 administrative remedy in place, the government argues that the defendant must first exhaust  
23 these remedies because of the Prison Litigation Reform Act," and the court goes on at some  
24 length to discuss that.

25 Then, I can cut this short, because if we go to page 508, the court does not apply that.  
26 It finds that it does have subject matter jurisdiction. In other words, it will hear the challenge  
27 to the SAMs, and then it goes on to consider whether or not the SAMs violated the  
28 defendant's right to counsel and then it sets out the test that applies to determine whether  
29 prison regulation burdens fundamental rights, the court must ask whether the regulation is  
30 reasonably related to the legitimate penological objectives or whether it represents an  
31 exaggerated response to those concerns, and it goes on to cite the test that was also set out in  
32 *El-Hage*.

33 It goes down to the final paragraph, "The court has reviewed the material submitted  
34 which formed the basis for the acting Attorney General's determination. After careful

1 consideration, the court finds that the government has offered sufficient evidence for the  
2 court to conclude that the SAMs are reasonably related to legitimate penological interests.”

3 So, Ms Baird, a couple of things following on from that. First of all, you agree with  
4 me, *Hashmi* case, pre-trial, yes?

5 A. Yes.

6 Q. The court accepted that it had jurisdiction to hear a challenge to the SAMs,  
7 notwithstanding that there had not been exhaustion of administrative remedies, correct?

8 A. For pre-trial, yes.

9 Q. The court undertook a substantive review of whether or not the regulation was, i.e. the  
10 SAM, reasonably related to legitimate penological objectives, yes?

11 A. Yes.

12 Q. And it went so far as to review the material that underpinned the imposition of the  
13 SAMs in the first place, correct?

14 A. Correct.

15 Q. And the court then goes on to discuss why it finds the SAMs to be lawful. And in  
16 terms of the *El-Hage* case, I am not going to turn it up, that was a case that there had been  
17 exhaustion of administrative remedies, it was heard at first instance and heard on appeal prior  
18 to the trial commencing, is that right?

19 A. I am not overly familiar with that, no.

20 Q. And whatever you say about the exceptionality of the *El-Hage* case, Mr El-Hage was  
21 Bin Laden’s trusted lieutenant. That is right, is it not? Yes?

22 A. As I said, I am not overly familiar with that particular case or what role or ---

23 Q. Well, I can tell you what it says about Mr El-Hage. It sets out at some length, there is  
24 no need to pick this up, Miss Baird, El-Hage played a significant role in Al-Qaeda’s  
25 operations from at least 1992 until his arrest in 1998. The defendant was one of Bin Laden’s  
26 trusted associates, privy to Al-Qaeda secrets and plans, served as Bin Laden’s personal  
27 secretary, travelled on his American passport on Bin Laden’s behalf, moved Bin Laden’s  
28 money and worked in Bin Laden’s factories in the Sudan, factories which served as a cover  
29 for the procurement of chemicals and weapons.” He was also linked, as I understand it, to the  
30 events at the Nairobi Embassy as well. And notwithstanding all of that - sorry, I am just  
31 reading in terms of what he was accused of, ---

32 JUDGE BARAITSER: Well, do you need to? I think you have made your point in relation  
33 to the role in Bin Laden’s case.

34 MS DOBBIN: So, not ---

1 JUDGE BARAITSER: What is your question to her?

2 MS DOBBIN: --- notwithstanding all of that, Miss Baird, that was an inmate subject to  
3 SAMs who was still able to have a roommate, correct?

4 A. Prior to 2001, and very much, very much the exception. As I mentioned earlier, I  
5 have never seen that before.

6 Q. You have spoken at length about inmates at the MCC being in solitary confinement  
7 but they had as much access to their lawyers, did they not, as other people in the MCC?

8 A. They had the same access, yes. In a different form, but yes.

9 Q. So, when they were preparing for trial, Miss Baird, they were presumably entitled to  
10 spend as much time as they needed with their lawyers in order to prepare for trial, correct?

11 A. Within parameters, yes.

12 Q. So, aside from the time that they had with their lawyers, the time that they had with  
13 their family when they visited, you also referred to your staff and you also being able to make  
14 visits to the unit as well. Yes?

15 A. Yes.

16 Q. And ---

17 A. Yes.

18 Q. --- presumably, Miss Baird, you were in a position, you being the warden of the  
19 MCC, to ensure that there were enough staff on that unit to be able to observe people or  
20 speak to them as and when those people were not with their lawyers or not seeing family?

21 A. There were two officers on that unit but they did not engage in conversation with the  
22 inmates.

23 Q. Why not, Miss Baird?

24 A. It is just not what correctional officers normally do ---

25 Q. Miss Baird, with respect you ---

26 A. --- because ---

27 Q. --- are giving evidence to this court about the conditions at the MCC and you were the  
28 person in a position to encourage your staff to speak to inmates or to undertake the kind of  
29 conversation that might have ameliorated the sorts of conditions that you are saying were not  
30 up to scratch.

31 A. In that unit you have to understand there was a steel door and there was a viewing  
32 slot, for lack of a better word, and that viewing slot remained closed at all times except when  
33 the officer makes his rounds every 30 minutes to check and make sure that everybody is OK.  
34 That is when they would open up the viewing slot, check and make sure that the person is

1 OK, close the viewing slot, move on. So, they did not stand there and engage in a full-on  
2 conversation with the inmates in that unit. It just did not happen.

3 Q. Yes, but it could have done, Miss Baird, if someone like you, for example, had  
4 encouraged it or said that that was something that should happen.

5 A. No, that is not something - I mean, I lead by example and I would stop at every cell  
6 and talk to every inmate if they wanted to talk to me but it is not something that a warden  
7 enforces on their staff that you have to go and talk to every inmate, converse with every  
8 inmate, that is, that is not something that a warden does. I may want them to do that but that  
9 does not mean that I have the authority to tell them to do that. That is not - you know, they  
10 are all in a union and if I told them that they had to converse with inmates they would tell me  
11 it is not in their job description. So, it is not something that I can order them to do ---

12 Q. Miss Baird, come on ---

13 A. --- if that makes sense.

14 Q. --- are you seriously ---

15 A. No, I am ---

16 Q. --- suggesting that you could not encourage your staff to go and talk to inmates or  
17 have a bit of a chat with them?

18 A. Certainly, certainly I could encourage but you are talking about enforcing and you are  
19 talking about what normally happens, and I am saying on a regular basis all the correctional  
20 officers in that unit, and there were two, do not go and engage in lengthy conversations with  
21 an inmate in a SAMs unit.

22 Q. And did you encourage staff to have those sorts of interactions with people in the  
23 unit?

24 A. I do not know that I specifically had that conversation with those staff members. Like  
25 I said, I was approaching it to lead by example and I did stop at every cell and I did talk to  
26 every inmate and sometimes I had an interpreter if I needed an interpreter.

27 Q. I mean, Miss Baird, if the conditions were as worrying as you would suggest, would it  
28 not be the first thing that you would do is to have a meeting with your staff and say, you  
29 know, I would like you to have a chat with people, I would like you to have an interaction?

30 A. No. I mean, that is not something that is done in a prison. I am sorry that I am not  
31 answering it the way that you would want me to but I am answering it the way that it actually  
32 is.

33 Q. Did you ---

34 A. What I want is not what I can enforce.

1 Q. Did you ever raise concerns about people on SAMs with those above you in the  
2 Bureau of Prisons?

3 A. No. I did not.

4 Q. And when the judge in the Abu Hamza case spoke to you about him, did you raise any  
5 concerns with her?

6 A. I do not recall having that meeting with the judge for Abu Hamza.

7 Q. Do you remember that the judge was in touch with the MCC it seems on a number of  
8 occasions about Abu Hamza?

9 A. Many judges in the Southern District of New York I was in contact with. Specifically  
10 about Abu Hamza, I honestly cannot recall that meeting or that conversation.

11 Q. Now, I am just going to read out to you what the judge said in her sentencing remarks  
12 in Abu Hamza's case. "First, the BOP has dealt with Mr Abu Hamza for a couple of years  
13 now. I have also dealt with the MCC in connection with Mr Abu Hamza's medical  
14 conditions a number of times and spoken with them about it and spoken with the warden  
15 about it on a number of occasions over the last several years. I have toured the medical  
16 facilities over at the MCC and I have met with the medical staff over at the MCC because  
17 issues have been brought to me over time." Do you recollect any interactions with the judge?

18 A. Yes, I did read that. I did go through that, what you just read to me as I was going  
19 through all the bundles and I do not know that that was absolutely me. I do not know. What  
20 were the dates of that meeting? And what were the dates of his sentencing?

21 Q. Well, I can tell you the date of his sentencing. It was 9 January 2015 and you started  
22 work in the MCC in 2014.

23 A. Yes. I mean, it very well could have been me. I do not recall the specific meeting  
24 with the judge and I do not recall her or him touring the medical facility or touring the unit.

25 Q. Do you remember ever raising with any of the judges that you were in contact with  
26 concerns about conditions in the SAMs unit?

27 A. No, that was such a small segment of our population. No, so, I do not, I do not know  
28 that I have ever spoken to any of the judges of the SAMs inmates.

29 Q. So, just to recap then, Miss Baird, you did not encourage your staff to talk to people  
30 on the SAMs unit, you did not raise concerns with anybody above you in the Bureau of  
31 Prisons, and it does not appear that you raised any concerns with any judges that might have  
32 spoken to you about SAMs either or inmates who were on the SAMs unit, is that correct?

33 A. The first part of that, that I did not encourage staff to converse with SAMs inmates,  
34 you know, that sounds very harsh and I would say, and speaking for myself, I believe that I

1 was a very - I tried to be a very fair and somewhat compassionate employee. The fact that  
2 other staff did not engage in conversations as I had, that is, that is a reflection on how they  
3 performed their duties, but that is just not uncommon. If you have been to any of the federal  
4 prisons you would know that that is not uncommon for staff to not engage in conversation  
5 with the inmates.

6 Q. Yes, but ---

7 A. And I - no, in answer to your other question, I do not recall making a complaint or  
8 recommendation to a judge or somebody in the Bureau of Prisons above me regarding SAMs.

9 Q. Miss Baird, what that all suggests is that these conditions did not cause you that much  
10 concern at the time and it is only now, when you have been asked to provide evidence in  
11 these proceedings, that you are describing the conditions in the way that you are.

12 A. It did cause me concern but I had to convince myself that it was OK.

13 Q. Well, what I am interested in, Miss Baird, as the person who had responsibility for the  
14 running of the MCC, what did you actually do about your concerns at the time?

15 A. I honestly did not believe I had any control over it at all. It was at such a higher level  
16 than I was.

17 Q. Miss Baird, you did not even ---

18 A. If anything ---

19 Q. --- you did not even try to do anything about it, did you?

20 A. I was, I was not able to make any kind of recommendations to change it.

21 Q. So, just coming back then to your two years at the MCC, how many people on the  
22 SAMs unit during that time were found not fit to stand their trial because of their mental  
23 condition?

24 A. None that I am aware of.

25 Q. How many of those individuals were transferred to a hospital because of mental  
26 illness?

27 A. While I was there?

28 Q. Yes.

29 A. None that I am aware of.

30 Q. In terms of the suicide rate of the MCC, I think it has been reported that the suicide of  
31 Jeffery Epstein was the first suicide that there had been in some 13 or 14 years, is that  
32 correct?

33 A. At the MCC, yes.

34 Q. So there were no suicides either whilst you were the warden of the MCC?

- 1 A. No.
- 2 Q. Did anyone ever bring a claim against you or the Bureau of Prisons claiming that the  
3 conditions on the SAMs unit were unconstitutional?
- 4 A. I am sure they have.
- 5 Q. Did any of those cases succeed?
- 6 A. I do not know.
- 7 Q. Do you think you would have remembered if any judge had ruled that the conditions  
8 on the SAMs unit were unconstitutional?
- 9 A. If something had changed, yes, I believe I would have remembered.
- 10 Q. Can I move on then to the ADC, have you ever actually been to the Alexandria  
11 Detention Center?
- 12 A. No.
- 13 Q. Are you in any position to comment on the conditions at that prison pre-trial?
- 14 A. Other than what has happened with SAMs, no.
- 15 Q. Leaving SAMs to one side, are you in any position to comment, for example, on the  
16 standard of medical care that is provided at that facility?
- 17 A. No.
- 18 Q. Are you in any position to dispute or gainsay what Mr Kromberg says in his second  
19 statement at paragraph 13 about the staffing levels at the ADC?
- 20 A. I am not familiar with the ADC.
- 21 Q. Mr Sickler gave evidence that he thought the overall standard of care at the ADC was  
22 good or, in his words, “stellar.” Are you in any position to dispute that?
- 23 A. I cannot comment on the ADC, it is a county or state facility that I have no knowledge  
24 of.
- 25 Q. I am going to turn then to the post-conviction aspect of this case, please. First of all,  
26 you are not in any position, are you, Ms Baird, to speculate or comment on any sentence that  
27 Mr Assange might get?
- 28 A. From my experience of cases that I know are similar, they always receive life  
29 sentences.
- 30 Q. That is simply not right, Ms Baird. Can you help me with that, what case are you  
31 referring to that is similar?
- 32 A. One that we had many years ago was an espionage case, Aldrich Ames.
- 33 Q. Mr Ames, is he not a spy?
- 34 A. It was an espionage case, and I do not know all the details, it was so long ago that I

1 have no familiarity with that case; it was the mid-90s.

2 Q. In terms of the Espionage Act and in terms of distribution of national defence  
3 information, the highest sentence is about 63 months; that was the sentences given in respect  
4 of Reality Winner; are you familiar with that case?

5 A. No, I am not.

6 Q. Going back to the sentencing process, the first part of that process is that the judge  
7 may or may not recommend where an individual goes to prison; is that right?

8 A. That is correct, yes, they may or they may not.

9 Q. When it comes to ADX, and before I deal with the ADX, have you ever been to the  
10 ADX, Ms Baird?

11 A. No.

12 Q. Are you aware of the sort of reviews that take place before an inmate is even  
13 considered for the ADX?

14 A. I am because over the course of many years I was the designator, I made the  
15 determination of where somebody would serve their sentence; that is how I am familiar with  
16 the procedures.

17 Q. Were you responsible for replacing people at the ADX?

18 A. Yes.

19 Q. Can you tell us what the process is for placing people at the ADX?

20 A. It is a little bit different now than back in the 90s, but now the designation centre,  
21 which was created in 2005/2006, they send a referral to the regional director and the district  
22 in the north/central regional office who has oversight authority for the facility; and that  
23 regional director, I believe it is assistant director now, has to approve placement of an inmate  
24 into the ADX. If there was a referral from it, that would be for an initial commitment. For  
25 somebody that is transferring, it is very similar procedures; the warden at the transferring  
26 facility would send a packet to the DSCC designation centre, and then DSCC would send it to  
27 the regional office and/or central, and then, if approved, they would send it back to the chief  
28 of the designations area, and the chief would either approve it or not. I would imagine that  
29 the chief is going to approve whatever the designator says.

30 Q. Was this the procedure in the 1990s, Ms Baird, or is this the up to date procedure you  
31 are describing?

32 A. It was a little bit different. It was a little different in 1990 because we did not have a  
33 designated centre in Texas at that time.

34 Q. Just to be clear, Ms Baird, you were a designator in the 1990s, is that right?

1 A. I did designations, yes.

2 Q. In the 1990s?

3 A. Yes, in the 1990s.

4 Q. If we look at page 336 of the prosecution bundle, this is a description of how one  
5 comes to be placed at the ADX: “Inmates are afforded multi-level reviews prior to their  
6 placement at the ADX. The current policy sets out a multi-step process, which includes a  
7 formal hearing, full clinical psychological evaluation, which is reviewed by the Bureau  
8 Central Office and medical review for determining whether or not an inmate is appropriate  
9 for placement at the ADX. The process applies to all inmates who are considered for transfer  
10 to the ADX, including those with special administrative measures.” That is just one part of  
11 the multi-level review, which, you are quite right, it is obviously considered by a number of  
12 different officials?

13 A. Yes, that is how it is done, that way.

14 Q. You accept, Ms Baird, yes, that that is the proper procedure that applies before  
15 someone is even considered?

16 A. Yes, that is correct.

17 Q. If we go to page 463 of the bundle, this sets out the process that applies in terms of  
18 medical screening: “BOP has implemented a robust screening process to ensure inmates with  
19 serious mental illness are not placed in the ADX, which is described in the policy referred to.  
20 This process begins with the initial referral, which requires a clinical interview and  
21 psychological testing, conducted by a psychologist at the referring institution. Psychologists  
22 in the central office screen out inmates who have serious mental illness, review the results of  
23 this assessment and the mental health record. The ADX’s chief psychologist screens inmates  
24 who are not precluded again at the time that they are designated to the ADX to ensure that no  
25 significant deterioration has occurred since the time of the original screening. A psychologist  
26 sees them again on arrival.” Then it goes on to talk about working diagnosis that are  
27 assessments of functional impairments and so forth and so on. There is the initial screening,  
28 then there are specialist medical screenings as well. Do you agree?

29 A. I would agree that if the screening is done in the way they talk about it for serious  
30 mental illness, then in my experience serious mental illness in the Bureau of Prisons meant  
31 somebody was psychotic and likely needed to be in a mental health unit because they had  
32 psychosis.

33 Q. It is dealt with, is it not, in Dr Leukefeld’s affidavit at paragraph 33? She goes on to  
34 say that there are only 14 inmates at the ADX who have a serious mental illness, but who

1 have to be placed there because of exceptional security concerns. Have you seen that?

2 A. I have seen that, and I would agree with that, and I believe that they moved a lot of  
3 inmates out after making their decision to the penitentiary at Allenwood and the facility in  
4 Atlanta Georgia, that secure mental health unit.

5 Q. I am going to come back to deal with medical care at the ADX, but before I do, I want  
6 to ask you about the evidence that you gave that people with SAMs are only ever held at the  
7 ADX. I wanted to understand what the basis is of that evidence, Ms Baird. How do you  
8 know that?

9 A. There is nowhere else for them to go.

10 Q. Right. In the *Ahmad* decision evidence was given that out of the 41 prisoners who  
11 were subject to SAMs, that 27 were in the H unit at the ADX; did you read that?

12 A. I did.

13 Q. Have you undertaken any research in order to understand where the other prisoners  
14 might be who did not fall within that 27?

15 A. I did not do any specific research, but I would guess they have serious medical  
16 problems, serious mental health problems, or they are in a state facility somewhere.

17 Q. I want to understand, why do you think that someone subject to SAMs could not be  
18 placed anywhere else, apart from a federal medical centre?

19 A. Because other institutions really do not have the capability to house somebody that  
20 has SAMs for a lengthy period of time because of the isolation aspect and not being able to  
21 be around other inmates. In a special housing or restricted housing unit, there are too many  
22 other inmates in that area and it would violate SAMs.

23 Q. I asked for up to date information about where people are within the prison system  
24 who are subject to SAMs. This can be checked, but the instructions I have been given are  
25 this: nine BOP inmates have a SAM for espionage pursuant to 501.2 of the Federal Code.  
26 Four are housed at the ADX. One at the MCC New York, two at the FCI Terre Haute in the  
27 CMU, one at FCI Hazelton, and one at the FMC Carswell.

28 A. OK.

29 Q. If that is right, Ms Baird, do you accept that people who are subject to SAMs can be  
30 held in other parts of the prison system than the ADX?

31 A. Some of them may be pre-trial. The Carswell situations is an all-female facility, so  
32 that person is likely in a restricted housing unit away from all other inmates, and any of these  
33 people who you talk about in order to follow the SAMs order would have to be isolated in a  
34 separate area of special housing unit.

1 Q. Well, the first point is, Miss Baird, if that is right those individuals are not at the  
2 ADX. Correct?

3 A. That is correct, if you have that information.

4 Q. And second of all, you seem to be under the impression that SAMs cannot be  
5 amended or adapted so that inmates who are subject to them can spend time with other  
6 inmates.

7 A. I have never personally seen it happen. I do not know of any cases where that has  
8 happened. I understand it is phase 3, which is on paper. I do not know how many inmates  
9 have participated in this phase 3 of the ADX in the H unit. I have no idea. I would guess that  
10 it is probably very, very few, if any at all.

11 Q. Right. Can we just have a look, because you seem to doubt Mr Kromberg's evidence  
12 about this, so can we just have a look at the policy document about this, and that is at page  
13 340 of the defence bundle. And this policy document, or this report rather, which is  
14 describing the special security unit sets out that it is designed for inmates who are subject to  
15 special administrative measures, which are restrictions on communications imposed by the  
16 Attorney General; explains what they are. Sets out that they are placed in the H unit. Says  
17 why they can be imposed. Sets out SAMs include, but are not limited to, placing an inmate  
18 in administrative detention and restricting social visits, the first of them being reviewed  
19 annually. And then it goes on to say, "The inmates incarcerated in H unit have the  
20 opportunity to participate in a three phase special security unit programme designed  
21 especially for SAMs inmates. The purpose of the programme is to confine inmates with  
22 SAMs under close controls by providing them opportunities to demonstrate progressively  
23 responsible behaviour and to participate in programmes in a safe, secure environment. The  
24 SSU programme balances the interests of providing programming opportunities and increased  
25 privileges with the interests of ensuring institutional and national security. The success of the  
26 inmate's participation in the SSU programme provides information that can be considered in  
27 an evaluation of whether SAMs continue to be necessary, or whether the inmate's  
28 communications can be monitored in a manner that will not compromise national or  
29 institutional security interests." And then it sets out the different phases, and just starting at  
30 the top sets out that inmates are able to receive up to five social visits. That applies to  
31 everyone, does it not, Miss Baird?

32 A. No, that does not apply to everyone.

33 Q. Well, this is what the policy is setting out. Are you suggesting that people who are  
34 subject to SAMs at ADX are not allowed to have their family visit them?

1 A. Oh no, I am not suggesting that. They are allowed to have their approved family  
2 members, yes.

3 Q. Right. So they are allowed family visits and then this, as we see, it sets out the  
4 different phases that the individuals can work through. And then it says, "Placement into  
5 phase 3 typically requires a modification of the SAMs to allow inmates to have physical  
6 contact with one another. They are allowed into the range in groups of up to four. An inmate  
7 in phase 3 gains the ability to be in physical contact with other inmates in the range area  
8 outside his cell seven days a week." Now, you are not suggesting, Miss Baird, are you, that  
9 this is just a fiction that the Bureau of Prisons has created?

10 A. No, I am not suggesting it is a fiction. I am not suggesting that at all. What I am  
11 suggesting is that there are likely very few inmates that ever make it to the phase 3 that are  
12 under SAMs because it completely defeats the whole purpose of what SAMs is set in place  
13 for.

14 Q. Miss Baird ---

15 A. So if somebody is a SAMs and is allowed to carry on communication with other  
16 inmates, why would the person need to be a SAMs anymore?

17 Q. Well, Miss Baird ---

18 A. It completely goes against what SAMs is.

19 Q. I mean I hate to make a statement of the obvious, but what this is setting out and  
20 describing is the process by which inmates are tested so that the BOP can ensure that their  
21 SAMs can be removed. Do you understand that that is what they are setting out?

22 A. Yes. You are talking about what you are calling a programme, which are these three  
23 phases. That has nothing to do with them having the SAMs removed. The phases, the part  
24 from phase 1 to phase 2 really only is about privileges. They have additional privileges. If  
25 they follow all these things and they make it from phase 1 to phase 2 they have a few extra  
26 privileges, but they are still housed in isolation, they are still housed alone. It has no bearing  
27 on that effect.

28 Q. Miss Baird ---

29 A. And there is no programme.

30 Q. To be clear, it says in terms, "The success of the inmate's participation in the SSU  
31 programme provides information that can be considered in the evaluation of whether SAMs  
32 continued to be necessary, or whether the inmate's communications can be monitored in a  
33 manner that will not compromise national or institutional security interests." So, in other  
34 words, it is a system of privileges, is it not? I mean that is what it is describing.

1 A. It is describing how possibly they could receive more privileges, but in Mr  
2 Kromberg's report he made it sound like it was this system of programmes and that there are  
3 these programmes that an inmate in H unit can participate in, and there is going to be other  
4 inmates, these group programmes. It is not going to happen.

5 Q. Well ---

6 A. There are no group programmes.

7 Q. I am going to - well, you have said that on a number of occasions and I do not accept  
8 that and I am going to tell you why. It is explained in the affidavit of Miss Leukefeld, but I  
9 am just trying to understand, Miss Baird, how do you know any of this? You do not have any  
10 direct experience of how a H unit works, do you?

11 A. Because I know what the directive is with SAMs. It is not a policy, it is not  
12 something that is discretionary. There is no grey area with SAMs. It is very matter of fact  
13 and it is very black and white.

14 Q. OK, well, let us test that. Can we look at ---

15 JUDGE BARAITSER: Just before you do, can I just interrupt for a moment? You have been  
16 giving evidence for about an hour and 35 minutes. Would you like to continue or would you  
17 like a break now before you continue?

18 WITNESS: Thank you, your Honour, I can continue.

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

20 MS DOBBIN: My Lady, I would not mind a break, if that were possible.

21 JUDGE BARAITSER: You would like a break. All right. I think we will take a break. We  
22 will just take 10 minutes to give everyone a chance to have a walk round and take a comfort  
23 break if they need it. Please can you make yourself available at five to 12, please, in 10  
24 minutes time?

25 Thank you very much. We will just rise for 10 minutes

26 (Short adjournment)

27 JUDGE BARAITSER: Thank you very much. Thank you, Ms Baird. We will pick up  
28 where we left off a moment ago.

29 WITNESS: Thank you.

30 MS DOBBIN: So, Ms Baird, before I turn to Ms Leukefeld's evidence, I just wanted to go  
31 back to the judgment of *Ahmad v United Kingdom* at page 274. I do not know if you know  
32 that in that case, the European Court asked for information from the United States and this,  
33 my Lady, is at page 238. It set out a series of questions that it wanted answered about how  
34 the ADX operated.

1 So, it asked how long inmates in the special security programme had been at the ADX  
2 and how long had they been in each phase of the programme? How many inmates were in  
3 each phase of the step down programme? How long each inmate had spent at ADX and how  
4 long they had been in each phase of the programme and how many inmates have completed  
5 the programme? How long they had spent at ADX and how long they had been in each phase  
6 of the programme?

7 At page 274, the court, and this is at paragraph 223, at the midway point of that  
8 particular, says, “However, the figures provided by the United States authority, although  
9 disputed by the applicants, show that there is a real possibility for the applicants to gain entry  
10 to the step down or special security unit programmes.

11 First, the Department of Justice’s letter of September 26, 2011 shows that whilst there  
12 were 252 inmates in ADX’s general population unit, 89 inmates were in the step down  
13 programme.

14 The figures provided in that letter for the special security unit programme when  
15 compared with the November 2010 figures, given by Mr Milusnic, demonstrated that inmates  
16 were progressing through that programme too. Secondly, Ms Randall’s declarations show  
17 that inmates with convictions for international terrorism have entered the step down  
18 programme and in some cases have completed and been transferred to other institutions.”  
19 The court refers there to the case of *Rezaq v. Nalley* where the petitioners, all convicted  
20 international terrorists, had brought proceedings to obtain entry to the step down programme,  
21 but by the time the matter came to judgment, they had completed the programme and been  
22 transferred elsewhere.

23 So, can you tell me then what evidence you have since 2012 that prisoners who are  
24 subject to SAMs are not progressing through the special security unit at the ADX?

25 JUDGE BARAITSER: Just pause for a moment. Do we have a sound problem? Is it her end  
26 or our end?

27 MR FITZGERALD: I wonder if it could be made clear that those statistics are not about  
28 SAMs. They are about, so far as I can see, all the people in ADX.

29 JUDGE BARAITSER: Alright. Well, let us just see if we can make contact again. Can you  
30 just say some words so we can hear you, please?

31 WITNESS: Yes.

32 JUDGE BARAITSER: Thank you, alright. Yes, thank you very much, we now have contact.  
33 Now, Mr Fitzgerald, you wanted to ask Ms Dobbin to make something clear and that was?

1 MR FITZGERALD: I just, I would want it clarified, the figures about the people in ADX are  
2 not confined to those subject to SAMs and that should be made clear, I think.

3 JUDGE BARAITSER: Alright, thank you very much.

4 MS DOBBIN: So, since 2012, can you provide any evidence to suggest that people are not  
5 progressing through the special security unit at the ADX?

6 A. The inmates that they are referring to, all these inmates, these 200 and something  
7 inmates, are obviously not SAMs inmates.

8 Q. Yes.

9 A. Especially given that there are only between 40 and 50 SAMs inmates, so they are  
10 talking about terrorist inmates that are not SAMs, that have worked their way through the  
11 step down unit. The stepdown unit is not, or the stepdown programme does not apply to  
12 SAMs inmates.

13 Q. Well, what the European Court found was that there was a real prospect that the  
14 applicants in that case would be able to work their way out of the H unit and eventually find  
15 themselves in the general population. Do you understand that that is the effect of the *Ahmad*  
16 judgment?

17 A. Yes, I understand that that is likely the goal, but that is not what they were referring to  
18 when you just read the excerpt.

19 Q. Let me just make clear what it says at the very outset of paragraph 223, “The court  
20 would also note that, as it emphasised in *Ramiraj Sanchez*, solitary confinement, even in  
21 cases entailing relative isolation cannot be imposed indefinitely. If an applicant were at real  
22 risk of being detained indefinitely at ADX, then it would be possible for conditions to reach  
23 the minimum level of severity required for a violation of article 3. Indeed, this may well be  
24 the case for inmates who have spent a significant period of time at the ADX.

25 However, the figures provided by the United States authorities, although disputed by  
26 the applicants, show that there is a real possibility to gain entry,” and I have already read you  
27 out that part.

28 A. OK. I am still unclear that you are talking about SAMs inmates.

29 Q. Right. Well, that was the basis upon which the court gave the judgment in that case,  
30 on the basis that there was a real risk that the inmates would be sent to the H unit at ADX.  
31 Do you understand that? And it found that there was a prospect that they could work their  
32 way through the various levels at the ADX.

33 A. Yes, and, again, it is not a programme. They are allowed certain benefits if, in fact, if  
34 they meet all the requirements to maybe go to another phase.

1 Q. Are you saying, Ms Baird, that since 2012, no one has been moved out of the H unit?

2 A. I believe that there has been - from what I have read and I think it may have been in  
3 the prosecution bundle, that there have been five cases of removal, of SAMs removal since  
4 2009.

5 Q. Where did you read that?

6 A. I thought I read it in one of your documents.

7 Q. I do not recollect that, but aside what you have read in these documents and based on  
8 your apparent knowledge of this field, can you tell me how many people have been moved  
9 out of the H unit since 2012?

10 A. Well, only from what I have read and what you have provided and that was, my  
11 understanding that there were five inmates that were removed from SAMs, but that was, I  
12 believe, since 2009.

13 Q. So, is this right, Ms Baird, you have absolutely no idea of how many people have  
14 been able to progress through the H unit since 2012?

15 A. I do not have the number, no.

16 Q. Do you know, since 2012, how many people at the ADX have not had their SAMs  
17 renewed?

18 A. I believe since 2009 it has been five.

19 Q. Again, Ms Baird, where are you getting that from?

20 A. It was an agent that completed a declaration. It was in your bundle. I believe it was  
21 an FBI agent.

22 Q. I think that you are talking about an old declaration that was before the European  
23 Court. Is that what you are referring to?

24 A. I am not sure when it is dated.

25 Q. I am just going to check that. Are you referring to the declaration of Christopher  
26 Sangsvall?

27 A. Yes. That was with him.

28 Q. So, my Lady, that is at your bundle, page 33. You did not check the date of that, but -  
29 --

30 A. It was the attorney, I believe.

31 Q. That was signed on the 24<sup>th</sup> of September 2010 and I think what you are referring to is  
32 his paragraph 5, "There have been a number of cases in which the SAM of inmates have been  
33 vacated or not renewed in their entirety. The SAM of ten inmates who have been housed at  
34 the ADX have been removed. Five of those instances of non-renewal have taken place since

1 January 1, 2009.” I am asking you about what you know about the operation of H unit since  
2 2012.

3 A. I cannot give you an exact number. I have no idea how many inmates have been  
4 removed from the programme.

5 Q. How can you possibly give evidence to this court that Mr Assange would be detained  
6 indefinitely at the H unit if you do not even know the basic statistics about how many people  
7 have been able to work their way through that unit?

8 A. I know that the ones that are there have been for - the cases that I have read have been  
9 there for quite some time and are still SAMs.

10 Q. Which cases have you read about, Ms Baird?

11 A. I know the *Hamza* case.

12 Q. Yes.

13 A. Lyndsay Lewis provided a statement.

14 Q. Anybody else’s case that you know about?

15 A. That is the one that, that is the one that comes to mind. I am not aware of the names  
16 of the others that I have looked at.

17 Q. Are you familiar with any other cases of people in the H unit?

18 A. Yes.

19 Q. And whose case are you familiar with?

20 A. I do not recall the names. It was three of the terrorists.

21 Q. Do you know what phase they are in at the special security unit?

22 A. No, I do not. It sounded like they were in phase 1 in the court documents that I have  
23 read.

24 Q. Which court documents?

25 A. It was on their case. I cannot provide it for you.

26 Q. Right, so you cannot name anybody apart from Abu Hamza who is in the H unit. Is  
27 that right?

28 A. I cannot name them by names, no.

29 Q. Alright. And in terms of what you know about Abu Hamza, presumably you only  
30 know about that because of this case in terms of him being at the ADX. I think you say that  
31 in your affidavit.

32 A. Yes. Yes, I did not know that he, that SAMs continued in the ADX.

1 Q. Now, as I understand it, and this is an approximate figure, since 2012, 26 inmates who  
2 were on SAMs and housed at the ADX have been moved out of the H unit and did not return  
3 to it. Presumably, Ms Baird, you are not in any position to comment on that, are you?

4 A. Not specifically, no.

5 Q. You have suggested throughout your affidavit that you found it, I think in your words  
6 at paragraph 10, that it was baffling how anybody subject to SAMs could be involved in any  
7 sort of group therapy, correct?

8 A. Yes.

9 Q. And Ms Leukefeld addresses that, does she not?

10 A. Yes, she does.

11 Q. Can we pick that up, please? My Lady, this is at paragraph 34 of Ms Leukefeld's  
12 witness statement. And she says, "This mental health treatment at ADX is available in both  
13 individual and group therapy settings. It is provided regardless of the housing unit the inmate  
14 resides in. Consistent with BOP policy, it is conducted in private and is not observed by  
15 correctional services staff. Mental health treatment and other programme is incentivised to  
16 encourage broad participation from the inmate population such that technically 50 per cent of  
17 the inmate population is participating in psychology services programming at a given time."

18 And then over the page, "I have no knowledge of whether special administrative  
19 measures would be applied to Mr Assange and this is not under the control of the BOP.  
20 However, if they were applied there would be no change in the availability of medication or  
21 individual counselling as interventions for mental illness group therapy is also permitted for  
22 inmates with SAMs when there is approval from the agency that requested the SAMs."

23 So, in other words, Miss Baird, there is scope within the imposition of SAMs for staff  
24 at the ADX to be able to request amendments to them so that individuals can participate in  
25 different therapies or activities. Can you see that?

26 A. I think she has made a clear distinction. These programmes are not necessarily  
27 related to SAMs inmates and she - and you are advising that there is a way for an inmate to  
28 go as a SAMs modified and I would agree that that is correct but if that happens I have not  
29 seen the SAMs modified.

30 Q. She said very specifically, has she not, "Group therapy is also permitted for inmates  
31 with SAMs when there is approval from the agency that requested the SAMs." It is quite  
32 simple, is it not, Miss Baird?

33 A. She has made that statement. I have never seen it in - during - in my experience, I  
34 have never seen that happen.

1 Q. Miss Baird, is that because your experience of SAMs is limited entirely to the pre-  
2 trial phase?

3 A. It is because of what SAMs represents, what it is supposed to - the whole purpose  
4 behind SAMs.

5 Q. Yes. And as we have already been through, Miss Baird, there is a system in place so  
6 that SAMs can be lifted, or a process in place so that SAMs can be lifted. You at least agree  
7 with that, do you not?

8 A. There is something in place that it could be lifted. Whether or not that ever happens is  
9 something different.

10 Q. Well, I think we have agreed, Miss Baird, that you do not have any evidence that you  
11 are able to give about that at the ADX, correct?

12 A. I do not have specifics about the ADX but I am familiar with SAMs.

13 Q. Do you agree that since 2012 the mental health provision at the ADX has improved  
14 because of the *Cunningham* settlement?

15 A. For non-SAMs inmates, yes.

16 Q. Why has it not changed things for SAMs inmates, Miss Baird?

17 A. It was focused on a different group of inmates in that decision. It was focused on  
18 inmates more in the general population so that they could ---

19 Q. Have you read ---

20 A. --- be involved in group participation.

21 Q. --- have you read the settlement in *Cunningham*?

22 A. I have.

23 Q. I wonder if we could just pick it up because it applies across the board, does it not, to  
24 people in ADX?

25 A. Not - my understanding is it is not.

26 Q. Sorry, can you point me to where in the settlement it excludes people who are subject  
27 to SAMs?

28 JUDGE BARAITSER: Page please?

29 MS DOBBIN: I am so sorry.

30 JUDGE BARAITSER: It is all right.

31 MS DOBBIN: It is the exhibit at tab 13, it is the "Kromberg 4".

32 JUDGE BARAITSER: So, it is not in the general prosecution bundle?

33 MS DOBBIN: I am sorry. No, it is not.

1 JUDGE BARAITSER: No. All right. I will find it, thank you. Yes. Sorry, I interrupted,  
2 did you hear the question?

3 A. Yes, could you refer me to where your - the decision is?

4 MS DOBBIN: I am looking at the *Cunningham* settlement. It is an exhibit to Gordon  
5 Kromberg's fourth declaration.

6 MR FITZGERALD: Is this in the prosecution bundle?

7 MS DOBBIN: I think - did you not put the ---

8 A. I have it. It is in the defence bundle.

9 MS DOBBIN: Yes.

10 MR FITZGERALD: So sorry. Yes, we did. We put his statement in, yes.

11 MS DOBBIN: So, can you just explain to me how this does not apply to people on SAMs?

12 A. Can I just get to the decision on SAMs? I do not have the decision in his fourth  
13 declaration that I am looking at but ---

14 Q. Well, you ---

15 A. --- the *Cunningham* decision, it talked about increasing the mental health aspect in  
16 many different ways for the inmates at the ADX.

17 Q. Yes.

18 A. And part of that settlement was group participation in the programmes that they  
19 offered. So, SAMs inmates are not entitled to group participation, they do not have that  
20 capability to get involved in group participation.

21 Q. So, I am just going to look at the settlement. It is not a decision, it is a settlement, and  
22 I am just looking at paragraph 4 of it, I will read it to you if you do not have it, Miss Baird?  
23 "This addendum is the result of nearly four years of collaborative arms-length settlement  
24 negotiations by energetic and experienced counsel for the parties and their respective  
25 consultant and experts, aided by an experienced United States Magistrate Judge to resolve the  
26 claims raised by this action. The parties, without conceding any infirmity in their claims or  
27 defences, engaged in extensive arms-length settlement negotiations to implement changes  
28 related to the constitutional violations alleged in the complaint."

29 Now, I am just going down a bit, "The parties benefitted from the informed advice of  
30 two psychiatrists, Jeffrey Metzner and Sally Johnson, with correctional experience who have  
31 significant experience as expert witnesses and monitors in corrections, mental health  
32 litigation, as well as other outside and Bureau experts. This collaborative attitude allowed  
33 defendant to address the issues raised in association with the constitutional violations with

1 practical creativity. Defendants’ voluntary significant initiatives and parties’ collaborative  
2 work resulted in the following ...”.

3 And it then sets out a number of policies relating to the screening and diagnosis of  
4 mental illness, provision of mental healthcare, suicide prevention, conditions of confinement,  
5 to reduce the risk of development or exacerbation of mental illness. It then sets out seven  
6 different policies.

7 “The development and activation of the following units for mental health treatment.”.  
8 It then sets out the three further provisions that was being made for mental health treatment.  
9 So, a secure mental health unit at Atlanta, Georgia, secure mental health unit at the United  
10 States Penitentiary in Pennsylvania, and the Stages Programme at Florence, Colorado, as  
11 well.

12 And then, “The undertaking of the following significant initiatives”, and then it sets  
13 out all of the various initiatives, and I think there is 31 separate initiatives related to mental  
14 health, and then for example, that includes constructing, maintaining, and employing areas  
15 for private psychological and psychiatric counselling sessions in all housing units at the  
16 ADX.

17 Another example, the periodic assessment of all inmates at ADX to determine  
18 whether mental illness has developed since the last screening. And then the exclusion of  
19 certain inmates, and we have already been through this, with serious mental illness from the  
20 ADX accepting cases of extraordinary security needs.

21 It is absolutely clear, is it not, Miss Baird, it is beyond argument that that settlement  
22 was to the benefit of everyone who resided at the ADX. Do you agree?

23 A. The settlement was - yes, I would agree that the settlement benefits everyone at the  
24 ADX but specific areas of the settlement do not overlap with SAMs inmates at all.

25 Q. So, are we back to your point, Miss Baird, or your understanding, which is contrary to  
26 the evidence of Ms Leukefeld, that people who are subject to SAMs cannot engage in group  
27 therapy? Is that what it comes down to?

28 A. It makes clear - it makes a lot of sense. Yes, it goes against the very premise of what  
29 SAMs is, to engage in group therapy.

30 Q. Are you suggesting that Dr Leukefeld is wrong or just does not know what she is  
31 talking about when she says that people that are subject to SAMs can join group therapy?

32 A. I think she does not have very much experience with SAMs inmates and she has  
33 worked in the central office and not in the field for several years.

1 Q. Well, I think there are two points that follow that, Miss Baird. Your experience, your  
2 direct experience is limited to the two years that you have spent at the MCC. And, second of  
3 all, I think if you look carefully at Ms Leukefeld's affidavit, it is absolutely clear that she is in  
4 a position to comment on what the provision is at the ADX. You disagree?

5 A. I think if you are familiar with SAMs and if you have worked with SAMs inmates for  
6 any period of time, SAMs applies whether it is pre-trial or whether it is post-trial. A SAMs  
7 measure is what it is and there is no differentiating what a SAMs is. With Dr Leukefeld, I  
8 would just say that she even mentioned in her own report, she specifically took out SAMs for  
9 one area because it seemed like she was not familiar with how it applies to SAMs.

10 Q. Miss Leukefeld was dealing with SAMs separately so as to make clear, Miss Baird,  
11 that people who are subject to SAMs are entitled to individual treatment on their unit and also  
12 are able to join group therapy. And I fail to see ---

13 A. I do not disagree that ---

14 Q. --- I fail to see how you could possibly be ---

15 MR FITZGERALD: Question please.

16 Q. --- in any better position ---

17 MR FITZGERALD: Well, that is a comment.

18 JUDGE BARAITSER: Do you believe you are in a better position?

19 MS DOBBIN: Do you think you are in a better position than Dr Leukefeld to comment on  
20 how treatment is provided at the ADX?

21 A. Only because I am familiar with how SAMs is applied.

22 Q. I just want to deal briefly if I can with a few other matters. Can I first ask you this  
23 about the CMU that you worked in? Can you just confirm that the CMU is a general  
24 population unit within a prison?

25 A. It is a prison within a prison, yes.

26 Q. And the individuals who live there are not, as it were, in solitary confinement, is that  
27 right?

28 A. That is right. There is a solitary confinement unit within that unit.

29 Q. But presumably, ---

30 A. For those inmates.

31 Q. --- that is for disciplinary infractions and that kind of thing, is that right?

32 A. Disciplinary or administrative, yes.

1 Q. I also want to deal, if I can, just with the general issue of suicide prevention in the  
2 BOP. Do you agree with what Dr Leukefeld has set out, and this is just generally, at  
3 paragraph 13 and onwards in her statement?

4 A. Could you tell me what you are talking about?

5 Q. Yes, of course. She sets out at some length the sorts of assessments that are made  
6 whenever an individual first is admitted to the Bureau of Prisons, so do you agree that all  
7 inmates are psychologically screened on arrival for suicidal ideation?

8 A. Yes, I would agree with that.

9 Q. And do you agree that they are screened by psychologists as well?

10 A. Yes.

11 Q. And if we pick that up at paragraph 23, “The BOP prevents suicide by engaging in an  
12 earlier identification of at-risk inmates. All BOP staff trained annually to identify inmates at  
13 greater risk of suicide. All inmates screened for suicide ---

14 A. Yes.

15 Q. --- risk by a medical professional, typically upon arrival and always within 24 hours  
16 of arrival.”

17 A. Yes, I agree with that.

18 Q. And if we go over to paragraph 25, “The BOP also prevents suicide through  
19 comprehensive risk assessments. BOP staff receive annual training on how to identify  
20 suicide risk and make referrals.” Do you agree with that?

21 A. I do agree with that, yes.

22 Q. Again, paragraph 26, “The assessment is conducted only by doctor or level  
23 psychologists.” Yes?

24 A. Yes, I agree with that.

25 Q. Do you agree with what she says at paragraph 27? “The BOP uses a variety of  
26 cognitive behavioural therapies that are evidence based as regards suicide risk.” She  
27 mentions the specific ---

28 A. Yes.

29 Q. --- programme used. And do you agree with what she says at paragraph 28 that, “If  
30 warranted the BOP will place inmates on a suicide watch as a method of suicide prevention”?

31 A. Yes, I agree with that.

32 Q. And I think that you agree overall that the suicide prevention strategy of the BOP is a  
33 robust one that works well. Yes?

1 A. I would say that they have great programmes, yes. They do not always work, but the  
2 programmes are very good.

3 Q. And do you agree that the suicide rate amongst the BOP population at 10 per 100,000  
4 is a low rate?

5 A. I would say that when you are working in a system, you know, one suicide is too  
6 many, so I do not want to pass judgment on what I think 10 are low or a small amount.

7 Q. It is simply a rate, Miss Baird, that seems to be a very good rate.

8 JUDGE BARAITSER: Well, that is your opinion and I am not sure if she can – I think she is  
9 right in her answer. Whether it is a low or high, her answer is one is too many. What is your  
10 next question, please?

11 MS DOBBIN: Do you agree that that indicates that the programmes in place for suicide  
12 prevention are effective, Miss Baird, and that your former colleagues do a good job in  
13 preventing people from taking their own lives?

14 A. I believe that they are almost usually very effective and, yes, the psychology staff do a  
15 great job. I give them a lot of credit for all that they do.

16 Q. And I think that you agree that there are programmes within the BOP for the  
17 treatment of conditions like depression and anxiety. Yes?

18 A. I do not know if you could call them viable programmes. Are you referring to a  
19 specific programme?

20 Q. Well, I thought that at your paragraph 41 you were accepting that there were  
21 treatment options within the BOP for people who have conditions like depression and  
22 anxiety.

23 A. I mean, there are programmes that are sometimes offered through a counsellor, so  
24 some of these programmes are not necessarily viable programmes. They are programmes,  
25 but I think overall psychology services does good job.

26 Q. Yes. And I think that your criticism here is that Mr Assange may not be able to get on  
27 to a skills programme for people with autism?

28 A. He would not be eligible for that, no.

29 Q. And in any event ---

30 A. Probably not.

31 Q. --- that programme is for people with significant intellectual and social impairment, is  
32 it not?

33 A. It is now designed for people with - a lot of people that are on the autism spectrum. It  
34 ---

- 1 Q. Well ----
- 2 A. --- was not initially designed for that, but that is what it is utilised for now.
- 3 Q. I appreciate that you have not worked there for three years, but Dr Leukefeld sets out  
4 and explains in her affidavit that that programme is for people with significant intellectual  
5 and social impairment. Again, are you in a better position than ---
- 6 A. I do agree with it.
- 7 Q. Right. You do agree with that?
- 8 A. No, I absolutely agree with that, and what I was saying is it was not initially designed  
9 for that, but it evolved into that.
- 10 Q. I am going to move on, if I can. I just want to deal with staffing, if I may? Mr  
11 Kromberg in his fourth declaration sets out that this has been the sixth consecutive year of a  
12 decreasing population in BOP. Do you agree with that?
- 13 A. I do agree with that.
- 14 Q. At his paragraph 20 he sets out that there is 90 per cent staffing in medical staff.  
15 Miss Baird, you are not in a position to disagree with that, are you?
- 16 A. I do not have any knowledge of it currently.
- 17 Q. You have said in your affidavit that staffing can be a problem in rural areas, but we  
18 know that ADX ---
- 19 A. It can be a problem everywhere.
- 20 Q. Yes. ADX is one of the remotest prisons. I am not going to pull it up because I do  
21 not think we need to. It appears to have its full complement of medical staff. Are you aware  
22 of that?
- 23 A. I know that the ADX currently is operating a sign-up notice for anybody that will  
24 come and work there because they are short-staffed; in what department I do not know.
- 25 Q. OK. Well, let me just – I do not ask you to turn it up, this is a recent update in  
26 response to a report. It says, “This ADX Florence has more mental health staff than most  
27 Bureau institutions, with the mental health staff to inmate ratio greater than any other  
28 institution. Psychologists positions at the ADX are currently filled at 100 per cent. ADX  
29 Florence implemented an inmate request tracking system which tracks an inmate request until  
30 staff completion of the request. Each inmate at ADX Florence is seen at least once a week by  
31 trained mental health professionals or more often as is warranted.” Again, Miss Baird, you  
32 are not in a position, are you, you are not suggesting that that is wrong as regards the position  
33 at ADX when it comes to healthcare staff?

1 A. I am not suggesting that it is wrong at the ADX. I know what the 2017 Inspector  
2 General report said with regards to mental health staffing in the Bureau of Prisons. I am not  
3 disputing that the current figures that you just provided are not correct.

4 Q. If you would wait one minute. My Lady, that is all, thank you.

5 JUDGE BARAITSER: Thank you very much.

6 Re-examined by MR FITZGERALD

7 Q. Miss Baird, firstly, my learned friend asked you questions about your evidence that  
8 Mr Assange is likely to be subject to SAMs and one of the points you made in response was  
9 that Mr Kromberg in his first declaration expressly says that it is possible that he will be  
10 subject to SAMs. So that is one of the factors you took into account. Is that right?

11 A. Yes, very much so.

12 Q. You have given evidence in other extradition cases where, is this right, undertakings  
13 to have been at some stage, either he will not go to this prison, or he will go to this prison, or  
14 we will not seek a terrorism enhancement, or we will. Is it significant in your view that no  
15 such undertaking or proposal has been suggested by the Attorney General, "We will not  
16 apply SAMs"?

17 A. Yes, that is correct.

18 Q. Now, my learned friend then quoted some statistics to us about espionage. You said it  
19 was significant the fact that Mr Assange is charged with espionage. Is that right?

20 A. Yes.

21 Q. And we know that nine of those convicted of espionage are currently subject to SAMs  
22 in the BOP system. You heard that statistic?

23 A. Yes, I did.

24 Q. So in the light of that, the fact that you said the fact that he is charged with espionage  
25 is significant, do you still think it is significant?

26 A. I do.

27 Q. And one of the people was a woman who my learned friend suggested was Reality  
28 Winner detained in Carswell. That is a detention for women, is that right?

29 A. It is a medical centre for females with a ---

30 Q. Yes.

31 A. --- high security unit for females.

32 Q. Right. Well, assuming that it is right that that is Reality Winner, convicted of  
33 espionage and detained in Carswell, she was, my learned friend told you, sentenced to six  
34 years, but still subject to SAMs. Is that relevant?

1 A. The make-up of ---  
2 MS DOBBIN: Sorry, I do not remember ---  
3 A. The make-up of Carswell is they have a high security unit. It is the only one for  
4 females in the country.  
5 MR FITZGERALD: Right.  
6 A. So it ---  
7 JUDGE BARAITSER: Something you wanted to say, Ms Dobbin?  
8 A. She was likely housed in, I do not know specifically, but she was likely housed if she  
9 was SAMs in the high security unit in the special housing unit within that unit.  
10 JUDGE BARAITSER: Just pause, Mr Fitzgerald. Something you wanted to say.  
11 MS DOBBIN: I think my learned friend and I might be at cross purposes. I referred to  
12 Reality Winner having a sentence of 63 months. I did not mention SAMs in respect of her.  
13 MR FITZGERALD: No, but Reality Winner is detained in Carswell, and when my learned  
14 friend was referring to the one lady who was convicted of espionage who is detained in  
15 Carswell, my learned friend said she thought that that was Reality Winner. That is why I am  
16 putting it.  
17 JUDGE BARAITSER: And has it been confirmed one way or the other?  
18 MR FITZGERALD: Well, we confirm that she is certainly detained in Carswell.  
19 JUDGE BARAITSER: So SAMs has not been mentioned in any of this. Oh, she was one of  
20 the SAMs' people ---  
21 MR FITZGERALD: Other than by my learned friend, yes.  
22 JUDGE BARAITSER: --- who was not at ADX. Is that right?  
23 MR FITZGERALD: Yes, exactly, yes.  
24 JUDGE BARAITSER: I see.  
25 MR FITZGERALD: Well, so against that background just help us about this. Do you still  
26 think that it is likely that Mr Assange will be subjected to SAMs?  
27 A. I do think it is likely, yes.  
28 Q. And if we go on from there. I will deal with the nine people again a little bit later.  
29 Yes. My learned friend put to you the case of *Hashmi*, which I think you have got at page  
30 506 of the prosecution bundle. So if you have got it there, can you look at page 506?  
31 A. I have three bundles. I do not have any type of a tab or an index, so ---  
32 Q. Yes. Well, I will just put this to you. In there his complaint, his actual complaint,  
33 was that the SAMs was not prisoner specific, i.e., it did not take into account the particular

1 circumstances that he was in. Do you recall that that was his complaint? It may be you  
2 cannot.

3 A. I am sorry.

4 Q. In that case, let us move on. Let us go on to the case of *El-Hage*, my learned friend  
5 invited you to look at it?

6 A. Yes.

7 Q. The big prosecution bundle at page 481, and you were asked questions about that  
8 case. I want to put this to you: There has been a suggestion that there is no such thing as  
9 solitary confinement in the US system, but I want you to look at how the judgment describes  
10 his conditions. The judgment describes the conditions that Mr El-Hage was in as “solitary  
11 confinement”. If you look at the top of page 481, right-hand column, the judgment says: “He  
12 was subject to solitary confinement for the first 15 months”, do you see that?

13 A. Yes, I remember that.

14 Q. Can you assist us as to whether that throws any light as to whether the judges think  
15 that something is called “solitary confinement” if you are subject to SAMs?

16 JUDGE BARAITSER: Is this not a closing point?

17 MR FITZGERALD: Except that it has been put to this witness that there is not solitary  
18 confinement.

19 JUDGE BARAITSER: The fact that the judge has said that there is a closing point, is it not?

20 MR FITZGERALD: I am obliged. You were then cross examined on the basis that you did  
21 not encourage staff to have conversations with those subject to SAMs and did not raise  
22 concerns with the Bureau of Prisons or with judges. In response I think you said that the  
23 directions come from the Attorney General, is that right?

24 A. That is correct, yes.

25 Q. I think you also said that this would be “above my pay grade to complain about  
26 somebody” being subject ---

27 A. Yes, it would have been.

28 Q. On the numbers, my learned friend said that of the nine people subject to SAMs  
29 convicted of espionage, four are in ADX Colorado and one in the MCC. Those would be  
30 entirely consistent, would they not, with your view that you either are in pre-trial SAMs in a  
31 special unit or in ADX Colorado, those five?

32 A. Yes, absolutely.

33 Q. One was in FMC Carswell, and that was the lady, so that is six. Two were in FCI  
34 Terre Haute, would that be the Communications Management Unit?

- 1 A. They may be in an isolation within a Communications Management Unit.
- 2 Q. Right. Can you help us with Hazelton? Is Hazelton a medical facility?
- 3 A. It is a penitentiary, it is a federal penitentiary.
- 4 Q. Right. My learned friend also put to you the policy, and I know you have also seen,  
5 because you have commented on it, what Mr Kromberg says at paragraphs 46 and 47 of his  
6 fourth supplementary, which sets that out; have you got that for a moment? Would you recall  
7 that phase 1 was the period during which you are not permitted any association, and then you  
8 have commented that phase 2 was also a period where you would not be permitted any  
9 association, is that right?
- 10 A. That is correct, yes.
- 11 Q. Assuming that there is a phase 3, that is the only phase during which it is  
12 contemplated that there would be association with other prisoners, is that right?
- 13 A. Yes.
- 14 Q. My learned friend put to you various figures about ADX and completing the  
15 stepdown from the *Ahmad* decision (paragraph 223); do you recall those figures?
- 16 A. Yes.
- 17 Q. I think your comment was “Well, those figures are not specific to SAMs, they are the  
18 whole population of ADX”; is that right?
- 19 A. It is a different group of inmates, yes, other than SAMs.
- 20 Q. My learned friend also put to you about how long people spend subject to SAMs, and  
21 you gave the example of Mr Hamza who has already been subject to SAMs for five years.  
22 You are aware of what Mr Sickler says, you have commented on his figures and his account  
23 in his declarations, is that right?
- 24 A. Yes.
- 25 Q. At paragraph 39 of his second declaration he talks about 82 per cent have been subject  
26 to SAMs for more than a year and 13 have lived subject to it for more than a decade, do you  
27 recall that figure?
- 28 A. I do, yes.
- 29 Q. When you say that it could well be for a very prolonged period, do you regard that as  
30 a justifiable statement, the subjection to SAMs?
- 31 A. I do, yes.
- 32 Q. And that it could be potentially indefinite?
- 33 A. It could be, yes.
- 34 Q. My learned friend put to you in relation to the question of suicide that the figures in

1 the Bureau of Prisons were ten to 100,000, just help us on that, that is throughout the whole  
2 Bureau of Prisons, low security, medium security, high security, ADX, ten per 100,000?

3 A. Correct.

4 Q. Are you aware of the fact that the statistics are that it is higher in pre-trial detention  
5 and higher with people who are subject to solitary confinement?

6 A. It is usually higher in pre-trial, and definitely higher in solitary confinement, yes.

7 Q. You were asked about the procedure whereby SAMs were approved and SAMs were  
8 removed, and you agreed that it would be the Attorney General in consultation with the  
9 Intelligence Services, is that right?

10 A. Yes.

11 Q. I am just trying to understand that. Is that the CIA?

12 A. The FBI, persons in Border Patrol.

13 Q. Depending on who it is, but if the CIA was involved, they would be consulted, is that  
14 right?

15 A. Correct.

16 Q. You also said, and the literature backs you up on this, that the Department of Justice,  
17 the prosecuting authority would also be consulted, is that right?

18 A. Officer enforcement authorities, yes.

19 Q. What they thought about a particular defendant, the CIA, and the Department of  
20 Justice, job an important factor in whether they were subjected to SAMs or not, is that right?

21 A. Sure, absolutely.

22 Q. You have already helped us that the Attorney General at present who would take the  
23 final decision is Mr Barr?

24 A. Correct.

25 Q. One final matter, you were asked questions about your role as a consultant with a law  
26 firm. That is quite open that you are a consultant with a law firm, is that right?

27 A. Sure, yes.

28 Q. You provide independent expert evidence in cases to lawyers outside that law firm,  
29 obviously like in this case the defendant's lawyers, is that right?

30 A. Yes. Most of my work is outside of that law firm, yes.

31 Q. When you say you are an independent consultant, you are a consultant in relation to  
32 legal matters, is that right?

33 A. Yes, mainly Federal, yes.

34 Q. Would that be a wide range of things, criminal, civil, everything?

1 A. Yes.

2 Q. Where expertise is needed on the prison system?

3 A. I have expertise within the Federal prison system, all aspects, yes.

4 Q. Do you continue to liaise with and attend conferences involving BOP professionals  
5 and retired BOP professionals to familiarise yourself with the current situation?

6 A. I still am in touch with BOP employees.

7 Q. And attend seminars and conferences in relation to prison issues, is that right?

8 A. Conferences with current employees?

9 Q. Go ahead.

10 A. I do not attend (inaudible) specific current employees, but I am involved in  
11 conferences regarding the Federal system.

12 Q. In giving your opinion on these issues, have you acted independently and in good  
13 faith giving your view of what the position is?

14 A. Yes, I have.

15 MR FITZGERALD: I have nothing further, my Lady.

16 JUDGE BARAITSER: Thank you very much. I appreciate it is very early in the morning for  
17 you and we are very grateful you have taken time out to get up so early to give your evidence.  
18 Your involvement in the case is now finished and we are going to sever this link; thank you  
19 very much for attending today.

20 A. Thank you, your Honour.

21 (Witness withdrew)

22 JUDGE BARAITSER: I would like you over lunch, if at all possible, to give some thought to  
23 the anonymous witnesses. Before the court tries to take steps to accommodate them, I would  
24 like to know if they are agreed or not; you do not have to tell me now.

25 MR FITZGERALD: I think we may be making progress on that front, my Lady.

26 MR SUMMERS: We are in a position to assist you and, subject to witnesses being kept  
27 waiting, we can do it at 2 o'clock if that would assist.

28 JUDGE BARAITSER: It would assist me by way of informing me if they are agreed.

29 MR SUMMERS: I understand that I need to apply to you for anonymity before that  
30 discussion can conclude, and so the next step I propose to do is make that application to you.

31 JUDGE BARAITSER: Your discussions are dependent on some of my decisions regarding  
32 anonymity?

33 MR SUMMERS: As I understand it, yes.

34 JUDGE BARAITSER: We will do that after the witness so that she is not kept waiting.

1 MR SUMMERS: Thank you.

2 JUDGE BARAITSER: Thank you very much. Anything else?

3 MR FITZGERALD: My Lady, we may in due course be inviting admissions so the matters  
4 can be formally before you about some of the statistics that my learned friend has given from  
5 the Bar today. I am not disputing them; I think they might be of some assistance.

6 JUDGE BARAITSER: I see. If they can be put in the usual Section 10 format that would be  
7 very helpful. Anything else?

8 MR FITZGERALD: No.

9 JUDGE BARAITSER: 2 o'clock, please.

10 (Luncheon adjournment)

11 JUDGE BARAITSER: Thank you very much. Please sit down. Ms Lewis, can you hear the  
12 court? We cannot hear you yet. Is there a mute button that you need to turn off? Can you  
13 just say something?

14 WITNESS: Can you hear me?

15 JUDGE BARAITSER: That is perfect. We will just take you through the affirmation now.  
16 Just listen carefully, please.

17 LYNDSEY LEWIS, affirmed

18 Examined-in-chief by MR FITZGERALD

19 JUDGE BARAITSER: Thank you very much. Mr Fitzgerald.

20 MR FITZGERALD: Yes. Are you Lindsay Lewis?

21 A. Yes, I am.

22 Q. And is it right that you have prepared a declaration, you have sworn a declaration for  
23 this court, dated 17 July 2020?

24 A. Yes, that is correct.

25 Q. Do you stand by the contents of that declaration as true?

26 A. I do.

27 Q. And as part of your evidence for this court.

28 A. Yes, I do.

29 Q. And is this right, your qualifications are that you are a lawyer practising in the United  
30 States? Is that right?

31 A. That is correct.

32 Q. You were called to the Bar of New York in 2008. Is that right?

33 A. That is correct.

1 Q. And you have also been admitted to practise in the Federal Courts, including the  
2 Supreme Court, is that correct?

3 A. Yes, that is correct.

4 Q. And just to clarify one matter at the start, is this right, that you practise in a law firm  
5 in New York which represented WikiLeaks in an unrelated civil matter, is that right?

6 A. Yes, that is right. That matter was resolved in July of 2015, just before that date, but I  
7 did not handle that ---

8 Q. You, personally, were not involved. It was your partner in the firm. Is that right?

9 A. Correct, yes.

10 Q. But you can assist this court because you represented Mustafa Kamal Mustafa, who  
11 we know as Abu Hamza in this country. Is that right?

12 A. Yes, that is right.

13 Q. And was Mr Hamza subject to special administrative measures?

14 A. No, it was about two weeks after or three weeks after he arrived.

15 Q. And was that from that time two weeks after he arrived until the present?

16 A. Yes.

17 Q. And was that both pre-trial, as you have set out at paragraph 10 ---

18 A. Yes.

19 Q. --- and also, post-trial during which time he has been detained, for the most part, at  
20 Florence, Colorado.

21 A. Yes, a period of eight years rounded off.

22 Q. And that has gone on right until the present time, is that correct?

23 A. Yes, that is correct.

24 Q. And you set out in your declaration the limitations that that involves on contacts with  
25 other prisoners with family and indeed with his lawyers. Is that right?

26 A. Yes.

27 Q. And so, just to assist us, you have set out in some detail the history, the procedural  
28 history - my Lady, this is part A from paragraph 15 onwards - the procedural history of the  
29 representations that were made to the English courts before he was extradited and I just want  
30 to go through those quite quickly if I may and with your permission I will lead through.

31 JUDGE BARAITSER: Yes, of course. Yes.

32 MR FITZGERALD: Is this right, and you deal with this at paragraph 33, that representations  
33 were made first to the English Magistrates' Court and then to the English High Court that Mr

1 Hamza, if he was extradited, would not be detained in the ADX, or, if he was, it would only  
2 be for a very short period of time. Is that the representation that was made?

3 A. Yes.

4 Q. And was the same representation made by the US Government to the European Court  
5 in 2012 as you have set out at paragraphs 35 to 36?

6 A. Yes. This was all in reliance on the affidavit of Warden Wiley, the declaration of  
7 Warden Wiley, the warden at ADX, who made these representations that were adopted first  
8 time at pre-court, then by the High Court and then by the European Court and then again. It  
9 does not have to be by the High Court.

10 Q. Yes, and I think you have set out, for the assistance of the court, the fact that several  
11 of those courts made it absolutely clear, the High Court and the European Court, that it was in  
12 reliance on the representation that he would only go to ADX, if at all, for a very short period,  
13 that they found there was no problem about Article 3.

14 A. Yes. I believe the European Court even moved to the assurances and representations  
15 that were in Warden Wiley's affidavit.

16 Q. Despite those repeated representations, and despite the reliance on them by the  
17 English Magistrate Court, High Court and European Court, was he nonetheless sent to ADX  
18 Florence, Colorado?

19 A. He was.

20 Q. And has he been there for the last five years, since 8 October 2015?

21 A. Yes, he has.

22 Q. That is dealt with at paragraph 17 of your statement, is that right, that he has been  
23 there since 8 October 2015?

24 A. Yes.

25 Q. Now, I just want, I just want you to help us. We know from paragraph 55 that - from  
26 paragraphs 53 to 55 that he was held under SAMs pre-trial at the MCC in New York, is that  
27 correct?

28 A. That is correct.

29 Q. And was he held in isolation from other prisoners?

30 A. Yes. He was in a unit called 10-South.

31 JUDGE BARAITSER: Say again?

32 MR FITZGERALD: I am so sorry, we cannot hear.

33 A. Apologies. He was in a unit called 10-South.

1 Q. He was in a unit called 10-South. I think if you lean forward and speak it may be we  
2 can hear you a little bit better.

3 A. Yes, please let me know.

4 Q. Is that better?

5 JUDGE BARAITSER: It is a little better.

6 MR FITZGERALD: It is a little better, yes.

7 A. Is that better?

8 Q. Yes, that is better. No, that is better now when you are leaning forward. So, he was  
9 held in 10-South in isolation from other prisoners. Did that mean he could not associate with  
10 other prisoners even when he was out of his cell?

11 A. Yes, although I would note that he was almost never out of his cell except for legal  
12 visits.

13 Q. And you have set out the difficulties that you had as lawyers, communicating with  
14 him during that period. Is that right? You have set those out from paragraphs 55 onwards.

15 A. Yes, that is right.

16 Q. And were there also difficulties about his communications with his family?

17 A. Yes, he had calls that were not always honoured, that were sporadic, several members  
18 of his family could not join at a given point in time. There were always issues.

19 Q. Yes. Obviously, the relevance of that to this case arises from the question will Julian  
20 Assange in your view be likely to get SAMs also?

21 A. Yes. I do believe that based on the fact that there are national security grounds and  
22 unauthorised moving of classified documents and how closely they are involved in this case,  
23 that under this DFR he would certainly be eligible for placement under SAMs and I do  
24 believe he will be placed under SAMs.

25 JUDGE BARAITSER: Just pause a moment. I can hear some of this, it is not her fault at all,  
26 it is not a volume issue. It is not as clear as it has been.

27 MR FITZGERALD: Yes, I agree. It is not - Ms Lewis, although we can hear, it is not as  
28 clear as it might be. I do not know whether it is to do with the positioning of the microphone.

29 JUDGE BARAITSER: I am just going to ask Simon if you have got any ---

30 COURT CLERK: I think if she is not set on the bandwidth. We can ask her to disconnect  
31 and reconnect on a low bandwidth.

32 JUDGE BARAITSER: I think it might be a good idea to do that.

33 MR FITZGERALD: Could I just finish that one question?

34 JUDGE BARAITSER: Yes, of course you can. Yes.

1 MR FITZGERALD: So, you have said that you think he will be subject to SAMs and he  
2 would certainly be eligible on the grounds of national security. On balance, do you think he  
3 will be subject to SAMs pre-trial and post-trial?

4 A. I would say almost certainly, yes.

5 Q. Almost certainly.

6 A. In my view.

7 Q. Okay. That was just the matter I just wanted to complete.

8 JUDGE BARAITSER: I think what I am going to do, just to try to see if we can get a better  
9 sound - if we cannot, we can manage as it is.

10 MR FITZGERALD: Ms Lewis, we can hear you, but not perfectly and so her Ladyship has  
11 suggested that we try to improve the quality of your voice on the audio.

12 JUDGE BARAITSER: And the way to do that, Ms Lewis, I am told is to log out and log  
13 back in using a low bandwidth. Does that mean anything to you?

14 A. Yes, I was told of this procedure yesterday so I will try that right now. Thank you.  
15 Are you able to see and hear me now? I do not see my own image here, so I hope that  
16 hopefully does not mean that it is just me and not you?

17 JUDGE BARAITSER: I think the audio is better. We cannot see you I am afraid.

18 A. I am not quite sure why. I have my microphone and my camera on.

19 JUDGE BARAITSER: Simon, I can see that on our screen, the video has got a line through  
20 it.

21 MR FITZGERALD: The audio, as your Ladyship says, is much better.

22 JUDGE BARAITSER: I think it is better, yes.

23 A. Would you like me to try a third time or is there something you can monitor at your  
24 end?

25 JUDGE BARAITSER: We are just having a look at the situation now. Simon, do we need a  
26 technician to come in? Does the fact there is a line through the video mean anything?

27 Ms Lewis, you have not readjusted your lens so that you are not in camera, have you,  
28 anything like that?

29 A. Unfortunately, no. Sorry, your Honour.

30 JUDGE BARAITSER: Can we get a technician in? There is someone here who can look at  
31 the equipment. The equipment needs to be looked at to establish why we cannot have a  
32 picture. Can we do this. We are just going to ask for a technician to come into the room just  
33 to see if we can sort out the problem. It is going to take five minutes for that to happen, so I  
34 am going to leave you, unless, Mr Fitzgerald, you want to carry out without a visual.

1 MR FITZGERALD: Well, I am told that there might be a legal but if there is not, then  
2 certainly, we would be content, I think. Can I just check? If it is legally permitted, then I  
3 think ---

4 MS DOBBIN: I think that we would prefer that the witness can be seen.

5 JUDGE BARAITSER: Oh, yes, I am just talking about in the interim until it is fixed.

6 MR FITZGERALD: If we could make ---

7 JUDGE BARAITSER: It was not a long-term solution, just a short-term solution.

8 MR FITZGERALD: No. If we could make one more attempt and if it is absolutely  
9 necessary then we ---

10 JUDGE BARAITSER: All right. Take five minutes then to see if we can resolve it.

11 (Short adjournment)

12 JUDGE BARAITSER: Thank you. Do we have picture and sound adequate? Is that all  
13 right, Mr Fitzgerald?

14 MR FITZGERALD: Yes, yes, it seems to be working.

15 JUDGE BARAITSER: Thank you very much for your patience, Miss Lewis. We will carry  
16 on where we left off.

17 A. All right.

18 MR FITZGERALD: Yes. Miss Lewis, you were dealing under your heading "Part 2" at  
19 page 21 of your report from paragraphs 58 onwards with the conditions under which Mr  
20 Hamza is being held in ADX, Florence. Can I first of all ask you, looking at paragraph 60, is  
21 he, subject as he is to SAMs, permitted to associate with other prisoners?

22 A. No, not at all.

23 Q. And you deal with the effects of that denial of association with other prisoners at  
24 paragraphs 61 and 62. Can you just summarise what the effects are of being deprived of  
25 association with other prisoners and held in that manner?

26 A. Sure. I will just stay very briefly to the Centre for (inaudible) Rights and the  
27 International Human Rights Clinic, The Darkest Corner report, which said there is not a  
28 single solid study of solitary (inaudible) confined in which non-solitary confinement lasting  
29 for longer than 10 days failed to result in negative psychological effects. And to that I would  
30 say that I do not believe Mr Mustafa is an exception to that. I would say that it is a normal  
31 rule and well-established concept as to the long-term psychological effects and physical  
32 effects of a stay in solitary confinement of more than 50 days.

1 Q. Right. So, that is the effects psychologically. You then set out the question of  
2 whether suffering from mental illness is a bar to being held in ADX, Florence, Colorado, and  
3 what is the answer to that?

4 A. It is not a bar. In order to be denied designation or not placed at ADX, Florence, if  
5 you have a serious mental illness the bar for that would be incredibly high. Certainly  
6 someone like Mustafa has been designated and there is some established history of  
7 depression and, beyond that, even if someone does have a serious mental illness which could  
8 be again, (inaudible) mental illness, nonetheless, if security concerns dictate that they have to  
9 be placed at ADX because of the unavailability of other facilities in the BOP to accommodate  
10 them, they will nonetheless be placed there.

11 Q. Right. So, the mere fact that you suffer from depression will not be enough and even  
12 if you are floridly psychotic that may well not be enough if they determine that security  
13 requires you remain in ADX. Is that a fair summary?

14 A. Yes, and that is a matter of the open policy.

15 Q. Right. Now you have referred to the fact that there was the litigation in *Cunningham*,  
16 and I am sure you are aware, you have set it out, there was then a settlement approved by the  
17 court. Has that litigation and that settlement removed the problem that you have identified of  
18 people suffering from depression still being held there and people who are floridly psychotic  
19 but required to be there for security grounds still being held there? Has that problem been  
20 removed?

21 A. It has not. In fact, the *Cunningham* litigation, which is lauded I would say most for,  
22 and I put this in my report as well, was that inmates were able to move out of ADX. The best  
23 solution there was the fact that they were no longer subject to the subpar mental health  
24 treatment at ADX. Prisoners who are not given that luxury, such as Mr Mustafa, who  
25 (inaudible) generally because I do not know the specifics of his matter in terms of how his  
26 mental health was viewed. But within the context of *Cunningham* those prisoners who  
27 remained at ADX had certain (inaudible) under the *Cunningham* element such as enrolment  
28 in the (inaudible) programme and the other group therapies that are not available to inmates  
29 such as Mr Mustafa who is held on H unit which is for inmates under SAMs and almost  
30 inevitably, if not inevitably, were inmates who were under SAMs who will be investigated.

31 Q. Right.

32 A. In the BOP and also in the ADX.

33 Q. All right. So just pausing there. As you have set out at paragraph 73, if you are in the  
34 H unit and subject to SAMs, then you do not benefit from *Cunningham*. Is that right?

- 1 A. Yes, no benefit.
- 2 Q. Right. And if we can go on from there. You have dealt from paragraphs 76 onwards  
3 with the actual conditions in which Mr Hamza is being held. His experience at ADX, is this  
4 right, you have referred to the fact that he is frequently moved from cell to cell?
- 5 A. Yes. Let me just say that I am only able to even speak about his conditions that he  
6 had because they have been placed in a public document, which allows, you know, they are  
7 publicly available now, and it was the same thing for me, so I can speak about them freely but  
8 otherwise I understand I do not think I would be permitted to.
- 9 Q. Right. Because of the restrictions even on lawyers under SAMs. Is that right?
- 10 A. Yes.
- 11 Q. Yes.
- 12 A. And after the contact, in the context of his litigation, perhaps, but certainly not outside  
13 of that if it is something - and engage with a third party that he would have conveyed to me.
- 14 Q. OK. Miss Lewis, I am going to ask you just to speak very slowly because of the still  
15 slight problems of the audibility. If you speak very slowly I think that will help. If you will  
16 forgive me for asking you that. OK?
- 17 A. Absolutely, no problem.
- 18 Q. OK. And then at paragraph 78 you refer to the fact that Mr Hamza is in a situation  
19 where he spends his entire day each day in solitary confinement. Is that right?
- 20 A. Yes.
- 21 Q. And you then go on to deal from paragraph 89 onwards with the fate that would await  
22 Mr Assange if, as you think likely, he is subject to SAMs and detained at ADX Colorado. Is  
23 that right?
- 24 A. Yes.
- 25 Q. And just help us on that. You say at paragraph 90 that he would suffer a lack of  
26 association with other prisoners. Is that right?
- 27 A. Yes, inmates remain generally isolated. If not, completely routinely, then fairly  
28 routinely from day to day.
- 29 Q. And you say most inmates under SAMs spend all day every day completely alone and  
30 often for many years at a time.
- 31 A. Yes.
- 32 Q. Is that right?
- 33 A. Yes, that is right.

1 Q. And then at paragraph 91 you deal with the limits on contact with family members.  
2 Just help us about how great those limitations are.

3 A. The limitations on contact are extreme. Inmates under SAMs are not permitted to  
4 communicate by email, which leaves mail, you know, US mail, a visit, or a family or a social  
5 call.

6 Q. Slow down.

7 A. And ---

8 Q. Slow down.

9 A. Sorry.

10 Q. So it leaves a visit?

11 A. Yes.

12 Q. A visit, ordinary mail or a telephone call. Is that right?

13 A. Yes, a family or social call.

14 Q. And how often can you be guaranteed to make a phone call to your family?

15 A. The phone calls are limited, sometimes to only one a month, and there are only certain  
16 family members, and this is true for Mr Mustafa, that have been approved to speak with him  
17 and (inaudible) the court certain family members, who I cannot publicly possibly (inaudible)  
18 such as his young grandson has been deprived of the ability to speak with him any further.

19 Q. OK.

20 A. And certainly (inaudible) has not been in place, it is almost impossible.

21 Q. Right. And you have reaffirmed at paragraph 93 that among inmates communication  
22 is completely prohibited and that includes restriction of communal prayer. Is that right?

23 A. Yes.

24 Q. And then if we go on from there you deal with the length of time that this might go on  
25 for. We have heard that SAMs are renewed at annual intervals, but you have set out at  
26 paragraph 96 that 82 per cent of prisoners placed under SAMs were under those restrictions  
27 for more than a year. Is that right?

28 A. Yes, that is right.

29 Q. And what about people who are subject to SAMs for longer periods. Are there  
30 examples of that?

31 A. Yes, I would just note that same statistic about the 82 per cent of about inmates held  
32 under SAMs for more than a year came from the Darkest Corner article and of those 82 per  
33 cent, 13 of those were held for more than a decade under SAMs.

34 Q. Yes.

1 A. And in Mr Mustafa's case he has been held for now - this is his eighth year under it.

2 Q. Right.

3 A. Without stepdown.

4 Q. Right. Now you have then dealt with the problems of challenging designation at  
5 paragraph 102 onwards. How easy or difficult is it to challenge either administratively or in  
6 court the continuation of SAMs?

7 A. Extremely difficult. In order to challenge SAMs as an inmate, the inmate must go  
8 through the administrative remedy process within the Bureau of Prisons, which is a long  
9 drawn out process of filing complaint after complaint, awaiting a response at each point and  
10 ultimately I do not know of any SAMs inmate in the history of remedy that did not  
11 (inaudible). Once adopted the inmate has the ability then to communicate that issue in the  
12 court. The one caveat that I would know is that (inaudible) where an inmate has committed  
13 to mitigate their document administrative remedies, but as the whole of his modification, in  
14 particular for a post-conviction inmate would (inaudible) that was denied.

15 Q. Right. And I think you are aware that the case of *El-Hage* has been brought to the  
16 attention of the court yesterday and again today. Have you consulted that case of *El-Hage*?

17 A. Yes. Well, I was not at my firm during the times that this case took place and Mr El-  
18 Hage was - during pre-trial he was permitted to be housed another inmate. My partner,  
19 Joshua Dratel, actually represented Mr El-Hage during that timeframe and I have spoken with  
20 him about that and not only did it take (inaudible) for the court to ultimately allow for Mr El-  
21 Hage to be (inaudible), but one thing the opinion does not note and is not anywhere in the  
22 prosecution bundle is that in fact he was then denied again that right to be housed with  
23 someone else and was placed back in solitary confinement a couple of months before his trial.  
24 So he was in solitary for 15 months first, then he was for a period of time bunked with  
25 another inmate and then that was taken away from him, (inaudible) to the extent he was  
26 placed on SAMs for that period of a life sentence, and to my knowledge he remains on SAMs  
27 and I believe without stepdown in solitary under SAMs alone.

28 Q. And we know that this case was decided in 2000, so to your knowledge he is still  
29 there in 2020. Is that right?

30 A. Yes, and I would just also note the timing is significant as is the time of the case of  
31 9/11 and in my experience and to my knowledge there is a significant difference between the  
32 treatment of such cases pre and post 9/11,

1 Q. Yes. Can you just help us about this. In the judgment it refers to the fact that he was  
2 subject to solitary confinement for the first 15 months of his detention. Was there argument  
3 about whether that was an appropriate term for the judges to use in that case?

4 A. I am sorry, I do not understand the question.

5 Q. Well, it would appear from the judgment that we have here that the judges used the  
6 term, "solitary confinement" to describe the first 15 months of his detention.

7 A. That absolutely is correct. Even in the detention centre we are talking about  
8 segregated (inaudible) and solitary confinement.

9 Q. And I think - is my time up?

10 JUDGE BARAITSER: Well, we had a break, so ---

11 MR FITZGERALD: Yes, OK.

12 JUDGE BARAITSER: You began at five past 2.

13 MR FITZGERALD: Right.

14 JUDGE BARAITSER: It took about 20 minutes to get going, so you can have another five  
15 minutes, Mr Fitzgerald, if that helps.

16 MR FITZGERALD: Just the case of *Hashmi* has also been put to the two witnesses who  
17 preceded you. Are you familiar with the case of *Hashmi*?

18 A. I am.

19 Q. And it has been said that that indicates that there is some limited level of review of  
20 SAMs. Have you got any comment as to the difficulty or otherwise of successfully  
21 challenging a SAMs designation in court?

22 A. Absolutely. To my knowledge I do not know of a single case post-conviction where a  
23 defendant has been granted modification by the court under SAMs. With a pre-trial case,  
24 there the court only allowed that he could have his case heard by the court despite lack of  
25 exhaustion and nonetheless his SAMs were not modified in any capacity.

26 Q. Yes. So you have helped us with *El-Hage* and you have helped us with *Hashmi*. Are  
27 you also aware of continuing challenges on the international levels to the conditions in ADX  
28 Colorado?

29 A. Yes. I would note that (inaudible) the *Cunningham* litigation, there has been repeated  
30 complaints made by various inmates in regards to continued mental health treatment issues  
31 and although I can speak to my client's own experience, Mr Mustafa has laid out in his  
32 complaints in the District of Colorado he continues to remain under incredibly stringent and  
33 difficult SAMs conditions in solitary confinement 24 hours a day. He is not eligible for and  
34 has not received mental health treatment, district mental health treatment. He has not

1 received specifically mental health, physical healthcare certainly not given his disabilities.  
2 He lives in abysmal conditions and there really seems to be no way we can (inaudible)  
3 without anything more than just (inaudible).

4 Q. Thank you very much, Ms Lewis. If you just wait there for questions from my  
5 learned friend. I am very grateful.

6 Cross-examined by MS DOBBIN

7 MS DOBBIN: Ms Lewis, I am going to ask you some questions on behalf of the  
8 Government.

9 JUDGE BARAITSER: It is a quarter to 3 now. The sheet says one hour, is that what you are  
10 asking for?

11 MS DOBBIN: I may need slightly longer than that, but it will not be very much more. Ms  
12 Lewis, I saw that in your witness statement you referred to having visited Wandsworth Prison  
13 in 2019?

14 A. Yes.

15 Q. Could you just assist me as to why you were at Wandsworth Prison?

16 A. Yes. I was visiting an inmate who was facing extradition to the United States.

17 Q. Which inmate was that, please?

18 A. I do not know if I am at liberty to share that.

19 Q. I am going to assume that it was not Mr Assange or anyone linked to him.

20 A. That is correct.

21 Q. I just wanted to check that. I also wanted to check this before we go on, have you  
22 ever visited the Truesdale Detention Center in Alexandria?

23 A. I have not.

24 Q. OK. You cannot help us as regards any of the conditions that prevail at that prison?

25 A. No, I am sorry, I am not familiar with that facility's condition.

26 Q. In terms of Mr Hamza, although he was subject to SAMs pre-trial, you were able to  
27 visit him on countless occasions at the MCC. That is right, is it not?

28 A. Yes, so everything is relative. I was able to visit him many times over the years that  
29 he was detained at the MCC, but there were plenty of times, also bordering on a number that I  
30 cannot quantify, where I was either turned away and I was not able to see him because there  
31 were only two visiting rooms for legal visits on the unit and they were taken up by other  
32 counsel and I was told there was no chance I would be able to come in. On other occasions  
33 there were lockdowns which are frequent in facilities within the BOP more generally; and  
34 various other reasons I was not able to visit him.

1 Q. Ms Lewis, I was just going by the words that you used in your own witness statement  
2 at paragraph 10 in which you say that you were able to visit him: “In my capacity as Mr  
3 Mustafa’s counsel, I visited him countless times during his pre-trial incarceration at the MCC  
4 in Manhattan”, correct?

5 A. Yes, I do not think what I have just said contradicts that in any capacity, it just  
6 elaborates on that point.

7 Q. Ms Lewis, I think you were the most junior member of the defence team, is that also  
8 right?

9 A. No, that is not correct. There was another more junior associate that was employed  
10 by Jeremy Schneider, who was the initially appointed counsel on the case.

11 Q. Pre-trial, how many counsel did he representing him?

12 A. He had four in total. I would just add the fact that because they were classified  
13 documents they wanted to find another attorney with clearance to be on the case until one  
14 was appointed.

15 Q. First of all, he was convicted in the United Kingdom, was he not, of incitement to  
16 murder, is that right?

17 A. Yes, he faced a prior conviction.

18 Q. Then he was convicted on 19 May 2014 of 11 different counts, is that also correct?

19 A. Yes, all (inaudible).

20 Q. I think in fact he was convicted of three different strands of criminality, is that right?

21 A. Maybe four.

22 Q. Maybe four. Let me see if I can just turn it up. I have it, Ms Lewis. He was  
23 convicted, first of all, that in December 1998 he participated in a hostage taking in Yemen  
24 whose purpose was to coerce the Yemeni Government to free some of his followers. One of  
25 those followers included his stepson, is that also right?

26 A. Yes, generally speaking.

27 Q. Generally speaking. It is quite specific, is it not, his stepson, who I think was called  
28 Mohssin was imprisoned in Yemen at the time. Do you remember that?

29 A. Yes, that is a different (inaudible) of the charge, but, yes, that is correct.

30 Q. During that hostage taking four western tourists were murdered, that is also right, is it  
31 not?

32 A. I do not have the exact number but I think that is correct.

33 Q. The second set of charges that Abu Hamza was convicted of was that he tasked two  
34 men to come to the United States to set up in a Jihad camp in Bly, Oregon, Us that also

- 1 correct?
- 2 A. Yes, generally speaking, yes.
- 3 Q. The purpose of that camp was to train young men in America to fight and kill as part  
4 of Jihad, is that right?
- 5 A. Generally speaking, yes.
- 6 Q. So that they could travel to Afghanistan to join forces with Al-Qaeda, is that correct?
- 7 A. Yes.
- 8 Q. The third strand of conduct that he was convicted of was that from 2000 to 2001, he  
9 provided support to Al-Qaeda and the Taliban in Afghanistan?
- 10 A. Yes.
- 11 Q. Do you recollect that?
- 12 A. Yes.
- 13 Q. I think specifically he organised the sending of someone called Abbasi to join Al-  
14 Qaeda in Afghanistan?
- 15 A. Yes, that was Abbasi.
- 16 Q. He was also convicted of providing support to the Taliban as well, is that right?
- 17 A. Yes, that is right.
- 18 Q. I think that covers the convictions. After Abu Hamza was convicted, I think he also  
19 had quite a large number of appeals, did he not?
- 20 A. Yes, there was considerable litigation.
- 21 Q. I think that you set that out in your witness statement at paragraph 18?
- 22 A. I do not have to look it up myself, so I appreciate that.
- 23 Q. He had a first appeal to the second Court of Appeals, and that resulted in an opinion  
24 reversing Counts 7 and 8, but affirming conviction on 9?
- 25 A. Yes.
- 26 Q. Were 7 and 8 two of the counts relating to providing support to the Taliban, can you  
27 recall?
- 28 A. To be honest I do not recall at the moment the specifics of the counts. I actually did  
29 not represent him at that stage in that capacity, I was representing him only for prison and  
30 medical issues at that time.
- 31 Q. Can I just pause there, Ms Lewis. I had understood that you were part of his counsel  
32 team on the trial?
- 33 A. That is correct.
- 34 Q. But you did not play any part in the appeals afterwards, is that right?

1 A. Correct, yes, I was representing him in a different capacity in court, and continued in  
2 a different capacity, yes.

3 Q. Then there was a motion for reconsideration by the full court of that appeal, and that  
4 was denied, I think, is that right?

5 A. Yes.

6 Q. He filed a petition to the Supreme Court, or that was done on his behalf, correct, and  
7 that was denied?

8 A. Just one moment.

9 Q. I am looking at your paragraph 19?

10 A. Yes, sorry. He filed a petition pro se to the Supreme Court and at this point - which  
11 was denied, and now he has one kind of final last-ditch effort that is available to him under  
12 28, US 2055 to petition the ---

13 Q. You are getting ahead of me a bit. He filed a motion himself, you say that it was pro  
14 se, so he was able to file his own motion to request a new trial, is that also right?

15 A. Yes.

16 Q. That was denied, but in fact that decision is also being appealed by his counsel, yes?

17 A. Yes, that is correct.

18 Q. He was able to do all of this whilst he was in ADX, was he not?

19 A. He was, although I would say with considerable difficulties as has always been the  
20 case.

21 Q. Regardless of whatever difficulties there were caused by him pursuing administrative  
22 remedies, he has now been able to instruct you, you have been appointed by the Southern  
23 District of New York in order to represent him in respect of prison litigation, is that right?

24 A. I have been appointed to represent him in that capacity, but it is sort of dismissive to  
25 say that these other issues were not significant with his ability to pursue his other claim; his  
26 access to counsel was limited because of the distance between himself in Florence Colorado  
27 and New York, which is quite far away and hard to get to. His counsel has only been able to  
28 visit him on maybe one occasion, I believe, and again - I can speak to this personally - it is  
29 extremely difficult, sometimes the prison does not reply to me in a timely manner, or at all,  
30 and sometimes it can take weeks or months to set up a call. There have also been issues  
31 about access to his discovery and documents, and that has been consistent both pre and post-  
32 trial and I cannot imagine a scenario where someone under SAMs at ADX would not have  
33 similar issues.

34 Q. Moving on, as I have said, you were appointed by the Southern District to represent

1 him in respect of prison litigation. Does that mean that you have been instructed to pursue  
2 the complaint that he has made about the prison conditions that you refer to in your witness  
3 statement?

4 A. No, not technically. The complaint that he made was in his own capacity, it was a  
5 Bivens action, which is an action for constitutional violations by a federal authority acting in  
6 their capacity as a federal agent. Similarly, challenges his conditions of confinement, I would  
7 be making a motion pursuant to US 2241 challenging his conditions of confinement in ADX  
8 Florence, but the delay in doing so is that there is a slow trickle of mail I get from him,  
9 especially now we are in Covid. Once I have (inaudible) his complaint I will go to appeal.

10 Q. I want to be clear about this. All of the things that he sets out in his complaint, those  
11 are issues that you are now taking up on his behalf in order to pursue a Bivens action,  
12 correct?

13 A. If he were to pursue an action pursuant to 2241 conditions of confinement, yes.  
14 Those are essentially the things that I would be raising.

15 Q. I am going to come back to that complaint, but I am going to move on and deal with  
16 what happened prior to Mr Hamza's trial. Do you have the prosecution bundle in front of  
17 you?

18 A. I do have various pieces, so yes.

19 Q. Thank you, Ms Lewis. I am going to turn to page 1 of that bundle.

20 A. OK. The declaration of R Wiley?

21 Q. Yes. This is the document which I understand you to say represents an undertaking  
22 that was ---

23 MR FITZGERALD: She never use that had word, she said "representation".

24 MS DOBBIN: You used the word "undertaking".

25 MR FITZGERALD: No, I used the word "representation".

26 MS DOBBIN: Ms Lewis, I am not sure that the way that I describe it matters, we can just go  
27 straight to what Warden Wiley says and examine what the nature was of what warden Wiley  
28 said at paragraph 5. I am going to read it out to you: "I am aware that Abu Hamza has some  
29 medical concerns. Specifically I am aware that he has Type 2 diabetes, raised blood pressure,  
30 psoriasis, loss in the sight of one eye and bilateral amputation of both forearms that  
31 necessitates assistance with the activities of daily living. I am advised by the Chief of Health  
32 Programme for the Bureau that an individual represent with these types of medical concerns  
33 would likely be incarcerated in a bureau medical facility, at least initially, following his  
34 conviction and sentencing." Then it goes on to say this: "After a full medical evaluation, a

1 determination would be made regarding the most appropriate placement for him, considering  
 2 the level of medical care and security controls needed. If it is determined that Abu Hamza  
 3 cannot manage his activities of daily living, it is highly unlikely that he would be placed at  
 4 the ADX, but rather than a medical centre.” Then it goes on “I am aware of at least one of  
 5 their high profile convicted international terrorists who is presently housed at a Bureau  
 6 Medical Facility.” So, what it says is if it is determined that Abu Hamza cannot manage his  
 7 activities of daily living, it is highly unlikely that he would be placed at the ADX. That was  
 8 not an undertaking was it, Miss Lewis, that Abu Hamza ---

9 A. I am not sure that it would - I am sorry, I cut you off. Please continue.

10 Q. That was not an undertaking that Abu Hamza would not be detained at the ADX, was  
 11 it?

12 A. So, I am not exactly sure what you mean by the word undertaking. I have used the  
 13 terms assurances and representations in my report so I am going to stick to my words that I  
 14 feel comfortable with and understand the meaning of. In terms of what was promised or not  
 15 promised but what was put forward and represented and which the courts adopted in the UK  
 16 and the European court, it was that if he ever were to be placed at ADX, he would need to  
 17 (inaudible) medical evaluation and Warden Wiley explicitly states that he could not cope,  
 18 could not manage activities of daily living that necessitates assistance with his daily living  
 19 activities. And also at sentencing US Judge Forrest (inaudible) acknowledged the  
 20 commitment, that there was a commitment by the US government that if Mustafa could not  
 21 manage his activities of daily living he would not be sent to ADX.

22 So, we have Warden Wiley who states clearly that (inaudible) consistent with  
 23 activities of daily living, we have Warden Wiley who states that if he were ever to be placed  
 24 at ADX to give a full and complete medical evaluation and then we have his designation to  
 25 ADX which we know he still has inabilities to manage his medical conditions.

26 So, I do see this as representation that he would not be safe at ADX if he could not  
 27 manage his activities of daily living which the court concluded at every stage in the UK and  
 28 the High Court was highly unlikely and the European Court said it would be “impossible”  
 29 (inaudible) that he would be placed at ADX given his amputations alone.

30 So, this leads me to believe that the US did not comply with (inaudible) because  
 31 clearly had they provided him with a full evaluation of his medical conditions, as they did  
 32 indeed assure the UK and the European Court that they would, there is no way they could  
 33 have found that he could have managed his activities of daily living and his current  
 34 circumstances as well as his pre-trial circumstances clearly established that.

1 Q. OK. I am going - sorry, Miss Lewis, you have said what you think the High Court  
2 said about this. I am going to move on so that we can examine what the High Court said  
3 about this. This is at page 29 of the bundle and this is the judgment of the President of the  
4 Queen’s Bench Division in Mr Hamza’s appeal. I am going to try and keep this quite brief,  
5 Miss Lewis.

6 MR FITZGERALD: Hang on, you have left out the, this is the ---

7 A. If you have reference to a paragraph number that would be helpful.

8 Q. Yes, this is paragraph 65.

9 A. Thank you.

10 Q. Sorry, Miss Lewis, I am just picking it up at the midway point at paragraph 65.

11 A. Yes.

12 Q. The President said this, “There is no dispute about the appellant’s medical condition  
13 summarised earlier in the judgment. Mr Wiley states that he has been advised by the Chief of  
14 Health Programmes for the” - I think that is the Federal Bureau - “that if after full medical  
15 evaluation it is determined that the appellant cannot manage his activities of daily living it is  
16 highly unlikely that he will be placed at the ADX but rather at a medical centre.”. He goes on  
17 to say, “That statement is said by Mr Jones to be self-serving.” So, again, we can see that the  
18 court approached this on the basis that what would happen was dependent on the full medical  
19 evaluation taking place.

20 A. Yes, but I direct you to paragraph 68 where in the middle of that paragraph he is  
21 referring back to Warden Wiley’s statement and the conclusions that were based on them.  
22 The only statement is the judge was satisfied that the defendant would not be detained in  
23 these conditions indefinitely.

24 Q. What I am ---

25 A. Then he says physical disabilities would be considered, and they were, they only  
26 accommodated for his condition for a relatively short period of time. Not like the conclusion  
27 that the Magistrates’ Court drew, that the High Court adopted, that the European Court of  
28 Human Rights adopted and the US had believed or had known at the time that that was not  
29 the case then they misled the court. They should have corrected the record then. Otherwise, I  
30 cannot see how there is any other interpretation other than that they misled the court into  
31 believing that he would never be detained at ADX indefinitely.

32 Q. I am going to move on to paragraph 69. The court said this, “Second, although Mr  
33 Wiley’s evidence does not constitute the kind of assurance provided by a diplomatic note, we  
34 shall proceed on the basis that if the issue of confinement in ADX, Florence, arose for a

1 consideration, a full and objective medical evaluation of the appellant's condition and the  
2 effect of his disabilities on ordinary daily living and his limited ability to cope with the  
3 conditions of ADX, Florence, would indeed be carried out." It is quite clear, Miss Lewis, is  
4 it not, the court was not proceeding on the basis that any sort of undertaking or assurance or  
5 representation had been given that Mr Hamza would not be detained at the ADX?

6 A. Well, here I think if he were being detained at the ADX, Florence, I know what it is  
7 like there, a full and objective medical evaluation of the appellant's condition and his ability  
8 to carry out activities of daily living and ability to cope with conditions at ADX should have  
9 carried out. Based on the fact that he (inaudible) conditions, again I do not believe that had  
10 the US Government followed through and that (inaudible) that he would not appeal  
11 (inaudible). It is clear that the US Government has now followed through. Again, that entire  
12 process has lacked transparency. I have not got the clearest idea of what they did do other  
13 than potentially rubberstamp ADX detention.

14 Q. Well, we will come to the eight month rubberstamping exercise that took place, Miss  
15 Lewis, as you describe it, but first of all it is right to say that the judge who sentenced Mr  
16 Hamza also rejected your interpretation of what was said in Warden Wiley's statement as  
17 well, did she not?

18 A. Well, no, again, as I have made clear is that (inaudible) clearly acknowledged, and  
19 again (inaudible) of a sentencing transfer. The commitment by the US was that if Mustafa  
20 could not manage the activities of daily living he would not be sent to ADX. I think that is  
21 quite clear.

22 Q. So, I am just going to go on to look at the sentencing record and it starts at page 82. I  
23 am just picking this up. Mr Schmidt introduces himself to the court to say that he is  
24 relatively new to the case. I do not have time to go through all of his submission but we can  
25 see there ---

26 A. OK. I am just looking for what you have here, you said 86?

27 Q. Of course. Page 82, Miss Lewis.

28 A. Oh, I am sorry. Thank you very much.

29 Q. And I think as I understand the submission that was being made to the judge, it was  
30 that she should preclude the possibility of Mr Hamza going to ADX, is that right?

31 A. Yes. That is correct.

32 Q. Is that what you are arguing?

33 A. Yes, although I do not speak with (inaudible).

1 Q. I am just going to introduce the argument, do not worry, I will go through it as best I  
2 can in the time available. And we can see at page 83 there is reference in the last paragraph,  
3 “The government filed an affidavit by the warden of ADX and whilst the affidavit did not say  
4 with absolute certainty that he would not be held in ADX, it represented that both he, the  
5 warden, and the director of medical services believed that under the circumstances of his  
6 conditions and disabilities it was very unlikely that Mr Mustafa would be held at the ADX.”.

7 And the court says, “Can I pause you right there because this is going to come up  
8 repeatedly”, and I am just going to read out what she says, Miss Lewis. “I am looking in  
9 particular at paragraph 5 of the Wiley declaration which is contained in exhibit “F”, page  
10 213. In this paragraph the warden, Warden Wiley as we have been saying, does say that he is  
11 aware that Abu Hamza has some medical concerns and he goes through and recites some of  
12 them and then he states after full medical evaluation a determination would be made  
13 regarding the most appropriate placement for him, considering the level of medical care and  
14 security controls needed.”.

15 And then I think the following sentence is the key sentence, “If it is determined that  
16 Abu Hamza cannot manage his activities of daily living, and that is a term of art, activities of  
17 daily living, which goes by the acronym ADL being the term of art, it is highly unlikely that  
18 he will be placed at the ADX but rather a medical centre. I do not read that as a commitment  
19 one way or another as to the necessary outcome of the medical evaluation. It is just I do see  
20 it as a commitment that if he cannot do his activities of daily living, he will not be at the  
21 ADX but if there is a determination made that he can manage his activity of daily living then  
22 there is no commitment that he will not be at the ADX.” And then Mr Schmidt goes on, “I  
23 think that that is a somewhat correct reading of the paragraph.”.

24 A. Yes, I say again, I just direct you to paragraph 34 where she makes a statement -  
25 sorry, page 34, that there is a commitment so either this is inconsistent (inaudible) but I think  
26 it was very clear again that she did state in her sentencing submission that if Mustafa could  
27 not manage his needs of daily living, the US Government committed that he would not be  
28 sent to ADX.

29 Q. And I am just going to skip on, Miss Lewis, again, she picks it up again at paragraph  
30 91. And she says again, and this is at the halfway point of the page, “I do not but maybe you  
31 can point me to anything that the United States commits he will not be at the ADX because it  
32 keeps being presented as a commitment as part of his extradition that he will not be.” And  
33 then ---

1 A. Right. And I do not think that this deals with the fact that they said a full and fair  
2 medical evaluation would be carried out if he ever were to be placed at the ADX. This was  
3 another strand that was needed.

4 Q. And I just want to, and again I am doing this for speed, Miss Lewis, just picking it up  
5 at page 95, the judge then talks about the fact that she got in contact with ADX in order to  
6 find out about what the conditions might be like and she ---

7 MR FITZGERALD: Which page is this?

8 MS DOBBIN: Sorry, this is page 96, Miss Lewis. And she prefaces it by saying that she  
9 thought that it was important that she do additional work to familiarise herself with the  
10 conditions of the ADX. And then ---

11 A. I am not sure what you (inaudible) from that but ---

12 Q. She goes on to say that she had talked to senior counsel at the Bureau of Prisons who  
13 prepared the letter and I will take you briefly to the letter in a second. The judge asked  
14 questions about the amount of medical staff “to assure myself that what was being presented  
15 in the various filings”. So, she went on to ask “Had they dealt with amputees in the past, they  
16 have. Whether the prosthetic specialist was a true specialist in prosthetic devices with arm  
17 amputations, he is. Whether or not the prosthetic specialist had dealt with individuals at the  
18 ADX, he has. Whether or not the ADX has housed individuals with amputations in the past,  
19 they have. And then she talks about whether they would need to change certain aspects of  
20 what would otherwise be standard housing accommodation. And then she goes on over the  
21 page in terms of her enquiries to say that all of the sinks and showers had push buttons. Then  
22 she goes on to say that she was not saying that the defendant would necessarily be assigned to  
23 ADX, but that it is clear that what needed to occur and what would occur before any  
24 designation is that the defendant would get a full medical evaluation, which is really handled,  
25 as she understood it, by the BOP and then an appropriate designation would be arrived at.

26 A. I think what is not said is whether, and the protocol is not really the issue, it is that  
27 they think about his ability to be housed in a cell for, or that the ADX has cells for  
28 handicapped individuals. That was not what Mr Docherty and Garvey talk about, the fact  
29 that he has access or there is a prosthetic specialist there. It needs to be a prosthetic specialist  
30 and (inaudible) in the transcript, with experience dealing with double armed amputees in  
31 particular and this (inaudible) is what they proposed here. It was obviously just a suggestion,  
32 and this was something that came up in a transcript, that they there has somehow been some  
33 transformation since 2012 when Mr Mustafa was extradited and it seemed highly unlikely at  
34 best that he would be at ADX (inaudible) to this new position that quite surely, he could be

1 held at ADX and that was certainly within the realm of what the BOP (inaudible. It was a  
2 complete 180. It makes no sense. It is not logical and the only conclusion that I think can be  
3 drawn from this is that the US (inaudible).

4 Q. Okay. So, I just want to - the judge referred to a letter so for fullness, I just want to  
5 make sure we have got that letter as well. That is at page 45 of the bundle. This is the letter  
6 that she was referring to from Geoffrey Allen and Dominic Ray of senior counsel.

7 A. Yes, that was the letter that she referred to and I just recited some of that letter  
8 (inaudible) prosthetic specialist.

9 Q. So, it says here he will be given a full medical evaluation at a medical centre and  
10 assessed by a prosthetics specialist. After a medical determination regarding the most  
11 appropriate placement for him and considering the level of medical care and security controls  
12 needed, he will be designated. Whether he can manage his activities of daily living and the  
13 amount and intensity of medical care and assistance he needs will be important  
14 considerations in the designation process. And then, there is quite a lot of detail there. I will  
15 not read all of that out, about the review processes that take place. There is also detail about  
16 the hearing that might take place and then at the bottom of page 47, "If it is determined that  
17 the ADX is the most appropriate housing for inmate Mustafa, he would be housed in an area  
18 that can accommodate his medical needs. The ADX has a variety of housing assignments  
19 available in order to accommodate various level of healthcare needs including handicapped  
20 accessible cells and those designated for serious medical needs."

21 It talks about healthcare personnel making rounds in each housing unit on a daily  
22 basis. Additional needs like wound care are attended to on a daily basis. Currently, there are  
23 54 staff in the health services department. It sets out what they are. The ADX also provides  
24 on-site dental optometry and MRI treatment, has its own laboratory and pharmacy to provide  
25 services to inmates. So, that was the information that was being provided to the judge.

26 A. I do note that she says there that (inaudible) important considerations (inaudible) from  
27 what the US were presented previously that, again, he could not do his daily living activities  
28 at ADX. This is an important consideration (inaudible) representative. Then in terms of the  
29 accommodations that you mentioned and that are available at ADX, I would challenge you to  
30 show me adequate mental care. I certainly have not experienced that to be the case with my  
31 client. I would put his care as (inaudible) lack of caring and adequacy of care in that regard.  
32 The list goes on. I am happy to address any of those if you want.

33 Q. So, I am just going to carry on with the judgment in the sentencing hearing. I do not  
34 have time to go through all of it, but I wanted to just go to page 135 where the judge, during

1 the course of her sentencing, talks about medical conditions and designation issues and she  
 2 goes on to describe, “Having dealt with Mr Hamza for a couple of years now, dealt with the  
 3 MCC in connection with him. Spoken with the MCC. Spoken with the warden on a number  
 4 of occasions about it over the last several years, toured the medical facilities over at the  
 5 MCC. Met with medical staff at the MCC because issues have been brought to me over  
 6 time.” So, can you just help me then, is it right that this judge, whilst she had supervision of  
 7 Mr Hamza’s case, also took it upon herself to visit the MCC about his detention?

8 A. Yes. I think it is actually notable that if she did take that level of care, we still spent a  
 9 good majority of our time during which we could have been preparing Mr Mustafa for trial  
 10 dealing with ongoing issues with the MCC and care at the MCC. I would say that during that  
 11 time, I actually developed a good relationship with the head of the legal department there  
 12 because we were so much in contact about the inadequacies of his care and, despite that  
 13 effort, many of his needs could not be met. You know, some days, not even for lack of  
 14 trying. Some of it is just lack of ability to accommodate the medical needs. Even if  
 15 (inaudible) you do not mention it because you do not want to prejudice the failure of the  
 16 BOP, but to me that is just an acknowledgement that the BOP has failed, has failed with Mr  
 17 Mustafa there and has continued to fail (inaudible).

18 Q. I wonder about that. If we look at page 139, she said, “Folks have said the MCC  
 19 conditions may be worse than the ADX, and I am quite familiar with the MCC conditions.  
 20 There are certainly difficulties. There are improvements, but there is by no means anything  
 21 that is close to rising to a level of any kind of constitutional violation.”

22 A. I would say two things to that. One, it is her opinion and, secondly, any judge who  
 23 would take the position that detention at the MCC constitutes a constitutional violation,  
 24 though detention at the other facilities is so woefully inadequate to be constitutionally  
 25 deficient that creates an unsolvable problem for the Bureau of Prisons because then what?  
 26 You would have to release all of these people, find new places for them to go. It is an  
 27 untenable position. It would be foolish for any judge to do that, knowing that is the reality of  
 28 something of that nature.

29 Q. And what she also does in this judgment, Ms Lewis, is she goes on to describe – this  
 30 is at pages 136 and 137 - all of the experience that she has in sentencing people who have  
 31 very serious illness as well, so she talks about people who have full blown AIDS, people with  
 32 cancer, diabetes, people with amputation from gunshot wounds, amputations from having  
 33 been at war, people with brain tumours. “I have had defendants with all of these issues and  
 34 more and by virtue of the fact that I have had these defendants, so too has the Bureau of

1 Prisons subsequent to my sentencing. They know the capabilities of each facility,” and she  
2 said that she was not prepared to distrust their judgment.

3 A. They do not do anything more than say well you have to let them see and if they fail,  
4 they fail. She said previously, obviously, the MCC had as well.

5 Q. So, can you just help me with this, whilst he was in the MCC, did Mr Hamza ever  
6 need to be hospitalised for any of his conditions?

7 A. It is not a question of whether he needed to be hospitalised. I think it is a better kind  
8 of question of whether he was hospitalised. To my knowledge, he was never hospitalised  
9 during his time there, but I can certainly say again, just so as not to violate anything that I  
10 have learnt from him and that is not in the public record, I can just say generally that he  
11 suffered tremendously from (inaudible) there.

12 Q. I just wonder because he had a lot of things wrong with him. He had hypertension, he  
13 had diabetes. He obviously had his issues with his amputations, but nothing that stopped him  
14 being fit for trial.

15 A. No, it is not a question - again, it was not specifically a competency issue. (Inaudible)  
16 in solitary confinement of his ability to recall information and to testify effectively on his  
17 own behalf and that was something, obviously, that he raised at trial I believe at the  
18 beginning of his testimony, but he is a unique case because, for him, his disabilities which  
19 interplay with his medical issues will be s(inaudible) and so the kind of things that make it  
20 untenable for him to receive care and accommodation at the MCC are a little bit different  
21 than it would be for someone with (inaudible). For him, the issue is it is not that he would  
22 necessarily wind up in a hospital, it is that he is being forced to do things that nobody with his  
23 disabilities should be ever made to do and these result in injuries, ongoing, that he would feel,  
24 as he says himself during the trial, (inaudible) and then there is no evidence of what he  
25 suffered. It is a little different. It is not something that would necessarily result in him  
26 winding up in a hospital (inaudible).

27 Q. I am going to move to, just to deal with ADX. Have you actually been to ADX, Ms  
28 Lewis?

29 A. No, I have not. I had once this year, earlier, or last year rather, contemplated a trip  
30 there, and wound up not going as the logistics of it were difficult to get there and (inaudible)  
31 and then Covid happened.

32 Q. And have you represented anyone else subject to SAMs in ADX?

1 A. As for me personally, I have not represented other SAMs inmates at ADX, but my  
2 partner has represented a number of other inmates who are on SAMs and have been  
3 designated to ADX.

4 Q. I am just interested in what you can give direct evidence about. You seem to refer  
5 throughout your opinion to the report written by the Loewenstein Clinic on what SAMs are  
6 like.

7 A. Yes.

8 Q. And is that because you lack any direct knowledge of what SAMs ---

9 A. No. Sorry, as I said, I have not personally represented in my individual capacity  
10 individuals with SAMs, but, sorry, under SAMs at ADX beyond Mr Mustafa who I feel I  
11 have had sufficient experience to opine on the dealings at ADX, but I have consulted with  
12 colleagues of mine, including my law partner who I have worked with for 12 years about  
13 inmates that he represents who are at ADX and I also felt that appropriate to further back up  
14 my own personal opinion with objective documentation (inaudible).

15 Q. I am going to focus on Mr Hamza for the moment and I have looked at this. He has  
16 written a sort of handwritten complaint where he sets out his various issues about conditions  
17 at the ADX, is that correct?

18 A. Yes.

19 Q. Have you taken ---

20 A. I am sorry, I just want to correct that. It is actually two different complaints. There  
21 was a complaint and then later an amended complaint.

22 Q. And is that because the Government objected to the first complaint because it was  
23 vague and unparticularised?

24 A. I am sorry, could you just repeat that one more time?

25 Q. Was that because the first complaint was vague and unparticularised?

26 A. I do not recall why they had him do it, but I do know it was extremely lengthy and so  
27 I think it may have been to have him pare it down.

28 Q. Have you played any part in drafting any particulars or gathering any evidence in Mr  
29 Hamza's claim?

30 A. No I have not.

31 Q. So, everything that you rely on to describe Mr Hamza's experience of being in the  
32 ADX is based on what Mr Hamza says, is that right?

33 A. No, not completely and certainly not anywhere near completely. I have often had  
34 many conversations over the years with ADX staff, the legal department (inaudible) certain

1 pieces of information and also that - well, I will relate my comments to ADX and not refer to  
2 MCC but there have been other sources that I have garnered information from.

3 Q. Right, and has that been given by way of formal evidence yet?

4 A. No, it has not been admitted in that context. We have not, again because of the  
5 exhaustive administration remedies, had the opportunity to litigate his claim.

6 Q. And these are all alleged facts, Ms Lewis, that will be decided in any trial of any  
7 issues before the court, is that right?

8 A. I think the veracity of the claim will certainly deal with that issue, yes.

9 Q. It is likely, is it not, that many of the things that Mr Hamza alleges in that claim will  
10 be disputed?

11 A. I think there are a number of things that will be non-dispute, the fact that my client is  
12 a double-armed amputee that does not receive daily care (inaudible) as he did in the  
13 (inaudible) four to six times a day. Here he does not receive it at all and he has not been  
14 placed in a cell for a handicapped individual. I had conversations with the ADX specifically  
15 about the cell placement that he is in, that the cell does not have the proper shower and toilet  
16 fittings as a result of the fact it is not for someone with his disabilities. He has had issue to  
17 accessing discovery, given his disability, and also just general other issues with access.  
18 These are all documented, not just in Mr Mustafa's complaint, but in a court conference that I  
19 had with US Government representatives at the Bureau of Prisons at ADX.

20 Q. Has it been accepted what he alleges about his medical care at the ADX?

21 A. I am unclear what you are referring to, specifically by who?

22 Q. That is what I am asking you, Ms Lewis, has anyone accepted the allegations that Mr  
23 Hamza makes about the standard of medical care afforded to him?

24 A. In that regard, I am not sure whether I am at liberty to say, but, yes, I can say that  
25 there has been acknowledgment for the need to further assess certain aspects of that, of his  
26 current conditions, and particular care to correct some of them. I would also add that many  
27 of his issues were substantiated previously at the MCC by virtue of certain accommodation  
28 that was provided obviously that was not sufficient in that that may need more (inaudible)  
29 after time, but there are documents that that has been the case and has been independently  
30 verified, and in some cases after the times this may not be (inaudible) by the BOP.

31 Q. There is no shortage of medical care it would seem at the ADX, do you agree?

32 A. I think there is extreme shortage of medical care in particular for someone like Mr  
33 Mustafa who requires daily care and in the UK, where clearly you must have much superior  
34 treatment, he was given (inaudible) four to six times a day, care from other inmates as well.

1 Here at ADX, he is on his own, hardly has contact with anyone else, let alone other inmates,  
2 and, to my knowledge, certainly not sufficient contact to manage his medical issues as they  
3 arise.

4 Q. One of the things that is striking from all of the things that you complain about, like  
5 his toenails needing cut, and he wanting dental work done, he does not seem to mention  
6 anywhere in his complaint lack of care, for example, about his diabetes?

7 A. I think you may want to consider and realise the things that he has raised. For Mr  
8 Mustafa these daily issues are a greater torture than some of these other issues that for a  
9 normal person who is not in his circumstances would be overwhelming. For him, when we  
10 talk about his inadequate dental care, that is because he currently has to open – this is in the  
11 complaint - he has to open cans with his teeth because he does not have adequate ability to  
12 open them with his prosthetic and with his current (inaudible). That is something that affects  
13 him on an extreme level because it causes infection. The same thing is true of his toenails.  
14 This is not a petty inability to get a pedicure, this is somebody who at MCC waited for a  
15 period of nine weeks to the point where special tools were need to cut his toenails and they  
16 did not have them, could not do them and a medical profession was not even (inaudible) tried  
17 to cut his nails because he was (inaudible) support. This is very important for Mr Mustafa, as  
18 he suffered amputations in the past we will assess him, so we need to (inaudible) for him and  
19 unfortunately for him it seems to trump other medical issues, such as his diabetes and a  
20 constellation of other issues.

21 Q. Just as regards his toenails, were you aware, for example, in 2005 Mr Hamza refused  
22 to appear in court in England because of complaints that his toenails were too long ---

23 A. No, I am not.

24 Q. --- and he was not able to walk?

25 A. No, I was not aware of that.

26 Q. That may suggest, Ms Lewis, that our standards of medical care are not quite as good  
27 as you think?

28 A. Well, that is a shame, I was holding out hope.

29 Q. I am just going to move on then, if I can. You have not represented anybody at the  
30 ADX other than Mr Hamza, are you aware of how the H unit at ADX works?

31 A. Yes, I am, from Mr Mustafa's representative.

32 Q. Are you aware that people are able to work there through the H unit so that when they  
33 get to phase 3, they are able to socialise with other people on it?

34 A. I am aware from speaking with my colleague, Mr Dratel, and again my law partner

1 who have personally dealt with those clients, that his clients at ADX have not been moved  
 2 through that procedure to stepdown, and also I would note in order to stepdown under the  
 3 SSU - I do not whether programme has been used, I do not think it is really a programme, it is  
 4 just the H unit, that in order to stepdown here, he really would need a modification of SAMs  
 5 in order to ever be allowed to communicate with another inmate. You simply cannot do that  
 6 by virtue of having someone say they are planning a stepdown. It requires a modification.  
 7 Again, I do have many colleagues who have clients and understand (inaudible) and I do not  
 8 know of any situation where these kinds of modifications post-trial have been granted to step  
 9 people down to communicate with inmates.

10 Q. It expressly says in terms of phase 3: "Placement into phase 3 typically requires a  
 11 modification of the SAMs to allow inmates to have physical contact with one another", so  
 12 there does not seem to be any difficulty about that, does there, Ms Lewis?

13 A. No, but again it requires modification of SAMs in order to have contact with another  
 14 inmate. If your SAMs are not modified, then the only thing that I understand (inaudible), a  
 15 couple more social calls a month and maybe access more commissary items.

16 Q. I am not going to take you to this because there is not time, but we have already  
 17 looked at the fact that when the issue ADX was before the European Court, the European  
 18 Court asked a series of questions of the United Kingdom about how ADX worked, and I am  
 19 just going to look over the page to page 239 that deals with that. "The special security unit..."

20 A. Which document are you looking at?

21 Q. We are looking at the 2013 document of the European Court.

22 A. I have a lot of documents in front of me, can you please directly to the right  
 23 document?

24 Q. Ms Lewis, please do not worry, I will read it out to you. I wanted to give you some of  
 25 the statistics that were before the European Court: "The special security unit programme  
 26 could house up to 32 inmates. There were 17 inmates in phase 1, nine in phase 2, and six in  
 27 phase 3." Then for the stepdown programme, 32 inmates were in J unit, 32 in K, 25 in D and

28 B. Then the court goes on to deal with, and again I do not quite have time to go there, I am  
 29 just going to go to paragraph 97: "If special administrative measures were vacated for an  
 30 inmate at ADX, he could be transferred from ADX to another prison. This had occurred for  
 31 seven of the 13 inmates whose special administrative measures had been vacated." That was  
 32 the position in 2012. Have you any evidence that people are not progressing through the H  
 33 unit at ADX, Ms Lewis, since then?

34 A. The only document that I can think of offhand, and perhaps with a little more time I

1 would be able to draw on something else, is as per the Sessional Constitutional Rights  
2 (inaudible) report. Nino said in 2009, for instance, there were only 30 inmates under SAMs  
3 and I know from experience that ADX is where the majority, if not all, of the inmates on  
4 SAMs wind up in the system. In 2017 there were 51 inmates on SAMs. It does seem to me  
5 that on balance we are getting more and more inmates that are being housed under SAMs  
6 conditions, not a decreasing number. Again, I personally do not know of anyone, not one  
7 individual who was serving a long-life sentence who ultimately progressed out of there, yes,  
8 who was on SAMs.

9 Q. I am going to disagree with you, Ms Lewis, and say that people do work their way  
10 through it. I am going to go on, if I may, and deal with a point that you have made, that the  
11 *Cunningham* litigation does not improve conditions for people under SAMs at the ADX. Are  
12 you familiar with the terms of the settlement?

13 A. I do not recall offhand what all the terms are but generally, yes.

14 Q. The settlement sets out in enormous detail the number of improvements that are being  
15 made. Your Ladyship, for your note, it is the fourth declaration. Ms Lewis, there is no need  
16 to bring this up if you do not have it. There were a number of modifications and changes  
17 made to a number of policies, seven in all, that governed the provision of mental health at the  
18 ADX. It also led to the constitution of three further programme at high security units for  
19 mentally ill individuals?

20 A. Does it have any impact though?

21 Q. Yes, but it enabled over 100 people to be transferred from ADX?

22 A. Sorry, I did not mean to interrupt you but I know some of the people that remain at  
23 ADX who are not eligible for that programme.

24 Q. Are you disputing that over 100 people were moved out?

25 A. Not at all. I think it shows the inadequacy of the medical and mental health treatment  
26 at ADX that that was seen as the best way to handle those people, and I know that was  
27 lauded, and I said that in my report.

28 Q. It sets out a number of specific initiatives that have been implemented, including  
29 constructing, maintaining and employing areas for private psychological and psychiatric  
30 counselling sessions in all units at the ADX.

31 A. Yes, I think practically speaking though, and I believe this might have been  
32 documented in Dr Cornell's report, it is also in my report and cited in there, those individual  
33 consultations for people like there Mustafa, like anyone understands, like (inaudible)  
34 understands, they are not participating in group therapy and can only participate in individual

1 therapy. There are only up to five appointments on Fridays and if it is too difficult to provide  
2 care, then you are looked over. I also think there are (inaudible) there. For instance, issues of  
3 confidentiality and attorney/clients and an attorney who gets privilege and they are careful  
4 where if you are standing near to someone's cell that (inaudible) confidentiality of that  
5 medical relationship, it certainly, I would imagine, dilute the quality of that kind of individual  
6 therapy, if it occurs at all. Mr Mustafa has not received adequate mental health care.

7 Q. I was going to ask you if you have seen paragraphs 34 and 35 of Dr Leukefeld's  
8 witness statement where she states that individuals who are on SAMs are able to have  
9 individual therapy and also join group therapy if that course is assented.

10 A. I think it shows her lack of knowledge what is possible for a SAMs inmate. How is it  
11 even feasible, even possible, that someone who is not allowed to have contact with other  
12 inmates could possibly participate in group therapy? I think that it requires us to discount  
13 everything she has to say about mental healthcare if this is what her position is.

14 Q. Miss Lewis, she explains in her witness statement that inmates under SAMs are able  
15 to have group therapy. She sets that out in clear terms and explains that they are allowed to  
16 do that by way of modification to their SAMs. Do you understand that?

17 A. Yes, but that requires modification of the SAMs.

18 Q. Yes.

19 A. Inmates who are under SAMs do not have access to the therapy.

20 Q. Yes, but if their SAMs are modified, Miss Lewis, they do.

21 A. Yes, but again ---

22 Q. And there is provision for therapy.

23 A. --- the vast majority of cases are not modified for post-conviction. The vast majority  
24 of cases, in many cases individuals remain on SAMs for many years, and certainly my client,  
25 Mr Mustafa, is an excellent example of somebody who, despite a lack of any serious  
26 violations of his SAMs, which I put in my report, has remained under SAMs without  
27 modification now for eight years, five months.

28 Q. Has Mr Hamza violated SAMs?

29 A. No. In fact, I want to draw your attention to one of the alleged violations because I  
30 think it is fairly significant in terms of explaining how SAMs are approved and the  
31 justifications for re-approval. It was an allegation that the violation that justified his SAMs  
32 being renewed in the past year was that he had communicated in a letter to his son, who was  
33 an approved contact, something along the lines of, "Do not tell my one year old grandson that  
34 I love him." The idea that Mr Mustafa's SAMs could be reinstated for a new year on the

1 basis of the contact with a third party, a one-year old child, to say, “I love you”, has nothing  
2 to do with threat of violence or national security, and exemplifies the completely, I think,  
3 arbitrary and the punitive nature of the SAMs.

4 Q. And is that something that you are going to raise in the litigation on Mr Hamza’s  
5 behalf? Are you going to argue that his SAMs are arbitrary?

6 A. I am going to argue that his SAMs are arbitrary, and again I would like to preserve the  
7 ability when I am sitting down to write it to more figure out how we are going to state it, but,  
8 yes, generally speaking I am going to raise issues with his SAMs and the renewal of his  
9 SAMs as well.

10 Q. OK. Do not worry, Miss Lewis, I do not think anyone is going to hold you to how  
11 you do your drafting. You are aware, are you not, that a number of Mr Hamza’s family have  
12 been implicated in quite serious criminality, are you not?

13 MR FITZGERALD: One grandson.

14 A. I think there are varying degrees, but I know that some of them have convictions in  
15 other cases and those members have been precluded from his list of approved contacts, but,  
16 of course, I am also concerned so as that I do not understand why he would be denied contact  
17 with such as his young grandchildren. This I think is emblematic of the way that SAMs  
18 really destroys relationships between families and, in particular, in cases like this one where  
19 there is a great distance between the family. That was something I noticed, that the European  
20 Court had dealt with it at one point in one of their actions they wanted - a number of their  
21 opinions, but that is certainly why he (inaudible).

22 MS DOBBIN: And Miss Lewis, the content of SAMs and restrictions on people, particularly  
23 terrorists, being able to communicate with people, the rationale for that is often the concern to  
24 stop them communicating coded messages to people, if one looks at the case law. Do you  
25 agree?

26 A. Yes, that is one item, yes.

27 Q. And just in terms of Mr Hamza’s family, although a number of them have been  
28 implicated in criminality, it is nonetheless right that his wife and daughter are allowed to visit  
29 him at ADX. Is that correct?

30 A. Yes, yes, and the son that I spoke of earlier has not been implicated in any criminality,  
31 the one that he sent this message to the grandchild to.

32 JUDGE BARAITSER: Thank you very much. Mr Fitzgerald?

33 Re-examined by MR FITZGERALD

1 Q. Yes, just a few matters in re-examination. First of all, you were asked whether you  
2 had personally visited ADC in Alexandria and you said no. I just want to ask you this.  
3 Based on your knowledge of the SAMs system, are the restrictions under the SAMs system  
4 likely to be the same in ADC Alexandria as in the MCC in New York, which you do have  
5 experience of?

6 A. Yes, I see no reason that I can think of why they would not be different.

7 Q. No. ADC Alexandria is also a pre-trial, the same, yes. The ---

8 A. That s ---

9 Q. Sorry. I was responding to a sotto voce from my learned friend Mr Lewis. The level  
10 of court review you dealt with the problems of taking a challenge to the courts and you said  
11 that the problem is that if a judge were to find a constitutional violation in relation to the pre-  
12 trial conditions in the MCC then that would cause, as it were, an appalling vista for the  
13 executive. They would have to let everybody out or transfer them.

14 A. Yes. I think it would make it an unsolvable problem and I think, you know, on some  
15 level the number of people that they approve for SAMs and how it is done in MCC is largely  
16 based on how many people they can accommodate on 10-South. They need it for people who  
17 are on SAMs and require a solitary unit. So it does (inaudible) tremendously.

18 Q. Just help us as to this. Does that chime in with the approach of the US courts of  
19 deference to the executive in challenges to prison conditions?

20 JUDGE BARAITSER: Well, that is a very wide-ranging question about the courts in general  
21 and their deference to the administration in general.

22 MR FITZGERALD: No, in ---

23 JUDGE BARAITSER: If she does answer it, then I will take her answer in that context.

24 MR FITZGERALD: Yes. It is just in the context of the prison, prison litigation, which you  
25 have been asked - well, my learned friend has been suggesting you can take prison litigation  
26 and that can be effective. I am asking you about whether there is an approach based on  
27 deference to the executive.

28 A. Yes, and when it comes to - there absolutely is deference even pre-trial when courts  
29 have the authority to opine on these things, there is always deference to the Bureau of  
30 Prisons, always deference to the executive because of the notion that they are somehow in  
31 superior positions to make these determinations. (Inaudible) in particular when it comes to  
32 SAMs that is just really the authority, unbridled authority, I should say, of the Attorney  
33 General and that is where we would start.

1 JUDGE BARAITSER: Are you challenging the independence of the American judiciary? Is  
2 that your point?  
3 MR FITZGERALD: No, I am just indicating the constraints within which they necessarily  
4 operate when dealing with challenges to SAMs.  
5 JUDGE BARAITSER: Constraints, but you are talking about deference, which rather  
6 implies.  
7 MR FITZGERALD: Well, it is a language used by the courts themselves.  
8 JUDGE BARAITSER: What, that they accept ---  
9 MR FITZGERALD: Yes.  
10 JUDGE BARAITSER: --- that they defer to the administration.  
11 MR FITZGERALD: Yes.  
12 JUDGE BARAITSER: Even when fairness is an issue?  
13 MR FITZGERALD: Yes, when it comes to questions of conditions. I mean it is a turn of art  
14 used by the judiciary of deference to the executive. That is what I am ---  
15 JUDGE BARAITSER: Well, perhaps you can produce a case which confirms that.  
16 MR FITZGERALD: Yes, I will, yes.  
17 JUDGE BARAITSER: Right.  
18 WITNESS: And actually, your Honour, I can do so if that would be helpful.  
19 JUDGE BARAITSER: I think Mr Fitzgerald will in due course. Thank you.  
20 MR FITZGERALD: No go ahead, please assist us. You are the expert.  
21 A. Sorry.  
22 Q. Not me.  
23 A. It is just that it is in the prosecution bundle, so I figured it was relevant here. The case  
24 of *Abdulmutallab* (inaudible). There it states in the opinion, "The court notes" - it notes that  
25 the court has to prove that the government predictive judgment as to national security, and  
26 that is a case where they upheld SAMs restrictions, so I think that does make it pretty clear  
27 that there is deference.  
28 Q. Yes.  
29 A. On the part.  
30 MR FITZGERALD: I am sorry, my Lady, it may be I did not ask the question very well, but  
31 that was the point I was seeking to assist.  
32 JUDGE BARAITSER: I see. All right. Thank you.

1 MR FITZGERALD: Now in relation to legal calls, my learned friend has said, “Well, you  
2 had legal visits and legal calls.” If someone is subject to SAMs, will those legal calls be  
3 listened into by the FBI?

4 A. Yes, and may be terminated by the FBI really at their discretion, anything that the FBI  
5 determines warrants terminating the call.

6 Q. Does the same apply to family calls?

7 A. I am sorry, I was referring to family calls in that.

8 Q. Yes.

9 A. In my answer.

10 Q. Yes, OK. What is the position on legal calls? Can they be listened into?

11 A. My understanding is that my legal calls are not monitored with my client as a term of  
12 client privilege, but I do know that the court does review all the emails that I send to Mr  
13 Mustafa as a person under SAMs and under their procedures. It creates a delay in the mail to  
14 and from and sometimes a letter of mine is not delivered or vice versa to or from a client  
15 inexplicably. Sometimes I have been told it is because I have not properly stated that I am an  
16 attorney on the form even though I routinely, as part of my letterhead it says Attorney at Law,  
17 you know. So there is a lot of reasons why that (inaudible).

18 Q. You have referred in answer to my learned friend’s questions to the considerable  
19 difficulties that you had in representing him about prison conditions and you said there has  
20 been real difficulties. Can you just very briefly explain what those difficulties have been?

21 A. Sure. I would say one big issue that we have had is, you know, again Mr Mustafa to  
22 raise something formally in court has to exhaust the administrative remedies, so he spent  
23 years at MCC working his way through the administrative remedy process, getting denial  
24 after denial, and then finally when I could have litigated those he was then transferred to the  
25 ADX where he has to then restart that process, renew raising issues, even if they were largely  
26 the same issues that he had faced at the MCC, and that also extends to the general issues like  
27 (inaudible) mentality and maybe we will get a small concession and it will last for a couple of  
28 months and then I will find out that whatever that small accommodation is, it has been  
29 removed or is not working as they had hoped. It is just an ongoing battle.

30 Q. Right.

31 A. And there are so many restrictions on what the BOP is willing to do that they justify it  
32 for various reasons, administrative security. It makes it very difficult to get any progress.

33 Q. Yes. And you were comparing in respect of Abu Hamza the treatment that he had  
34 received in the UK compared with the treatment he is receiving in the US. Can I just put this

1 to you about Julian Assange, that in the UK prisons at present he is category B, he is  
2 permitted association with other prisoners, he is permitted to make regular phone calls and he  
3 has before Covid had the regular sessions with a psychologist. Is he going to get any of that  
4 if he is subject to SAMs in the US?

5 A. In my experience I think he would be unlikely to get anywhere near the same type of  
6 care comparable to that he has had in the UK.

7 MR FITZGERALD: Yes. I think those are the only matters. Those are the only question,  
8 sorry.

9 JUDGE BARAITSER: Thank you very much indeed. Thank you very much, Miss Lewis,  
10 for joining us, giving up your time to give evidence. Your involvement in the case is now  
11 finished. Thank you. We are going to sever this link. Thank you for your attendance.

12 WITNESS: Thank you.

13 (Witness withdrew)

14 JUDGE BARAITSER: Now, perhaps at this juncture we should deal with the anonymity  
15 issue.

16 MR FITZGERALD: Yes, my Lady.

17 JUDGE BARAITSER: The first question is whether that should be done in open court or  
18 not. Do you have a view one way or the other at the outset?

19 MR SUMMERS: No, I see no reason why it cannot be done in open court.

20 JUDGE BARAITSER: All right. My next question before you start is whether it is opposed  
21 by Mr Lewis or Miss Dobbin, the application for anonymity.

22 MR LEWIS: Well, we have not heard it yet.

23 JUDGE BARAITSER: I see. All right. You want to hear it first. So be it.

24 MR LEWIS: It has not made in writing.

25 MR SUMMERS: I understand Mr Lewis's position. Can I say this? You have been privy,  
26 madam, to discussions previously in relation to this, the result of which was a confidentiality  
27 ring was put in place in principle, by which certain named members of the Government will  
28 receive the names of witnesses 2 and 3 in order that they can undertake their due diligence  
29 and so that matters can proceed. There will be, and I am jumping to the end, but hopefully,  
30 madam, to comfort you, there will be named CPS, named counsel, named prosecutor in the  
31 US under named FBI Agent to whom the names will be disclosed. And once, madam, we  
32 have your permission to adduce anonymous evidence, those names will then be released into  
33 the confidentiality ring whereupon the US and the CPS will be able to undertake their due

1 diligence and assuming neither of the names disclose convictions, for example, perverting the  
2 course of justice. The parties' anticipation is that this is evidence that will then be read.

3 JUDGE BARAITSER: I see.

4 MR SUMMERS: So, madam, ---

5 JUDGE BARAITSER: The only reason I asked Mr Lewis at the outset is because if it is not  
6 opposed well, then it is a different kind of application that you make ---

7 MR SUMMERS: Well, absolutely.

8 JUDGE BARAITSER: --- but if it is opposed then you will make good I am sure the points  
9 that you seek to.

10 MR SUMMERS: Well, madam ---

11 MR LEWIS: Madam, if I can help this way, to some extent the prosecution take a relatively  
12 neutral approach ---

13 JUDGE BARAITSER: I see.

14 MR LEWIS: --- but as a matter of law the court has to be persuaded that there is a real risk of  
15 harm in order to take the unusual course of allowing confidentiality. So, it is up to my  
16 learned friends on evidence to show the court that there is a real risk of harm in these  
17 circumstances.

18 JUDGE BARAITSER: Yes.

19 MR LEWIS: The prosecution take a fairly neutral view, that is a matter for the court.

20 JUDGE BARAITSER: That is the test in *Re B* which I assume you assume ---

21 MR SUMMERS: Yes.

22 JUDGE BARAITSER: --- is the appropriate test. The only other issue is I am aware, and I  
23 cannot recall how I am aware, I am assuming it is because the defence told me, that  
24 anonymity has already been granted in the Spanish proceedings by a Spanish Judge.

25 MR SUMMERS: Yes, madam, and certainly part of my submissions will be that there ought  
26 to be some kind of mutual recognition of the position taken by other courts on this issue.

27 Perhaps the easiest thing to do is to take you to the evidence we have pertinent to the *Re B*  
28 test?

29 JUDGE BARAITSER: Yes.

30 MR SUMMERS: And then with Mr Lewis' state of neutrality make the submission which I  
31 hope is broadly straightforward. So, madam, the evidence if you have the core volume,  
32 volume 1?

33 JUDGE BARAITSER: Yes, I do.

1 MR SUMMERS: Again, I can probably do this reasonably quickly but of course we can look  
2 into matters in more detail if it becomes necessary to do so.

3 JUDGE BARAITSER: Yes.

4 MR SUMMERS: So, madam, core volume 1, tab 11 is the statement of witness one. And,  
5 madam, you will observe from the first paragraph of witness one asks for protection. In fact,  
6 what he is asking here for, I say he, I genuinely do not know whether this is male or female,  
7 but I hope I will be forgiven for convenience sake of calling him “him”. He asks the Spanish  
8 court for protection, to be granted the status of a protected witness, given that with this  
9 decision with which I have taken fully, my family and I are put at risk with the information  
10 and documentation I am providing. Madam, I know that you have read the evidence of  
11 witnesses ---

12 JUDGE BARAITSER: Yes, I have.

13 MR SUMMERS: --- one and two and I know that you have read our submissions, in  
14 particular our first – or the first chapter of our submissions in this case which explains how  
15 we say the evidence is of relevance. Witness two ---

16 JUDGE BARAITSER: Just when you say witness one, the weakness of course of this is he  
17 does not explain how he is put at risk and the basis on which he makes his request is  
18 regrettable.

19 MR SUMMERS: I will come to that.

20 JUDGE BARAITSER: You will?

21 MR SUMMERS: Yes.

22 JUDGE BARAITSER: OK, thank you.

23 MR SUMMERS: But that is all he says.

24 JUDGE BARAITSER: Yes.

25 MR SUMMERS: Witness 2 does the same, madam, at paragraph 1 of his or her statement.  
26 Madam, you can then go to core volume 1, where Mrs Peirce tells you at paragraph 3 that  
27 pursuant to that the lawyers acting for Mr Assange in Spain who are named took a number of  
28 steps towards alerting the Spanish prosecuting authorities. Those steps involved establishing  
29 protection of the witnesses involved and the confidentiality necessary. That confidentiality  
30 has been maintained by Mr Assange’s lawyers both in Spain and in the UK, all of whom have  
31 been made aware of the likely progression of steps being taken.

32 Then at paragraph 34, madam, of that same statement, Mrs Peirce recounts in fact  
33 what the Spanish lawyer tells us himself. So, paragraph 34 is a recounting of core volume 2,  
34 Mr Himiner’s statement, it does not have – or at least mine does not have – paragraph

1 numbers but if one goes to the second page, penultimate paragraph, that is what Mrs Peirce is  
2 talking about. On September 17, the Central Investigative Court, number 5, agreed a set of  
3 proceedings including the protection of the former workers as protected witnesses amongst  
4 other things. And madam, that is something that is repeated by Mr Himiner just so you know  
5 at tab 9, paragraph 4.

6 The bulk of the information that underlies this application however is to be found in  
7 tab 45. This is the detailed statement of Mr Himiner which answers the question that you, my  
8 Lady, asked of me, the basis of their fears.

9 JUDGE BARAITSER: Yes.

10 MR SUMMERS: I invite you to remind yourself of the content of this statement, paragraph  
11 1, Mr Martinez is a lawyer, he is part of the Baltasar Garzon firm. It was he that on July 29  
12 2009 filed the criminal complaint, you have that at tab 10 in relation to the evidence given by  
13 the two witnesses who were permitted to have anonymity by the court in Spain. And there  
14 you have at paragraph 3, madam, the same information that on 17 September the court  
15 granted the protection of the witnesses.

16 At paragraphs 4, madam, onwards, he goes into some more detail. So, on May 20, his  
17 firm received an email from a former worker at UC Global, the company in charge of the  
18 security at the Ecuadorian Embassy. That is the witnesses known as witness two in these  
19 proceedings who approached him first without providing his identity and before he was even  
20 willing to speak. He requested reassurance that his identity would be protected. That witness  
21 provided documentation to the witness. He had paragraph 5, an appreciation of the serious  
22 step he was personally taking and expressed fear of being exposed to serious repercussions.

23 Later, another witness, witness one, was introduced to the firm, he too afraid,  
24 Morales. Madam, just to remind you, David Morales ---

25 JUDGE BARAITSER: The director, I know of the company ---

26 MR SUMMERS: Yes.

27 JUDGE BARAITSER: --- UC Global.

28 MR SUMMERS: Yes.

29 JUDGE BARAITSER: Thank you.

30 MR SUMMERS: --- could retaliate as a result of his giving information. They both then  
31 gave paragraph 7 their statements before the notary, both requested protected status for  
32 themselves on the basis that they themselves and their families were at risk. That anonymity  
33 was requested from the court and that is tab 10. In fact, it is on page 63 of tab 10 that the  
34 formal request is made. Then the lawyer requested protection again in the separate document

1 which we have but I do not think it is necessary to go to, filed on 2 September to preserve  
2 their identity and those requests were granted. The witnesses are unable, madam, paragraph  
3 10, to provide a copy of the resolution granting the request because it is confidential but  
4 refers you to subsequent resolutions from the court in which they are referred to as having  
5 received protected witness status.

6 JUDGE BARAITSER: Can I just ask you, the repercussions he is worried about, each of  
7 them are worried about ---

8 MR SUMMERS: Yes.

9 JUDGE BARAITSER: --- is that from the director of UC Global, Morales, or is that from the  
10 American state or from whom do you think?

11 MR SUMMERS: Madam, the answer is given, madam, at paragraphs 13 onwards.

12 JUDGE BARAITSER: Yes.

13 MR SUMMERS: I cannot be any more specific than to say it is primarily from Morales but  
14 also those associated with him and that is the point made at paragraph 19 when one goes into  
15 the detail of the information. Primarily, from Morales, because what you are going to find is  
16 that the man has Army connections and a search of his house uncovered a loaded firearm  
17 with the identification rubbed off. But the fear extends to those associated with him and what  
18 we know from the statements in this case, that those associated with him stretch back into the  
19 US, but the ---

20 JUDGE BARAITSER: Can I ask something else then? Given how much information they  
21 give about when they were employed by his company and in what capacity, it is remarkably  
22 easy, I would have thought for Mr Morales to be able to identify them from the information  
23 they themselves have already disclosed. Is that not a fair point?

24 MR SUMMERS: That is at least possible and the lawyer does deal with that, madam, at  
25 paragraph 17. It is possible that Morales knows who they are, but he says that the existence  
26 of the Spanish proceedings, the existence of the court control over both Morales and the  
27 ongoing control over these witnesses and the protection that they are visibly under and  
28 receiving, and that includes armed protection where necessary, is keeping them safe at  
29 present.

30 The point he makes, madam, and having, of course, regard to the point you make is  
31 that that may be so, but the existence of these proceedings and the existence of the measures  
32 taken to protect these witnesses is, at present, serving to protect them against that risk.

1 JUDGE BARAITSER: I am just looking at witness 1's statement. In 2015, he took a share  
2 in the ownership of a company with a 50 percent stake and in 2019, he sold his share in the  
3 company back to Mr Morales. How is it possible that Mr Morales does not know who he is?

4 MR SUMMERS: Madam, I am – the position may be different in relation to the two  
5 different witnesses. It may be easier to identify one or the other.

6 JUDGE BARAITSER: Witness 2.

7 MR SUMMERS: It may be possible, madam, to identify both of them, but at present,  
8 pursuant to the Spanish court's order, they remain protected and anonymised.

9 JUDGE BARAITSER: It was two. February 2015. February 2015, he joined as an IT  
10 expert.

11 MR SUMMERS: Yes.

12 JUDGE BARAITSER: Well, how many people does that apply to, do you think?

13 MR SUMMERS: Madam, I cannot tell you, but it might not just be the one, but even if I am  
14 wrong about that, the position remains that the protection that is being afforded and the  
15 knowledge that they are protected witnesses is, it seems, serving to keep the threat to them,  
16 and the threat to them must be real, given what is known about Morales and what was found  
17 at his house in searches conducted by the Spanish police, serving to keep that threat at bay.

18 Madam, this is something that the lawyer deals with in detail, madam, at paragraphs  
19 13 through to 21. Their request is primarily because of fear of repercussions by David  
20 Morales. He has elite military training and madam, you see the point made at paragraph 14  
21 about the recovery of loaded firearms with the serial numbers rubbed as well as ammunition  
22 from his home address. He has been released provisionally by the Spanish court, madam, at  
23 paragraph 16, subject to conditions and madam, as you fairly observed, so does the witness,  
24 whilst it is possible that Morales has been able to identify witnesses 1 and 2, but because of  
25 the small number of former employees at his business, the lack of repercussions thus far is  
26 believed likely to be because he has only been released provisionally, but with precautionary  
27 measures, and the protected status of the witnesses remains essential and remains in place at  
28 the behest of the Spanish court.

29 Madam, paragraph 19, both believe and the lawyer shares in the belief, that if their  
30 identity was to become public, it could expose the witness and their families to the risk of  
31 violence by Morales himself or those associated with him and he makes the point that I  
32 sought to make earlier that UC Global and the organisation that employed the company in the  
33 relevant period, Las Vegas Sands, have extensive resources worldwide and that which they  
34 give evidence about obviously has effects which will be felt or could be felt very further

1 afield and they make the point that the head of security for Las Vegas Sands, madam, and he  
2 is somebody referred to by name in the evidence of witness 2, himself has a security  
3 background and extensive contacts.

4 Madam, in short, the Spanish court remains of the view that the protection of the  
5 identity of these witnesses remains essential for the proper administration of justice in that  
6 case and we invite you, madam, to have due regard to that.

7 I am reminded, and of course, it is right, that that which they talk about substantively  
8 in these proceedings, as they do in the Spanish proceedings, includes, and this is page 7 of  
9 witness 2's evidence at page 12, discussions between Morales and what he calls his American  
10 friends, and this is the third paragraph in the middle of page 7, Morales and his American  
11 friends concerning conversations about plans to either kidnap him or poison him.

12 JUDGE BARAITSER: Do you want a moment just to read the various notes?

13 MR SUMMERS: Yes, please. Thank you.

14 JUDGE BARAITSER: Do you want me to rise or do you just want me to wait for you?

15 MR SUMMERS: Yes, could you rise?

16 JUDGE BARAITSER: I will give you ten minutes, back at 4.30. Thank you very much.

17 (Short adjournment)

18 JUDGE BARAITSER: Yes, what else do you want to say?

19 MR SUMMERS: Thank you very much for the opportunity to take instructions. May I make  
20 a point I think I had not made properly. Firstly, I invite you to have regard to the discussion  
21 related by Witness Two about plans to do physical violence, kidnapping and poisoning.

22 Madam, the object of the Spanish proceedings that are ongoing of course is to establish the  
23 chain of command under which Morales was operating and to whom and how far back it  
24 went, and who exactly were the American friends.

25 Secondly, Madam, the subsequent discovery of a loaded firearm and anonymised in  
26 the possession of Mr Morales in those circumstances is obviously chilling.

27 Thirdly, and this is the point I was not, I confess, making properly. As matters stand  
28 at the moment and in relation to the protection afforded to these witnesses by the Spanish  
29 court, if their identity is known, it is, as my Lady has observed, known to Morales and  
30 nobody else. If harm comes to them now, it will be frankly obvious from whom it has come.

31 The publication, by contrast, of their names removes that form of protection. We  
32 understand that that is something that is well known to the Spanish court and which lies  
33 behind the orders they have made. The duty of this court of course is to reduce the risk that  
34 exists to witnesses such as Witness One and Witness Two, even if one cannot remove it

1 entirely, and the very real protection that is afforded by the knowledge that Morales must  
2 have that he is the only one who has possession of their names and knows their identities at  
3 present is, and according to the lawyer it seems successfully protecting them. What we  
4 invite, Madam, in those circumstances, is for this court to adopt the same position as the  
5 Spanish court and to carry forward that protection. It has logical sense. As matters stand, it  
6 appears to have had effect.

7 Madam, with that in mind, can I take I briefly to ---

8 JUDGE BARAITSER: There is no need, Mr Summers, I am with you.

9 MR SUMMERS: Thank you.

10 JUDGE BARAITSER: The testimony that there is genuine for anonymity, generally a  
11 justified fear for the safety of the witness. In this case, in my view, the genuine need for  
12 anonymity comes not so much from a justified fear for the safety of these witnesses, but from  
13 the fact that protection measures for both witnesses have already been granted by a Spanish  
14 court as part of their investigation.

15 In accordance with the usual principles of mutual co-operation and respect that  
16 exists between members of the Council of Europe, this court should and does respect the  
17 decision of the Spanish court that an order for anonymity is both appropriate and  
18 proportionate in their case. To insist on details being disclosed in these proceedings would be  
19 to wholly undermine the order made by the Spanish court and reveal the identities of  
20 witnesses they have sought to protect.

21 For this application, the fact that the prosecution, or the Government, do not oppose  
22 an order, and are neutral to the defence application, indicates that they do not consider they  
23 are in any way disadvantaged by the order in terms of their ability to challenge or test  
24 accounts. On that very exceptional basis, therefore, using the inherent powers of the court, I  
25 allow the defence application for the witnesses to give their evidence anonymously.

26 That deals with that. In terms of their evidence, will that now be read?

27 MR SUMMERS: Madam, that is our hope, but in fairness to those who represent the US,  
28 they now have to receive it within the confidentiality ring. The device we have put in place  
29 to satisfy B73 and our obligation to put the US in the best position they can in order to  
30 challenge this evidence, if they wish, is to create a confidentiality ring into which the true  
31 names of these two witnesses will be fed.

32 Armed with that, and one hopes it would take no more than 24 hours, the US will  
33 confirm that they are who they say they are, and they are not possessed of convictions for  
34 perverting or the like. Once that process has been gone through, our anticipation, Madam, is

1 that we will then be in a position to read that evidence.

2 JUDGE BARAITSER: There is some urgency in relation to that given that today is Tuesday  
3 and these proceedings are due to conclude on Friday, I just say that.

4 MR SUMMERS: Madam, I have some good news, we have made substantial progress on the  
5 witnesses. Madam, do you have your list?

6 JUDGE BARAITSER: I do.

7 MR SUMMERS: You already know, I think, that we have agreed the evidence of Ms Prince,  
8 Mr Chomsky, and agreed an acceptably edited form of Mr Goodwin-Gill's evidence. In  
9 addition, we have been able to agree in suitably edited form, Mr Boyle's evidence, in full Ms  
10 Maurizi's evidence. We will no longer rely on Mr Wahlstrom. Mr Cobain is agreed in full.  
11 Mr Cockburn has been the subject of agreed editing. And that leaves, madam, just Mr  
12 Worthington and Mr Jaffer.

13 JUDGE BARAITSER: And Mr Wahlstrom?

14 MR SUMMERS: No, no, we do not rely on him.

15 JUDGE BARAITSER: Oh.

16 MR SUMMERS: Mr Worthington, Mr Jaffer, potentially to be called live, and discussions  
17 ongoing regarding Mr Tigar and Miss Peirce's evidence. So, if as we anticipate, madam, the  
18 Spanish evidence does not need to be called live, we are really getting towards the end of  
19 where we need to be evidentially. Can I, whilst I remember it, say this, that during Mr Eller's  
20 evidence on Friday, I omitted, and it was entirely my fault, to have him adopt formally his  
21 statement. I have discussed this with Mr Lewis. Mr Lewis takes no - it was my intention and  
22 indeed Mr Eller referred to his statement during this evidence but the notion of recalling him  
23 to do that is one that does not fill us with particular assurance.

24 JUDGE BARAITSER: Provided there is agreement between the two of you ---

25 MR SUMMERS: Thank you.

26 JUDGE BARAITSER: --- I am happy to assume that he has indeed adopted his evidence.

27 MR SUMMERS: Thank you very much. So that, madam, leaves Mr Worthington tomorrow  
28 morning ---

29 JUDGE BARAITSER: Yes.

30 MR SUMMERS: --- Mr Jaffer was not due until Friday and I think we are going to struggle  
31 to get him forward to Wednesday and there is at least some chance that we might be able to  
32 reach agreement in relation to his evidence as well. So, what we anticipate for tomorrow,  
33 madam, is Mr Worthington followed by a good deal of reading ---

34 JUDGE BARAITSER: All right.

1 MR SUMMERS: --- and then potentially finishing on Thursday.

2 JUDGE BARAITSER: Thank you, that is very helpful.

3 MR LEWIS: Madam, it has come completely out of the blue that Mr Worthington is  
4 tomorrow.

5 JUDGE BARAITSER: Ah.

6 MR LEWIS: Because I have a professional engagement tomorrow morning and on the  
7 schedule which was – he was not shown, he is a witness I was going to cross-examine.

8 JUDGE BARAITSER: On Thursday?

9 MR LEWIS: On Thursday. So, tomorrow morning, Ms Dobbin and Mr Smith would have  
10 been here dealing with their witnesses, I will be here tomorrow afternoon, but not tomorrow  
11 morning. As I say, I have an unbreakable professional engagement.

12 JUDGE BARAITSER: All right. Well, this is entirely a matter between the two of you.

13 MR SUMMERS: Well, madam, I can accommodate that. We can read in the morning and  
14 then deal with Mr Worthington in the afternoon if it would assist?

15 MR LEWIS: I am grateful for that. So, the court appreciates the position with the  
16 anonymous witnesses. The government's position is that once we have done our checks to  
17 make sure they are proper people and do not have anything which the court should be aware  
18 of in their antecedents, the position which was set out in the evidence of Mr Kromberg was  
19 that there is a Chinese law between the prosecution and any other agencies which may have  
20 come into without confirming or denying whether they have or not any intelligence or other  
21 material. It follows I have no instructions and cannot have any instructions to put to those  
22 witnesses. So, if they are to be read, it is on that basis that we will in due course be  
23 submitting they are wholly irrelevant because of the Chinese law that is in place and there has  
24 been no influence, cannot be an influence at trial, it has the consequence that I have no  
25 instructions whether what they say is right or wrong.

26 JUDGE BARAITSER: I see.

27 MR LEWIS: And therefore it will simply be put into evidence on that basis, my Lady, I just  
28 wanted to make that clear. Assuming that there is nothing we wish to put before the court  
29 once we are informed of their names and have done some antecedent checks upon them.

30 JUDGE BARAITSER: Yes. Well, this issue has been raised before and I have seen some  
31 case law on whether or not a witness can go before the court to be read, who might be  
32 challenged but has not been challenged, and I wonder what the defence have to say about it?

33 MR SUMMERS: Madam, can I give it some thought? And I say that because I have to  
34 confess I do not really understand the position that is taken in relation to Chinese law. The

1 fact that Mr Kromberg might not know the answer to this evidence is no answer as we see it  
2 to whether the US government is able to provide instructions to the CPS in relation to its  
3 accuracy, and ultimately it is up to Mr Lewis whether he challenges this evidence or not. We  
4 can call it. If he has a challenge to put to it he is obliged to put it but you are being told he  
5 has no challenge at the moment to make.

6 JUDGE BARAITSER: Well, no, I am told he has no instructions in relation to whether to  
7 make a challenge. Well, is this a decision that I need to make about ---

8 MR SUMMERS: No.

9 JUDGE BARAITSER: --- a particular issue?

10 MR SUMMERS: Not as matters stand.

11 MR LEWIS: No, madam. We are confident it is completely irrelevant in any event so that  
12 will be our strong submission.

13 JUDGE BARAITSER: So be it.

14 MR LEWIS: So, I am certain that is the decision you will have to make first of all, whether  
15 there is any relevance, and only then ---

16 JUDGE BARAITSER: You are willing to take the chance that if you are wrong about that,  
17 well then, the evidence is unchallenged?

18 MR LEWIS: Well, I have no instructions so that will be our position on it.

19 JUDGE BARAITSER: All right. So be it. One other issue, again it has been raised by the  
20 press. Again, I raise it for both of you, they are now, the press, I assume it is the Press  
21 Association, are asking for all of the transcripts throughout the hearing from 7 September to  
22 date. I have already raised the possibility although I genuinely do not know the answer as to  
23 who the transcripts belong and whether or not they are a document and within these  
24 proceedings. And I would again ask you to address your mind to the issue and make  
25 representations so that I can understand better the position.

26 MR SUMMERS: Certainly.

27 JUDGE BARAITSER: One last thing, I have said this before, I say it again because I do not  
28 want it to be overlooked, I do need an indictment with the English charges on it and I do need  
29 the White Paper I referred to earlier. Can I add to that list, Mr Smith's cross-examination of  
30 Mr Grothoff's bundle in digital format please?

31 MR LEWIS: Yes. Certainly the charges we delegated that to Mr Smith so I am going to do  
32 him in it on that.

33 JUDGE BARAITSER: As long as it is not forgotten.

34 MR LEWIS: The White Paper?

1 JUDGE BARAITSER: You have referred to it in your submissions, your amended opening  
2 submissions.  
3 MR LEWIS: Oh yes. That White ---  
4 JUDGE BARAITSER: The White Paper attached to the 1989 Act.  
5 MR LEWIS: Yes.  
6 JUDGE BARAITSER: And I would like access to it since it is not easy to obtain.  
7 MR LEWIS: Yes.  
8 JUDGE BARAITSER: So, that is my list.  
9 MR LEWIS: And I am sorry, madam, can I just, because I was on my feet, the third thing  
10 was ---  
11 JUDGE BARAITSER: I have already been ---  
12 MR LEWIS: --- Mr Smith mentioned some bundle?  
13 JUDGE BARAITSER: His cross-examination bundle but in digital format please. I am sure  
14 he has it in digital format. Thank you. That is all I wanted to say. Back then tomorrow  
15 morning at 10 o'clock to read some statements with live evidence in the afternoon.  
16 MR LEWIS: Thank you.  
17 MR SUMMERS: Thank you.  
18 JUDGE BARAITSER: Thank you very much. Something else, Miss Dobbin?  
19 MS DOBBIN: No.  
20 JUDGE BARAITSER: No, just getting to your feet. Thank you, Mr Assange. You remain  
21 in custody overnight to be produced again in the morning for the rest of this hearing to  
22 continue. Thank you.  
23 ADJOURNED AT 16.38 UNTIL WEDNESDAY, 30<sup>th</sup> SEPTEMBER 2020

-----

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