

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

30th SEPTEMBER 2020. 10.00-15.06

1 JUDGE BARAITSER: Thank you very much. Please sit down. Do we know where the
2 defence team are? Public gallery is open is it?

3 COURT USHER: It is. I was told that there was nobody there when it was being opened
4 though.

5 JUDGE BARAITSER: All right. Good morning, Mr Summers.

6 MR SUMMERS: Morning, madam. Sorry, I did not see you over there.

7 JUDGE BARAITSER: All right. So, are you going to read some of the agreed statements
8 this morning?

9 MR SUMMERS: Yes.

10 JUDGE BARAITSER: And which one are you going to read first?

11 MR SUMMERS: Madam, can we begin with Mr Cockburn please at tab 51? Mr Cockburn's
12 statement has been edited in places. Can I please hand you up for your reference a copy of
13 the edits?

14 JUDGE BARAITSER: Yes. I am going to discard the one in my file.

15 MR SUMMERS: All right.

16 JUDGE BARAITSER: Thank you.

17 MR SUMMERS: Madam, Mr Cockburn is a journalist. He is currently the Middle East
18 correspondent for the Independent. He has previously worked for the Financial Times. He
19 has reported and written about the wars in Iraq and Afghanistan since 1977. He has reported
20 about various wars since 1977 and they have included since then the wars in Afghanistan and
21 Iraq.

22 He sets out various prizes that he has won for his journalistic work and he sets out his
23 views in this statement on the impact of the publications by WikiLeaks in 2010/2011.

24 Paragraph 2, madam, he reports exclusively from the ground in Iraq and Afghanistan and
25 says that he and other reporters suspected but could not prove that features of the US
26 activities there including that the US forces were killing civilians in significant numbers.

27 He was, paragraph 3, madam, he said in Kabul when he first heard about the
28 WikiLeaks' revelations which confirmed much of what he and others had suspected, that is to
29 say the killing of civilians in significant numbers and he sets out at the top of paragraph 3 the
30 materials which revealed that.

31 Paragraph 4, these reports of a small change of war but collectively they convey its
32 reality far better than even the most well-informed journalistic accounts. Two shootings that
33 he could summarise, madam, were a thousand times repeated though the reports were rare in
34 admitting that the victims were in fact civilians.

1 Madam, paragraph 5, in 2007 he published a piece in the Independent about the
2 killing of 11 people by a US helicopter in Baghdad. The dead included two Iraqi journalists
3 working for Reuters but the US military claimed that their forces had come under fire, killed
4 two civilians and nine insurgents. Police on the ground contradicted this. Iraqi eye witnesses
5 confirmed what the police had been saying, namely that the US helicopter had fired on an
6 Iraqi vehicle that had come to help the wounded.

7 The evidence was compelling but in the face of official denials it was impossible to
8 prove that those who had died were unarmed civilians. It was known that a film of the killing
9 existed but until – madam, this is paragraph 6 – Manning released it, it was not possible to
10 prove what had occurred. But for that release, madam, end of paragraph 6, the suspicions of
11 journalists and the local police in Baghdad could never have been established.

12 Madam, paragraph 8, the video still has power to shock and he draws out, madam,
13 passages from it that are particularly chilling. You have heard evidence already about the
14 content of that video, that is the Collateral Murder video that was released by WikiLeaks at
15 the same time as the Rules of Engagement. There is an issue about whether Manning
16 downloaded the two to his computer at the same time but the evidence is clear that they were
17 released by WikiLeaks contemporaneously.

18 Madam, he makes the point that the video shows shooting by the US helicopter at the
19 wounded as one of them, probably the Reuters’ assistant, Saeed Chmagh, crawls towards a
20 van that has stopped to rescue him. And he accords particularly callous observations about
21 the deaths of children involved in that incident.

22 Aside from this paragraph 9, madam, aside from this, there were many less well-
23 known incidents of shootings by US soldiers at civilians. At paragraph 10, many of the
24 victims were little known and he recounts, madam, some of those individual shootings and
25 deaths.

26 Paragraph 12, the early attempts to discredit Assange focussed on trying to prove that
27 the WikiLeaks’ disclosures had led directly to the deaths of US agents and informants. The
28 Pentagon put a great deal of effort into substantiating this allegation. It set up the
29 Information Review Taskforce headed by Brigadier General Carr which sought to produce a
30 list of people who might have been killed because of the information the cables contained.
31 Carr later described the extent of his Taskforce’s failure, that is to say the failure to identify
32 any such people in testimony given at Manning’s sentencing hearing. Carr told the court that
33 at one point his Taskforce seemed to be getting somewhere in that the Taliban claimed to
34 have killed a US informant identified in the WikiLeaks’ cables but Carr admitted, and this is

1 another reference to the sentence. We have the transcripts of course, madam, but here it is in
2 shortened form, Carr admitted that during defence cross-examination that the Taliban turned
3 out to be lying, the name of the individual killed was not in the WikiLeaks' disclosures at all.

4 Madam, paragraph 14, in Mr Cockburn's opinion, WikiLeaks did what all journalists
5 should do which is to make important information available to the public, enabling the public
6 to make evidence-based judgments about the world around them and in particular where the
7 actions of their governments, and of those actions more than any other those that reveal the
8 gravest of state crimes. And he observes that in 2010 WikiLeaks won a great victory,
9 freedom of expression against state secrecy, and in his view WikiLeaks have more than
10 fulfilled the prime purpose of news gathering as described by Robert Lowe in 1852.

11 Madam, that is Mr Cockburn. The next statement to be read is Mr Cobain, madam, at
12 paragraph 50. There are no edits to Mr Cobain's.

13 JUDGE BARAITSER: Thank you.

14 MR SUMMERS: Madam, Mr Cobain is another investigate journalist.

15 JUDGE BARAITSER: Can I just say, my copy is not signed. Is there a signed version of it?

16 MR SUMMERS: I am sure one exists. I have to say mine is not either.

17 JUDGE BARAITSER: Can you just give me the date on which it was signed that would be
18 helpful?

19 MR SUMMERS: 17 July.

20 JUDGE BARAITSER: I see. All right. So, can you just confirm one exists?

21 MR SUMMERS: Yes.

22 JUDGE BARAITSER: I am going to take it from you I do not need to see a copy. If you tell
23 me that one exists I am happy that it does.

24 MR SUMMERS: Thank you.

25 JUDGE BARAITSER: OK, thank you.

26 MR SUMMERS: Madam. Mr Cobain is an investigate journalist and has been such for 38
27 years. During the time with which we are concerned, he was a journalist at the Guardian.

28 Paragraph 3, his work has been recognised with a number of awards including Human Rights
29 Campaign of the Year Award from Liberty for his investigation into Britain's complicity in
30 renditions and the use of torture after the September '11 attacks of 2011.

31 The key focus of his work, madam, paragraph 5, has been on uncovering evidence of
32 British state collusion and involvement in US counter-terrorism operations around the world,
33 in particular in relation to rendition and mistreatment of detainees during those counter-
34 terrorism operations involving both the US and the UK.

1 He has reported on cases in which people have been detained in various countries
2 around the world and in Guantanamo, that is to say detained by the US in facilities
3 established in those countries around the world and Guantanamo. On each occasion there
4 were accounts of ill-treatment and good reason to believe that the individuals had been
5 detained by the suggestion or request of the UK and/or the US and interrogated on the basis
6 of questions supplied by the US and/or the UK . He provides a selection of those
7 reports, madam, I do not think it is necessary to turn to them.

8 And he points out, paragraph 7, that whilst the focus of his investigations have been
9 on UK actions, the overarching scenario is of UK complicity in and sometimes as a partner in
10 US activities.

11 Madam, paragraphs 11 to 19 concern his evidence concerning the mere impossibility
12 of ever uncovering such criminality. It is always the understanding that anyone who has
13 knowledge of state crimes and who comes forward to corroborate allegations about them may
14 face persecution. That is of course the position in relation to whistle-blowers. Evidence that
15 supports such allegations is extraordinarily difficult to obtain from within governments,
16 primarily because of penalties for unauthorised disclosure. A culture of secrecy might be
17 said to exist within some states' intelligence agencies and civil services.

18 Paragraph 14, normally the investigation process for his stories into war crimes and
19 international human rights violations is painstaking and slow. For many years after
20 September the 11th, the only information that would emerge came as hints disclosed through
21 litigation through which he was able to track the movements of aircraft that could be shown
22 to be part of the rendition programme or circumstantial evidence of state involvement in
23 human rights abuses.

24 He worked primarily, madam, paragraph 15, on piecing together fragments of
25 information indicating state involvement in such human rights abuses. At 17, routinely
26 however, little or no further proof to support what they were saying would be forthcoming.
27 18, a whistle-blower or a leaker would have greatly assisted, that is to say assisted in bringing
28 such things to light.

29 And he gives us an example, 19, in early 2002 he received information that the US
30 military was torturing detainees in Kandahar but could not at that time ever find a second
31 source and was not therefore able to publish.

32 Paragraphs 20, madam, to 25 concern the importance of reliable documentary
33 information relating to state criminality and he gives examples. A particularly significant
34 case, madam, that he reported on turned on documentary evidence which showed that MI6

1 had been providing the intelligence that led to a man and his pregnant wife being kidnapped
 2 and rendered by the CIA to a prison in Libya and he gives another such example at paragraph
 3 21. Both men, that is to say both men in each example, say they had suffered torture, and
 4 there is documentary evidence that the UK submitted long lists of questions to be put to them
 5 and the answers that they in turn gave were then used to justify the detention of others.

6 “Almost certainly”, he says, paragraph 23, “nothing of this case would have emerged
 7 into the public sphere were it not for the emergence of hundreds of documents relating to the
 8 Libyan security state that were uncovered during”, madam, “the Libya revolution in 2011 in
 9 Tripoli when filing cabinets fell into the hands of NGO workers and journalists.” And,
 10 madam, ultimately paragraph 25, the emergence of that corroborating evidence that caused
 11 the Government to apologise to the couple and make payment to them for what had occurred.

12 26, madam, through to the end. In his experience, states tend to meet questions about
 13 alleged involvement in human rights abuses and other crimes with blanket denials. 28 – no
 14 witnesses would come forward, no leaks, no honest briefings and state attempts instead to
 15 mislead journalists.

16 Madam, at 29 he gives an example of the seething threats to him not to report such
 17 information. At 30, but nobody has ever denied the accuracy of his reportings. 32, there is
 18 an understanding that journalists may also face attacks for this type of work, including, he
 19 says, actual military attacks. For example, he gives a report of a 2005 plan reported in the
 20 press to launch a military attack against the Aljazeera news organisation and he talks about
 21 threats of even prosecution for this type of work and gives, madam, 33, example of arrests of
 22 Belfast journalists in Northern Ireland following their cooperation in film about collusion
 23 between the police and gunmen in 1994, which threats resulted ultimately in not further
 24 action being taken.

25 Madam, you know the part of our case surrounds the absence of any precedent,
 26 whether in America or here, for a prosecution of the type which is postulated here.

27 35, for many years the UK’s Parliamentary Intelligence and Security Committee
 28 refused to investigate allegations of UK complicity in torture and its involvement in the US
 29 rendition programme, or did so in an inadequate fashion. Only in 2018 did it publish a report
 30 that made clear that the UK had been deeply involved in the so-called rendition programme
 31 and the mistreatment of detainees. And he observes, paragraph 37, that that was because by
 32 then the media reporting, such as his, surrounding these issues had made a thorough
 33 investigation irresistible.

1 Nevertheless, 38, the committee complained that they had been prevented from
2 interviewing key witnesses by the executive. And, finally, madam, 41, the Gibson inquiry
3 was suspended in 2012 while the Metropolitan police investigated the Libyan renditions and,
4 as matters stand, madam, the Intelligence and Security Committee has not been reconvened,
5 neither have all of its special reports been published. And 44, under the circumstances it
6 could be argued that, says Mr Cockburn, that media scrutiny is more important than ever and
7 that leaks and whistle-blowers remain a vital means by which state crimes can be exposed.

8 Madam, Miss Maurizi, please, at tab 69. There are no edits to Miss Maurizi's
9 statement. Madam, Miss Maurizi is an investigative journalist, previously worked and
10 worked at the time with which we are concerned for l'Espresso and la Repubblica, Italian
11 publications. Her paragraph 6, her background unusual perhaps for a journalist is as a
12 mathematician and particularly somebody with expertise in cryptography. As a result of that,
13 paragraph 7, her attention was directed in 2008 towards then a small organisation,
14 WikiLeaks, which were, middle of the paragraph, madam, pioneering the use of encryption to
15 protect journalistic sources and was thus of great interest to her. At the time, she says, no
16 newsroom was offering that.

17 Her first partnership, paragraph 8, with WikiLeaks was in 2009 and it covered what
18 she called the Garbage Collection Crisis in Naples at the time. The paragraph 9, she took
19 note of WikiLeaks' chosen modus operandi, that of making the original data available on its
20 website so that other media could access the original documentation, assess its value.
21 Mr Assange called this method scientific journalism, which he had based on the evidence
22 standards required by scientific journals. She noted, madam, towards the foot of that page,
23 that WikiLeaks was focusing on the importance of a number of protections, including
24 protection for the integrity of docs, including by encryption and thus protecting both the
25 documents and the sources.

26 Paragraph 10, in 2010 WikiLeaks published the Collateral Murder and the Rules of
27 Engagement. Madam, we know that happened on 5 April 2010, your reference for that would
28 be volume L, tab 69. Dramatically showing criminal acts carried out by the US military. The
29 publication was of immense importance and concern. And, madam, you have already heard
30 about that video and the criminality that it shows.

31 11, "After the publication of Collateral Murder, I made contact again with
32 Mr Assange who was due to give a talk to the European Parliament concerning the Collateral
33 Murder materials." They met in Berlin in September 2010 to discuss publication on the part

1 of l'Espresso of the Afghan war logs. Madam, paragraph 12, they made an agreement by
2 which l'Espresso became one of the media partners for that project.

3 And 14, she explains why l'Espresso engaged in that agreement. It was an
4 opportunity to investigate and expose manifest lies which had caused wars to be waged, a
5 chance to change the direction of future history, of immense significance, it was very clear to
6 her from the outset that that was the motivation driving both WikiLeaks and Julian Assange.

7 And 15, after that meeting WikiLeaks gave her access to what are now known as the
8 Afghan war logs. They were encrypted and password protected and with that she was able to
9 publish additional material based on her own further research and investigation, but
10 WikiLeaks had, of course, already published a considerable amount of data.

11 After that project, madam, paragraph 16, there was a new joint agreement on behalf of
12 l'Espresso and la Repubblica in relation to the cables. That was formed in January of 2011,
13 and the reason that the Italian media partners were brought into that project was, she says
14 towards the end of paragraph 16, that none of the initial five media partners were Italian and
15 local expertise was deemed to be important. Madam, she was then given access to a portion
16 of the cables. A piece of evidence, madam, that might be of some significance given the
17 cross-examination that was undertaken in relation to Mr Grothoff.

18 Madam, she then deals with three different issues concerning the cables. Firstly, their
19 public interest value; secondly, the redaction efforts to protect names; and thirdly, the efforts
20 to protect the data itself. Can I take those in turn but to do so I am going to have to jump
21 around that statement a little. So, firstly, the public interest value of the cables that she was
22 working on. At 25 to 44, madam. "The cables I was handling were primarily of Italian or
23 Vatican interest", but she says she also had an interest in broader areas, such as Guantanamo.
24 And 26 makes the point that despite their importance and the level of interest in such issues,
25 there were enormous barriers to adequate or reliable information, very rarely would such
26 materials emerge, or emerge in a way that enabled public debate. One such revelation ,she
27 recalls, was the CBS Seymour Hersh revelation of the Abu Ghraib photographs showing the
28 torture of Iraqi prisoners. Public awareness was nevertheless minimised by using the
29 narrative that these were simply a few rogue officers.

30 27, these pictures were published in 2004. It was now 2010 when the Collateral
31 Murder video and the war logs and cables were made available. They have been, she says, "I
32 believe rightly regarded as of unparalleled importance and such that could change state policy
33 and change the course of the war."

1 28, a further example of a case in which it was very difficult for investigators and
 2 journalists to obtain the information about very serious violations of human rights, but was in
 3 relation to the US extraordinary renditions, and she draws this example because she says,
 4 “Italy is the only country in the world which has convicted US citizens, almost all of them
 5 CIA agents, for the extraordinary rendition”, in fact of Abu Omar, and she recounts his case
 6 in the paragraphs that follow, madam. And then, as you will see, draws together some of the
 7 cables that were relevant to this. So Abu Omar, 29, madam, was kidnapped in Milan in 2003
 8 and he has himself described the torture that he was subjected to.

9 Italy commenced an investigation of 26 US citizens, almost all of them CIA agents,
 10 paragraph 30. The extradition procedure, however, was thwarted, but the Italian judicial
 11 system allows for trials in absentia, such that they were then convicted between 2012 and
 12 2014. Paragraph 31, they were sentenced. However, none of them have served a single day
 13 because, she observes, politicians who had been pressured by the US completely neutralised
 14 the highly independent Italian prosecutors. They refused to assist in the extradition process
 15 and in the end received presidential pardons.

16 You can go, madam, to 33. In February 2016, the European Court condemned the Italian
 17 Government for that and ruled that the criminal investigation had been completely subverted
 18 by the Italian Government and had resulted in impunity. And 34, madam, she explains the
 19 behind the scene handling of the case which was completely shielded by thick layers of
 20 secrecy, it involved secrets and relentless pressures exerted by the US diplomacy, which she
 21 was able to expose in 2011 in her book, but only thanks to the cables published by
 22 WikiLeaks. 35, those cables provided indisputable evidence that the US diplomacy exerted
 23 pressure on the Italian authorities. And she, madam provides examples of US efforts to
 24 thwart the judicial processes, including on extradition at 36.

25 The complicity of the Italian Justice Minister in it at 37, keeping the lid on recurring
 26 judicial demands to extradite the CIA officers responsible, 38. 39, the complicity of the then
 27 Prime Minister Berlusconi. And you can go to 42, “Had it not been for the US diplomatic
 28 cables revealed by WikiLeaks, it would have been impossible to acquire factual and solid
 29 evidence about the US pressures on the Italian politicians to prevent the extradition.

30 WikiLeaks provided a valuable service, contributing to shed light on extremely
 31 serious human rights violations like extraordinary renditions.” 44, “Those revelations are
 32 reverberating.”

33 Madam, just finally, on paragraph 52 on this issue, she gives further examples of the
 34 way in which the WikiLeaks’ disclosures have been important and empowering activists,

1 journalists and entire communities and the examples she draws out are the Chagos islanders
2 and El-Masri, both of which you have additional evidence from other sources about, madam,
3 so that is Ms Maurizi’s general evidence about the public interest value of the WikiLeaks’
4 materials.

5 Can I turn to the next topic she deals with which is the efforts to redact those
6 materials of identifying names? Paragraph 24, madam, “My own work started in January
7 2011, nine months after,” sorry. “My own work started in January 2011. Nine months later
8 in October, I was still analysing the cables. I worked with WikiLeaks on appropriate
9 redactions to ensure the safety of any names that arose, but that was undertaken with a view
10 to achieving the wider objective of bringing state crimes and abuses that would otherwise
11 have never been known to light in order to educate the public and influence government
12 policy.”

13 And, madam, also at 45, she returns to that topic, “The protection arrangements
14 involved, whereby when names that should be redacted are identified, the local partner, in
15 this case, myself, was to mark them with 12 ‘X’s so that even the number of letters did not
16 provide further clues. I can remember redacting one particular name myself in this way. It
17 was only then that WikiLeaks would publish the redacted version, having been guided by
18 what it regarded as local media partners with a greater understanding of local sensitivity, so it
19 was a cautious process. Even before the cables, I was able to see in the Afghan war logs,
20 when the WikiLeaks’ methodology was still evolving and lessons being learnt.”

21 She remarks, madam, on the withholding of some 15,000 documents from the Afghan
22 war logs for the purposes of protecting names within it.

23 Lastly, madam, she deals with the issue of protecting the data itself. That, madam,
24 begins at paragraph 17. So, you will recall that we looked, at the beginning of paragraph 17,
25 she had been given access to a small portion of the cables. You know those were the Italian
26 and Vatican cables. She was given, she says, an encrypted USB stick, “And once I returned
27 to Italy, I was given the password that would then allow the opening of it. Everything was
28 done with the utmost responsibility and attention. I am aware of the password that David
29 Leigh published. It was not the same one.

30 This was the first time I had ever worked in any publishing enterprise involving strict
31 procedures of this kind. These were protections considerably beyond those which any of
32 them, that is to say international colleagues, were accustomed to exercising,” and, madam,
33 she makes the point at paragraph 22 that the security procedures involved file encryption, air

1 gapped computers and many other important security arrangements. They were
2 unprecedented.

3 She has seen the evidence of John Goetz who has described it as the most careful
4 handling he has ever experienced. “I concur. Even the work done by close colleagues,”
5 recall, madam, that this is an Italian journalist, “Even work done by close colleagues on
6 stories regarding the Italian mafia require extreme caution and security. Never reached these
7 levels,” she says.

8 “The objective,” 23, “was to get access to the cables in a protected arrangement,” and
9 at 23, “To the best of my knowledge, all of the media partners, save one, kept the passwords
10 private.” When she learned that David Leigh and Luke Harding had published a password in
11 their book, including even that part of the password that Mr Assange had insisted in not
12 writing down, she wondered whether they had understood the procedure at all and she
13 expresses her surprise that Mr Kromberg sees fit to rely on David Leigh’s remarks.

14 “Keeping passwords private,” she says, “is a very basic security measure.”

15 Madam, finally, she returns to that topic at 46 to 49. 46, “In 2011, I became aware
16 that the password had been compromised by the publication of it in David Leigh’s book. I
17 was, in the course of my work, due to visit Ellingham Hall in Norfolk where Julian Assange
18 was then living at the end of August. I travelled there on Friday, the 26th of August.”
19 Madam, just to remind you, that is the day after the Der Freitag article had appeared in the
20 press.

21 “I encountered enormous concern. There was an ever widening circle of awareness at
22 the finals. Until then, considered to be safely encrypted. Might nonetheless be public very
23 soon because of the book which had been published. The day before my arrival, Der Freitag
24 had published the story.”

25 Madam, you have evidence on that. I will finish this and then come to what we are
26 going to take you to next.

27 47, “On the issue of whether WikiLeaks could have done something about the
28 situation that had arisen, there has been,” she says, “a misunderstanding. WikiLeaks could
29 not, that is to say could not remedy the situation, but Julian was clearly acutely troubled by
30 the situation with which WikiLeaks was faced.”

31 48, “On the 1st of September in New York, Cryptome published the cables,” and she
32 says that every possible step had been taken for over a year by WikiLeaks and Assange to
33 avoid that.

1 49, madam, “While I was at Ellingham Hall, Assange was himself making urgent
2 attempts to inform the state department that the information was circulating out of
3 WikiLeaks’ control.

4 “When WikiLeaks did eventually,” 50, madam, “when WikiLeaks did eventually put
5 the already published materials on its own website, I consulted a prominent US expert for his
6 opinion since the Guardian appeared to be condemning and encouraging further
7 condemnation of Assange in order to shift blame.” The expert she spoke to was Bruce
8 Schneier. Mr Schneier expressed to her in an email that both parties made dumb mistakes.
9 “If I were to assess the blame, the Guardian made the worst mistake. Without the key, no one
10 would have been able to brute force the file. No one, probably not even aliens with a planet
11 sized computer ...” Anything else you want in?

12 MR LEWIS: Thanks.

13 MR SUMMERS: Madam, Ms Maurizi was present at Ellingham Hall when Mr Assange was
14 calling the state department in order to deal with the situation that had arisen. You have two
15 of those transcripts in the evidence before you. Can I just remind you where they are and
16 what they say?

17 So, the first, madam, is at core volume, tab 37. It is one of the exhibits to Mrs
18 Peirce’s, I think fourth statement.

19 JUDGE BARAITSER: Now, when you say core volume. I have got the volume in court
20 which does not have the exhibits attached. It is the core volume rather than ---

21 MR SUMMERS: It ought to be in the core bundle, madam. It still ought to be in tab 37
22 because that is where there were three short exhibits produced by Mrs Peirce. One was the
23 Grothoff original letter.

24 JUDGE BARAITSER: Yes.

25 MR SUMMERS: So, madam ---

26 JUDGE BARAITSER: Just to understand what you are doing, obviously, this is how you
27 will present your closing I have no doubt. Are we reading Gareth Peirce’s statement as well?

28 MR SUMMERS: I think in due course we will be summarising Mrs Peirce’s statement. We
29 are in the process of agreeing that, but her production of exhibits is not contentious. There
30 are issues surrounding some of the other topics she deals with so I have no doubt at all that in
31 due course, her production of exhibits will be dealt with.

32 JUDGE BARAITSER: But my understanding is what you were doing now is simply reading
33 the statements which were agreed.

34 MR SUMMERS: Yes.

1 JUDGE BARAITSER: By taking me to the exhibits of Mrs Peirce's statement, you are going
2 beyond that role.

3 MR SUMMERS: Well, I was hoping to assist you and if this is not of assistance, then I
4 apologise and I will step back, but one of the purposes of adducing Ms Maurizi's evidence
5 was to enable you to have the full picture of what was happening in that crucial week at the
6 end of August and she has just told you about the conversations that she was witness to and at
7 the very least, I would like to remind you where they are in the evidence, even if, madam, it
8 would not be of assistance to summarise them for you.

9 JUDGE BARAITSER: I have no doubt in your closing submissions, that is exactly what you
10 will do. You will then identify the exhibits which support her account of what she overheard
11 in, is it Ellingham Hall?

12 MR SUMMERS: Ellingham Hall.

13 JUDGE BARAITSER: At this stage, what you are simply doing is getting the evidence
14 before the court and this evidence, if it is agreed, will be before the court in due course.

15 MR SUMMERS: So be it, madam. You had previously observed that the process of taking
16 the witnesses in chief in short form had been of assistance to you and highlighting the key
17 aspects of the evidence, we simply thought it might be of similar assistance to you to be able
18 to link the Maurizi statement to where you will ultimately locate the transcripts of the cause
19 that she is speaking of.

20 JUDGE BARAITSER: But the opportunity to do that I think comes in your closing.

21 MR SUMMERS: So be it. Madam, Mr Goodwin-Gill at core volume, tab 25, there are edits.
22 They are reasonably straightforward, madam. It is paragraph 10 onwards, it is out, but can I
23 offer you a replacement.

24 JUDGE BARAITSER: Thank you. I want it to be passed up, sorry.

25 MR SUMMERS: Professor Goodwin-Gill, professor of law at the University of New South
26 Wales, meritorious fellow of All Soul's College, Oxford and formally legal advisor to the
27 office of the UN High Commissioner for refugees and the author, madam, of numerous
28 works.

29 Paragraph 7, "On the 16th of June 2016, I attended a meeting at the Ecuadorian
30 embassy in London to discuss the international legal aspects of the asylum accorded to Mr
31 Julian Assange. I left my passport, phone and tablet at the door together with unlocked
32 luggage". He says he was on route to give lectures in Italy. "I naturally assumed", he says at
33 paragraph 8, "that, given the precautions taken before entry, such a legal conference would be
34 secure and confidential. I was somewhat shocked to say the least to learn in late 2019 that

1 my name featured in papers lodged in connection with legal proceedings in Spain concerning
2 the disclosure of confidential information and the occasion of my visit and participation had
3 been shared with various parties and that my electronic equipment may have been copied and
4 the contents also shared”.

5 And, then, madam, he goes on to explain why he offers an opinion on the asylum
6 situation to explain why he was there. Madam, may I turn my back on you, briefly.

7 JUDGE BARAITSTER: Yes, of course.

8 MR SUMMERS: Thank you. Ms Iveson will deal with the next piece of agreed evidence.

9 JUDGE BARAITSTER: Thank you.

10 MS IVESON: Madam, I think I need a different microphone, so I will just wait for that.

11 JUDGE BARAITSTER: Which statement are we dealing with?

12 MS IVESON: I am reading the statement of Robert A. Boyle.

13 JUDGE BARAITSTER: Tab 5.

14 MS IVESON: Yes, and he makes an additional statement which is in core bundle 2.

15 MR SUMMERS: Tab 49, madam, and there are edits to both, so can I hand up, please.

16 JUDGE BARAITSTER: Thank you. Can you lean forward.

17 MR SUMMERS: Sorry, thank you very much.

18 MS IVESON: Madam, there are edits, which obviously I will not read out. The first
19 statement is relatively lengthy. I will attempt to summarise it or gist it as best I can.

20 JUDGE BARAITSTER: Thank you.

21 MS IVESON: The first statement is dated 17 December 2019. It is the statement of Robert
22 A. Boyle, “I am an attorney admitted to the bar in New York State in 1981. I am a member
23 of the Criminal Justice Act Panel of the United States Court of Appeals for the Second
24 Circuit since 1991. From 1982 to ‘84, I was employed as a staff attorney to the Grand Jury
25 Project. That organisation sought to educate the public on the use and misuse of federal
26 grand juries. I was the author of the third edition of the treatise, ‘Representation of Witnesses
27 before Federal Grand Juries’ published by Clark Boardman Company. Throughout my
28 career, I have lectured attorneys, law students and members of the general public on grand
29 jury issues. I have been provided with portions of the court-martial proceedings conducted in
30 the case of Chelsea Manning, including her pre-allocation. I have also reviewed all of the
31 publicly available legal pleadings filed in connection with the subpoena requiring that
32 Manning appear and testify before a grand jury in the Eastern District of Virginia”.

33 Madam, Mr Boyle then talks about military court-martial proceedings. He
34 summarises the arrest and charges. He sets out that, “Following her arrest, Manning was

1 imprisoned in solitary confinement pending a duty to look over the charges in a military
2 court-martial. Manning’s treatment was ruled as cruel, inhumane and degrading by the
3 United Nations Special Rapporteur on Torture, who stated in a report that imposing seriously
4 punitive conditions of detention on someone who has not been found guilty of any crime is a
5 violation of his rights to physical and psychological integrity as well as the presumption of
6 innocence”.

7 The full report, madam, is exhibit 1 to that statement, which is in bundle B, tab 1.
8 Madam, in that statement of the Special Rapporteur for Torture ---

9 JUDGE BARAITSTER: Is that still Nils Melzer?

10 MS IVESON: No, it is actually Juan Mendez.

11 JUDGE BARAITSTER: Thank you.

12 MS IVESON: Who was the Special Rapporteur on Torture and Other Cruel, Inhuman or
13 Degrading Treatment or Punishment. That document deals with a number of cases, one of
14 them being that of Chelsea Manning. So that is on page 74 of that document.

15 JUDGE BARAITSTER: Right.

16 MS IVESON: Paragraph (a), and sets out that Ms Manning was held in solitary confinement
17 for 23 hours a day following his arrest in May 2010 in Iraq and continued through his time
18 through to the brig at Marine Corps Base, Quantico. His solitary confinement, lasting about
19 11 months, was terminated upon his transfer from Quantico to the joint regional correctional
20 facility at Fort Leavenworth on 20 April 2011”.

21 JUDGE BARAITSTER: And that statement, that report is exhibited to this statement?

22 MS IVESON: That is, your Honour, yes. Mr Boyle continues to deal next with Manning’s
23 guilty plea and allocution.

24 JUDGE BARAITSTER: It is helpful if you just mention the - I know that is paragraph 13,
25 but if you mention the paragraph then I can follow what you are saying.

26 MS IVESON: I am sorry, madam, of course.

27 JUDGE BARAITSTER: That is all right.

28 MS IVESON: Yes, so paragraph 14, “On February 28th 2013, Manning pleading guilty to 10
29 of the 22 specified charges. She did so without the benefit of a plea agreement. She did not
30 plead guilty to aiding the enemy and under the rules for the court-martial was required to
31 state under oath the facts surrounding her disclosure of the classified information. She was
32 also required to answer any questions posed to her by the presiding judge, including those
33 suggested by the prosecutor. On February 28th 2013, proceedings began with Manning
34 reading a prepared statement, which was 50 pages”.

1 Madam, that is exhibit 2. Manning’s plea allocution statement is dealt with from
2 paragraph 16 onwards. Relevant extracts are set out there, madam, under paragraph 16.
3 “Manning stated that the United States military became obsessed with capturing and killing
4 targets on lists and being suspicious and avoiding cooperation with our host nation partners
5 and ignoring the second and third order effects of accomplishing short-term goals and
6 missions. I believe that if the general public, especially the American public, had access to
7 the information, this could spark a domestic debate on the role of the military and our foreign
8 policy in general as well as it related to Iraq and Afghanistan”.

9 At paragraph 17, Mr Boyle sets out the background to the court-martial case, so
10 actions taken by Ms Manning in 2010. Paragraph 18 deals with uploading materials to the
11 WikiLeaks’ website and quotes from her allocution statement that she felt she had
12 accomplished something that allowed her to “have a clear conscience based upon what I had
13 seen and read about and knew were happening in Iraq and Afghanistan”.

14 Mr Boyle goes on to talk about other elements of the court-martial case at paragraphs
15 19 and 20. Paragraph 20, “Mr Boyle sets out that Manning called upon her military superiors
16 to investigate claims by the Iraqi Government that 15 of the individuals detained by the Iraqi
17 police were part of the terrorist militia but, in her view, those detained individuals had no
18 connections to terrorism and were, in her view, citizens who were critical of the Government.
19 She was told to drop it”.

20 Paragraph 21 sets out a further extract from Manning’s plea allocution statement,
21 “Although I stopped sending documents to WLO [which is WikiLeaks] no one associated
22 with the WLO pressured me into giving more information. The decisions I made to send
23 documents and information to WLO and website were my own decisions and I take full
24 responsibility for my actions”.

25 At paragraphs 22 onwards, Mr Boyle deals with Manning’s trial and sentence. He
26 sets out that, after she entered her guilty plea, prosecutors elect to proceed with the more
27 serious charges. Findings were issued by the judge on July 30th 2013 and, madam, you can
28 find that at exhibit 3. The court acquitted Manning of aiding the enemy but found her guilty
29 on the remaining charges and sentenced her to 35 years in prison to be remanded in an all-
30 male military prison.

31 Paragraph 23 refers to the commutation of her sentence. On January 17th 2017, one
32 of his last days in office, President Obama commuted Manning’s sentence to a total of seven
33 years. In one of his first tweets after taking office, Donald Trump called Manning a traitor
34 who should never have been released from prison. As a result of the commutation, Manning

1 was released on 17 May 2017. Mr Boyle then deals with grand jury proceedings and sets out
2 at paragraph 24, “In January 2019, Manning was served, through counsel, with a subpoena to
3 testify before a federal grand jury sitting on the United States District Court for the Eastern
4 District of Virginia”.

5 Mr Boyle then describes that, “The grand jury”, at paragraph 25, “is an institution
6 which began in England in the 12th century, which in theory serves as a buffer between the
7 Government and its people but, because of that historical role, grand juries operate without
8 adherence to the technical and evidentiary rules of criminal trials. Its investigatory power is,
9 therefore, necessarily broad and it can act on unsubstantiated tips and rumours”.

10 Paragraph 26, “Over the years, the traditional function of the grand jury as a buffer
11 has shifted. Its broad powers have been usurped by the Government and, more specifically,
12 the United States Attorney offices. The United States Attorneys of each federal district acts
13 as the grand jury’s legal adviser. It is the prosecution that directs which witnesses the grand
14 jury hears and which defendants the grand jury is asked to indict. As the United States Court
15 of Appeals for the Ninth Circuit has acknowledged, currently grand jurors no longer perform
16 any other function but to investigate crimes and screen indictments and then tend to indict on
17 the overwhelming number of cases brought by prosecutors. Many criticise the modern grand
18 jury as no more than a rubber stamp for the prosecutor. Day in day out, the grand jury
19 affirms what the prosecutor calls upon it to affirm, investigating all that is led, ignoring what
20 it is never advised to notice, failing to indict or indicting as the prosecutor submits that it
21 should”.

22 Paragraph 27, “The confluence of the enormous investigatory powers afforded to
23 grand juries due to their former role as a buffer and de facto appropriation of those powers by
24 law enforcement has created fertile ground for prosecutorial abuse. A prosecutor desiring to
25 coerce a prospective witness into cooperating can simply issue a grand jury subpoena without
26 any judicial scrutiny. While a grand jury witness may challenge the lawfulness of the
27 subpoena, because of the presumption of regularity that courts attach to grand jury
28 proceedings, together with its judicially recognised broad investigatory powers, it is
29 extremely rare for a court to quash or even limit the scope of a grand jury subpoena”.

30 Paragraph 28, “It is the universal rule that prosecutors cannot use grand jury process
31 for the purposes of gathering evidence at a subsequent criminal trial. However, exceptions” -
32 madam, over the page on page 12 - “including the legal standards applied by courts have all
33 but swallowed up this universal rule. A subpoena will be enforced notwithstanding that an
34 indictment has been returned unless it is shown that the sole or dominant purpose of the

1 subpoena is to prepare for trial on an already pending indictment. Because of the
 2 presumption that the grand jury acts within the law, it is the witness or the defendant who
 3 bears the burden of showing that preparation for trial is the sole or dominant purpose of the
 4 subpoena”. And, dropping down, three lines from the bottom, “So long as the Government
 5 simply accepts that it is investigating whether additional crimes have been committed, the
 6 subpoena will be upheld even if the information sought might also help the Government’s
 7 case at trial”.

8 Paragraph 29, “A grand jury subpoena cannot be used to discourage a witness from
 9 testifying for the defence at trial or to otherwise interfere with the defence”. Mr Boyle then
 10 talks about the example of the subpoena that was issued in the case of the *United States v*
 11 *Banks (Under Seal)*. In that case, the Government subpoenaed family members of the
 12 indicted defendant and later conceded that the subpoenas would be dropped if the indicted
 13 family member pled guilty. The subpoena was quashed by the lower court but the
 14 Government appealed and the appellate court held that, so long as the testimony that was
 15 sought was proper, it mattered not that the subpoena was otherwise being used for an
 16 improper purpose.

17 Madam, paragraph 30 deals with violation of the prohibition of privilege against self-
 18 incrimination and, to summarise, while the Fifth Amendment provides that no person shall be
 19 compelled in any criminal case to be a witness against himself, a witness subpoenaed to
 20 testify by a grand jury seeking to usurp the Fifth Amendment privilege can be conferred what
 21 is called “use immunity” by a judge in the proceedings.

22 Under that process - and, madam, I am halfway through the paragraph there on page
 23 14 - once a judge signs an immunity order, any grand jury testimony or evidence derived
 24 from that testimony cannot be used against the witness in subsequent criminal proceedings
 25 and the Fifth Amendment can no longer be used as a basis for refusal to comply.

26 Paragraph 31 deals with violation of freedom of speech and the application of the
 27 First Amendment to grand juries. Madam, dropping down to paragraph 33, Mr Boyle sets out
 28 that as a consequence of grand jury secrecy neither the courts nor Congress nor most
 29 importantly the general public can gauge how the institution is being used or abused,
 30 recognising that the grand jury has often been used to gather intelligence that would then be
 31 used to harass and disrupt political movements. Many activists have refused to cooperate and
 32 been jailed for contempt.

33 The historical use of the grand jury system to indict outspoken opponents of the
 34 Government is then set out at paragraphs 34, 35, and 36. And Mr Boyle says at paragraph 37,

1 “frequently when the United States Government has shown hostility towards political
2 activists, especially people of colour and those on the left, it has attempted to utilise the grand
3 jury system to disrupt political activities and to criminalise political movements.”

4 The next heading is “Sanctions for Non-Compliance with Order to Testify”, civil
5 contempt, and then over the page on page 18, at paragraph 40, Mr Boyle sets out that a
6 witness held in civil contempt for failing to cooperate with the grand jury can be jailed until
7 the term of that grand jury expires, can lawfully be re-subpoenaed to appear before another
8 grand jury, asked the same questions, and upon refusal held in contempt and re-incarcerated.

9 Mr Boyle then deals with criminal contempt at paragraph 42. He sets out that while a
10 witness may be accorded more procedural protections with respect to criminal contempt as
11 compared to civil contempt, the potential penalty faced by a recalcitrant witness has no upper
12 limit and that is in criminal contempt proceedings.

13 The next heading is “Application of Grand Jury Case Law” in the case of Chelsea
14 Manning. Mr Boyle sets out that, at paragraph 43, that on 6 March 2018 a grand jury sitting
15 in the United States District Court in the Eastern District of Virginia issued a sealed
16 indictment against Julian Assange. Chelsea Manning was charged with conspiracy. The
17 grand jury subpoena, madam, over the page, the January 29 subpoena to Chelsea Manning
18 was therefore served after the Government had already secured its first indictment against
19 Assange.

20 And then dropping down to paragraph 45, Manning through counsel filed a motion to
21 quash the subpoena. She argued that it was an effort by the Government to punish her for the
22 release of information to WikiLeaks. She pointed out she had made an exhaustive sworn
23 statement before the Military Court that was given at the time of her guilty plea and will
24 truthfully set forth the full extent of her knowledge including but not limited to her contacts
25 with WikiLeaks.

26 She asserted that the Government intended to set a perjury trap so that inconsistencies
27 between court martial testimony and grand jury testimony could lead to criminal charges for
28 perjury. Further details of the proceedings are set out at paragraph 46 and 47 and then at
29 paragraph 48, Mr Boyle says this, “Following the contempt adjudication, Manning was
30 imprisoned at the Alexandria Detention Center in Alexandria, Virginia. Her subsequent court
31 submissions filed on her behalf record that once there, she was placed in solitary confinement
32 “despite the stated concerns regarding the effects of prolonged isolation that compounded the
33 trauma I suffered from my previous time of confinement”.”.

1 And, madam, that quote is from Chelsea Manning’s declaration which is at tab 8 of
2 bundle B. It is exhibit 8 of the statement, it is dated 5 May 2019, and the quote there is her
3 own words. Madam, can I just draw your attention to paragraph 3 of that document for your
4 note where Miss Manning states, “Initially after arriving at ADC, the jail placed me in
5 administrative segregation despite stated concerns of myself and my legal representatives. I
6 stayed on ADSEG for 28 days without any misbehaviour. This isolation caused
7 extraordinary pain for me. While in ADSEG I suffered many of the ill-effects of prolonged
8 isolation. I experienced difficulty keeping attention on anything, sometimes referred to as
9 dissociative stupor. Thinking and concentration got harder. Anxiety and frustration for my
10 things, irritation and a spiralling inability to tolerate each symptom take hold. After weeks of
11 under-stimulation I became nauseated with vertigo and vomited on the floor ending my visit
12 prematurely.”

13 And at paragraph 6, she says, “After two months of confinement and using every legal
14 mechanism available so far I can, without any hesitation, state that nothing will convince me
15 to testify before this or any other grand jury for that matter.”

16 Madam, returning to paragraph 48 of Mr Boyle’s statement, he sets out there further
17 quotes from her statement at exhibit 8, including “I understand that this grand jury is related
18 to my disclosures of classified and unclassified information and records in 2010. I acted
19 alone in these disclosures. The Government is still preoccupied with punishing me despite a
20 court martial sentence and presidential commutation nearly two years ago.”

21 Mr Boyle goes on at paragraph 49 to say, “The term of the grand jury expired on May
22 9, 2019. Pursuant to the contempt order, Manning was released from prison on that date.
23 However, the day before her release, Manning was served through counsel with the subpoena
24 to appear before another grand jury. A new compulsion order was executed and Manning
25 was again conferred with using derivative use immunity.”. And, madam, the details of those
26 grand jury proceedings are then set out.

27 At paragraph 50, Mr Boyle refers to her motion to quash the new subpoena arguing
28 amongst other things that it was an abuse of the grand jury process and was being used in the
29 trial of the already indicted Julian Assange to gather evidence. Madam, the response to that
30 argument is exhibit 10, that is in bundle B, and Mr Boyle sets out there that on 16 May 2019
31 the court denied Manning’s motion to quash. The court found her to be in contempt and
32 again ordered her jailed for the life of the grand jury but in no event to exceed 18 months
33 which also imposed a fee of \$500 per day which after 60 days would increase to \$1,000 per
34 day.

1 Paragraph 51, Mr Boyle sets out that on 23 May a superseding indictment was
 2 returned against Julian Assange. Madam, of course, you are familiar with that. In response,
 3 Miss Manning argued that it rendered her grand jury testimony unnecessary and stated that it
 4 was now clear the sole and dominant purpose of her subpoena was to gather evidence for use
 5 at Mr Assange’s trial, or to otherwise interfere with his defence.

6 As Manning herself has stated, “I suspect that (the Government) is simply interested
 7 in previewing my potential testimony as a defence witness and attempted to undermine my
 8 testimony. This justifies my theory that participating in this investigation functions simply to
 9 abuse the justice system for political end.”.

10 Paragraph 52, Mr Boyle sets out that the Government oppose Miss Manning’s release
 11 on the basis that “Ms Manning’s testimony remains relevant and essential to an ongoing
 12 investigation.”. The Government asserted that claims of abuse were speculative and could
 13 not overcome the presumption of regularity attached to grand jury proceedings. Her motion
 14 was denied by the court.

15 And paragraph 53 sets out that at the date of this report Chelsea Manning remains
 16 incarcerated and that is of course picked up in the next statement. Paragraph 55, except for a
 17 few days in May 2019 Chelsea Manning has been in prison since March 2019 pursuant to
 18 civil contempt.

19 As set forth supra, so long as the Government simply asserts the subpoena was issued
 20 for a proper purpose, the courts will uphold the subpoena. Madam, that is the first statement.

21 The second statement is somewhat shorter. The same information is set out about Mr
 22 Boyle’s status as a lawyer. At paragraph 4, Mr Boyle states “AUSA Kromberg’s charges that
 23 I am unqualified to render my opinions because I lack the facts to apply them whether
 24 Chelsea Manning is properly subpoenaed. AUSA Kromberg is in essence arguing this court
 25 should take his word for it, that is not due process.”. And, madam, there are edits to
 26 paragraph 6 as you will see there. Have you got those?

27 JUDGE BARAITSER: Yes.

28 MS IVESON: Paragraph 7, in March 2019, Ms Manning was adjudicated in civil contempt
 29 for her refusal to testify before the grand jury. She was ordered incarcerated. Ms Manning
 30 remained incarcerated under often deplorable conditions. She maintains her position, that is
 31 paragraph 8. She filed a motion for release.

32 Paragraph 10, “Since my first statement the United Nations Special Rapporteur
 33 torturing other, other cruel, inhuman, or degrading treatment or punishing Nils Melzer
 34 publicly released a letter dated 1 November 2019. Madam, that is exhibit 1. Extracts from

1 that are then set out under paragraph 10, “The practice of coercive deprivation of liberty for
2 civil contempt involves the intention or infliction of progressively severe mental and
3 emotional suffering for the purposes of coercion and intimidation at the order of judicial
4 authorities. Indeed, victims of prolonged coercive confinement have demonstrated post-
5 traumatic symptoms and other severe and persistent mental and physical health
6 consequences.”.

7 Paragraph 11, in February 2020, “A further motion to release Chelsea Manning was
8 filed and an extract from that is set out under paragraph 11. As Ms Manning has resolved not
9 to testify that has been unwavering and as her morale conviction for which she is deservedly
10 renowned has become only more developed since her confinement. Her incarceration is not
11 serving its only permissible purpose. Miss Manning has now been incarcerated for 11 of the
12 maximum 18 months. There is no reason to believe she will experience a change of heart.
13 There are a pleather of indications that she will not.”.

14 Madam, paragraph 12, “On or about March 10, 2020, after nearly one year in prison
15 and three days before the court appearance to hear her motion seeking release, Chelsea
16 Manning attempted to take her life.”. And there is evidence in relation to that at exhibit 3,
17 madam.

18 Paragraph 13, “Two days later, United States District Judge Court Judge Anthony J
19 Trager issued an order dismissing the grand jury. On the basis the court found that “Ms
20 Manning’s appearance before the grand jury is no longer needed in light of which her
21 detention no longer serves any coercive purpose”, and her immediate release was ordered.”.

22 And paragraph 14 makes reference to the fact that because of the secrecy of grand
23 jury proceedings the factual basis for the judge’s finding is not known, but what is known is
24 that incarceration caused Ms Manning grievous psychological harm and very nearly cost her
25 her life.

26 And, madam, there are responses there to the statement of Mr Kromberg. Can I just
27 turn my back for a moment? And, madam, responses then to the first declaration of Gordon
28 Kromberg are at paragraphs 15, 16 and 17 up to 20. Madam, I do not think it is necessary to
29 read those out.

30 If we can jump forward then to paragraph 27. “I have been asked whether or not in
31 the event that Mr Assange is acquitted at trial there would be any bar to his being compelled
32 by a grand jury to be coercively interrogated by prosecutors on other matters, including in
33 relation to revealing his sources of information, which he has published in a wide variety of
34 publications in WikiLeaks and other media outlets. There would be no bar to the issuance of

1 such a subpoena by the grand jury in the United States, including one where prosecutors
2 could pose questions that might reveal the identity of journalistic sources.”

3 And, madam, now the brief statements of Bridget Prince. The first and second
4 statements are found at tab 13 of core bundle 1, and the third statement is at tab 41 of core
5 bundle 1. Madam, if you can just give me a moment? And the final statement is at 72 of core
6 bundle 2.

7 Madam, statement 1, the education and qualifications of Miss Prince are set out. She
8 holds an MSc from the London School of Economics and a BA from King’s College.

9 Paragraph 2, “Since 2007 I have worked as an investigator and researcher for One World
10 Research. I have been director of One World Research since 2010. Prior to One World
11 Research I worked in 2004 to 2006 as an investigator for the Habeas Corpus Resource
12 Centre, focusing on the appeals of men on California’s death row. I worked as a private
13 investigator prior to that for two years and from 2000 to 2002 I worked as an (inaudible) for
14 the University of California carrying out research on human rights and health issues.

15 “I have extensive experience carrying out research and investigations on criminal and
16 civil legal cases in a variety of jurisdictions”, that is paragraph 4. “I have worked for over 10
17 years assisting attorneys in the United States in preparing for trial. As a result of this, I am
18 familiar with the system for selecting a jury pool in federal courts in the United States and
19 have worked in a number of federal cases in the Eastern District of Virginia. I have been
20 asked to carry out research with regards to government agencies and contractors who were
21 located in and hence potential employers of individuals in the geographical area from which
22 Mr Assange’s jury pool will be selected.

23 “The US District Court for the Eastern District of Virginia consists of four divisions,
24 in each division there are a set number of counties and cities from which a jury pool is
25 selected. Mr Assange has been indicted in the Alexandria division of the Eastern District of
26 Virginia. According to the court website, this consists of the city of Alexandria and counties
27 of Arlington, Fairfax, Fauquier, Loudoun, Prince William and Stafford as well as any other
28 city or town within the geographical boundaries of those counties.” That is exhibit 1.

29 “I have carried out research in each of these counties and identified a large
30 concentration of government agencies that have offices and headquarters in this area. The
31 headquarters of government agencies which are based in the Alexandria division include
32 Central Intelligence Agency CIA Fairfax, Federal Bureau of Investigations Academy
33 (Stafford), National Cyber Security and Communications Integration Centre, Department of
34 Homeland Security, NCCIC (Arlington), US Department of Defense (The Pentagon)

1 Arlington, United States Army Intelligence and Security Command, INSCOM, Fairfax.
2 According to reports by the Virginia employment commission a number of government
3 agencies are in the list of the top 50 largest employers in these counties as follows.” And that
4 is exhibit 2. “City of Alexandria US Department of Defense (Second largest employer),
5 Institute for Defense Analysis and Department of Homeland Defence, (Third largest
6 employer) and United States Department of Justice, Fairfax, US Department of Defense
7 (Fourth largest employer), Department of Homeland Defense, Loudoun, US Department of
8 Homeland Defense (Fourth largest employer), Prince William, US Department of Defense
9 (Third largest employer), Stafford, US Federal Bureau of Investigation (Third largest
10 employer), US Department of Defense (Fourth largest employer).

11 “In addition, I carried out research into government contractors in the relevant
12 counties of the Alexandria division of the Eastern District of Virginia. The northern Virginia
13 area where the Alexandria division is located has a high concentration of companies which
14 are government contractors working in the military and intelligence sectors, and according to
15 an article in The Washington Post, the sector has been growing in recent years.” That is
16 exhibit 3.

17 “Many of these companies are based in Fairfax county. The Fairfax county economic
18 development agency states on its website that it is a good location for businesses working on
19 military contracts because there is “an abundance of retired and former military personnel
20 available for employment.” That is exhibit 4.

21 “Examples of military and intelligence contractors who are major employers in the
22 relevant counties from which the jury pool will be selected are”, exhibit 5, “Alexandria
23 Institute for Defense Analysis, Arlington Booz Allen Hamilton, Fairfax Northrop Grumman,
24 Loudoun MC Dean Inc. Schedules with the full results of my research into government
25 agencies and contractors in the Alexandria division are attached to this statement.” That is
26 exhibit 6 and 7. And that statement is dated 18 December 2019.

27 The next statement of the same date sets out the same qualifications and produces
28 public statements and further reports publicly available relating to Julian Assange and
29 WikiLeaks, the press and journalists and whistle-blowers.

30 The next statement is dated 12 February 2020. It sets out, “I have been asked by
31 Mr Assange’s solicitors to carry out research with regards to an individual named Sheldon
32 Adelson and his company Las Vegas Sands Corporation.” And then, madam, there are a
33 number of exhibits there which provide details of Mr Adelson, which I will not read out
34 because all the exhibits are there.

1 And final statement dated 17 July 2020, “In continuation of volumes E and F, I
2 produce here a number of public statements and further reports publicly available in response
3 to the declarations of Gordon Kromberg and all questions arising during the preliminary
4 proceedings in February 2020. I produce herewith material relating to the US Department of
5 Justice and US State Department in further public statements commentary in court filings.”

6 Madam, those are the statements of Bridget Prince.

7 MR SUMMERS: Madam, could we now have five minutes? I believe we ought to be able to
8 move to the Spanish chapter, but there is something I need to check first.

9 JUDGE BARAITSER: Yes, of course. Five minutes enough then for 11.30?

10 MR SUMMERS: It ought to be, thank you.

11 (Short adjournment)

12 JUDGE BARAITSER: Thank you, yes.

13 MR SUMMERS: Madam, we can proceed to the Spanish evidence. Ms Dobbin wants to say
14 something first.

15 MS DOBBIN: Madam, it is only this. This matter was left last night on the basis that some
16 form of diligence would be done in respect of these witnesses. It transpired that doing that
17 within the confines of confidentiality ring, when there is a busier domestic prosecution team
18 in the UK, people involved in the United States and such check potentially involving a third
19 country was difficult and for those reasons, the prosecution indicated to the defence that we
20 could not enter into the confidentiality ring, so I really just wanted to make clear to you that
21 those checks have not been done because of that.

22 JUDGE BARAITSER: Alright, but the evidence is not disputed and that is the basis on
23 which I receive it.

24 MS DOBBIN: Mr Lewis explained the position last night. I do not think there is any point in
25 me repeating it. I know that you are aware of the position.

26 JUDGE BARAITSER: Yes.

27 MR SUMMERS: Madam, that is a matter for the US. The first statement, therefore, is the
28 statement of witness 1 at tab 11 and this is evidence, of course, that will put into context, for
29 example, the statement of Mr Goodwin-Gill that was read earlier today.

30 Madam, this is a statement dated the 4th of July 2019.

31 JUDGE BARAITSER: Now, again, I do not have signed or dated statements. Is there one
32 available or can you just confirm that there is one in existence?

33 MR SUMMERS: I think these are translated versions. The originals are in Spanish and they
34 are signed. We will check that they are signed, but our understanding ---

1 JUDGE BARAITSER: If somebody confirms it, I do not need a copy.

2 MR SUMMERS: But the originals are certainly in Spanish.

3 JUDGE BARAITSER: And the date? Again, I do not have it.

4 MR SUMMERS: 4th of July, madam.

5 JUDGE BARAITSER: Thank you. I am assuming ---

6 MR SUMMERS: So, madam, this is witness 1 to whom both you and the Spanish court have
7 granted anonymity. You already know that in its first paragraph, witness 1 asks for
8 protection, believing him or herself to be at risk with the information and documentation that
9 he or she has provided.

10 Madam, there are not paragraph numbers, but I have numbered mine. It might assist
11 if you number yours as you go along. The second paragraph, "I have decided to provide this
12 detailed statement as a result of recent events, specifically the detention of Mr Assange. With
13 the revelation of a criminal case against him in the US, I have come to realise that some of
14 the events that I have witnessed are relevant."

15 Third paragraph, "UC Global is a company that does security consulting and training
16 and whose owner, administrator, director is David Morales." This witness was a 50 percent
17 owner in the company from 2015 onwards.

18 Fourth paragraph, "In reality, UC Global started with meagre contracts and
19 practically, the sole contract was the one it signed with the government of Ecuador in October
20 2015. The contract encompassed security services for the daughters of the president and the
21 embassy in London."

22 Fifth paragraph, "UC Global had employees with Spanish nationality who were thus
23 able to move freely and reside in the UK, by virtue of their EU citizenship meaning that our
24 employees could travel to London unimpeded, reside in the UK and even travel to Ecuador
25 when necessary."

26 Over the page, madam, what would be paragraph 7, the second paragraph on that
27 page, "Around July 2016, by which time UC Global was already providing security services
28 at the embassy, David Morales travelled to a security sector trade fayre in Las Vegas which I
29 wished to accompany him on, but he insisted he had to travel alone. On this trip, he
30 showcased UC Global and its security of the famous embassy."

31 "8. After his initial travels to the US, UC Global obtained a flashy contract,
32 personally managed by David Morales with the company Las Vegas Sands owned by the
33 tycoon, Sheldon Adelson, whose proximity to Donald Trump is public knowledge. At the

1 time, Trump was the presidential candidate.” Madam, that, of course, is the relevance of the
2 exhibits produced by Peirce, by Prince 3 at tab 41 that was just alluded to.

3 “The contract did not make sense because its purpose was to provide security to a
4 luxury boat belonging to Sheldon Adelson, but the boat had its own security.”

5 “9. Morales, after this trip, announced to the office in Jerez in Spain that we will be
6 playing in the big league. We have switched over to what he said was the dark side, referring
7 to cooperating with the US authorities and as a result of that collaboration, ‘The Americans
8 will get us contracts all over the world.’”

9 “10. I learned that he had entered into illegal arrangements with the US authorities to
10 supply them with sensitive information about Mr Assange and the President of Ecuador.”

11 “11. I learnt that the chief of security of Las Vegas Sands, a man named Lahave, had
12 agreed the contract and this person offered to cooperate with the US intelligence authorities
13 by supplying information about Mr Assange.”

14 “12. This cooperation became more concrete over time. In fact, as the US elections
15 neared towards the latter half of 2016 and especially once Trump had won the elections,
16 David Morales’ cooperation became absolutely clear, that this reality was something that
17 employees of UC Global openly commented and were fully aware of.”

18 13, madam, on page 3, “The security work at the embassy required keeping the
19 Ecuadorian intelligence agency apprised of every single occurrence. In order to do this, we
20 had a CCTV system that did not record sound inside the embassy and there were daily reports
21 written up by the UC Global security personnel who were physically deployed within the
22 diplomatic mission.”

23 “14. However, as a result of the parallel agreement that Morales had signed with the
24 US authorities, Morales commented that these reports would also be sent to the dark side. In
25 order to do this, David Morales began making regular trips to the US to talk with, ‘our
26 American friends.’ One trip a month or even on occasion, up to two trips per month.”

27 15, madam, “Around 2017, Morales asked someone from the company to supply a
28 secure phone with secure applications as well as an encrypted computer for his
29 communications with, ‘the American friends.’”

30 “16. I asked insistently who his American friends were and Morales replied, ‘US
31 Intelligence.’ I asked him who specifically. He would cut me off.”

32 “17. Morales’ wealth increased considerably.”

33 “18. From 2017, with the victory of Donald Trump, I realised that David Morales’
34 trips to see the American friends, which he did not want anyone else at the company to take

1 part in, began to escalate. More specifically, around June or July 2017, Morales began to
2 develop a sophisticated information collection system inside the embassy. The employees
3 received instructions from him to change the internal and external cameras of the embassy.
4 The interior ones recorded sound and he instructed a team to travel regularly to London to
5 collect the camera and recordings. Morales would personally bring these to the American
6 authorities.”

7 “19. He showed, at times, a real obsession in relation to monitoring and recording the
8 lawyers who met with the guest, Julian Assange, because our American friends were
9 requesting it. When I realised what was occurring,” paragraph 20, “I decided to put an end to
10 our relationships and sold my shares.”

11 Madam, witness 2, tab 12. Again, I am going to invite you, madam, if it assists to add
12 paragraph numbers as we go along.

13 Paragraph 1 requests, as did witness 1, the status of protected witness.

14 Paragraph 3, “I joined UC Global in February 2015 as an IT expert.

15 “4. I remember that after David Morales had returned from the US at a meeting with
16 the rest of the staff, he affirmed that we were moving into the Premier League. After this, I
17 became aware that he was making regular trips to the US, the context of which was Morales
18 repeating to his having, ‘gone to the dark side.’”

19 “5. On the 24th of January 2017, once Donald Trump had acceded to the presidency
20 of the Unites States, David Morales sent a message over telegram in which he wrote that
21 they, UC Global, were being vetted, so everything that is confidential should be encrypted,
22 and by everything, they meant the UK issue. The people vetting them were apparently our
23 friends in the USA.”

24 “6. I remember that Sheldon Adelson himself increased his ties with UC Global.
25 Morales was personally put in charge of the security of the magnet and his children when
26 they visited Europe.”

27 7, over the page, madam, on page 2, “Once Donald Trump won the elections at the
28 end of 2016, the collection of information intensified as Morales became more obsessed with
29 obtaining as much information as possible, hence between June and July 2017, I was
30 summoned by Morales to form a task force of workers at our headquarters in Spain. The
31 purpose was to execute from a technical perspective, the capture, systemisation and
32 processing of information collected at the embassy.”

1 “8. Morales indicated to the task force that the cameras in the embassy had to be
2 changed every three years. This made no sense. At the time, the CCTV cameras did not
3 record sound.”

4 “9. Morales asked me explicitly for security cameras with sophisticated audio
5 recording capabilities. The cameras should not show that they were recording sound and he
6 was insisting to the extent possible on concealing audio recording capabilities.”

7 10, in December 2017, this witness, 2, was instructed to install new security cameras
8 in the embassy. “I carried out the new installation. I was instructed by Morales not to share
9 information about the specifications of the recording system and if asked, to deny that the
10 cameras were recording audio. I was told that it was imperative that these instructions be
11 carried out as they came, supposedly, from the highest spheres.”

12 “11. I have numerous photos of the installation as well as copies of the recordings.

13 “12. Around June 2017, Morales instructed that the cameras should allow streaming
14 capabilities so that ‘our friends in the United States’, as Morales explicitly put it, would be
15 able to gain access to the interior of the Embassy in real time. This alarmed me. I claimed it
16 was not technically achievable but Morales continued to insist. He emailed me a PowerPoint
17 document with instructions in minute detail of how to do it, but obviously Morales did not
18 have such technical knowledge so the document must have been supplied by a third party
19 whom the witness suspects could be the US Intelligence given that it was in English. The
20 witness refused to assist alleging that it was manifestly illegal”. 13, around January 2018,
21 Morales asked him, the witness, to travel to London to install microphones in the Embassy.
22 There was a microphone in the meeting room in a fire extinguisher.

23 “14. In the toilet at the Embassy, a place that had become strategic because Mr
24 Assange had maintained many of these meetings there in order to preserve confidentiality,
25 they used a nearby socket to conceal a microphone”. 15, the witness has recordings captured
26 by these devices and photos of the fire extinguisher.

27 Over the page, madam, 4, “16. When I returned in January 2018, Morales commented
28 openly that ‘our American friends’ had asked him to install microphones. This is when I
29 realised that Morales’s dealings with the US Intelligence had deceived me in order to install
30 them. The entire Embassy was to be bugged. Once again, I challenged Morales on the
31 legality of these measures and the plan was not executed. 17. Morales indicated that the
32 purpose of installing the microphones was to record the meetings that Assange had with his
33 visitors, but especially the defence attorneys and, very specifically, the defence attorney,
34 Baltasar Garzón. Morales subsequently stated that gathering information on Garzón should

1 be prioritised, including having his passport pages photographed.

2 “18. The lawyers were the priority targets, so the security personnel that were
3 physically deployed in the Embassy were specifically asked to monitor these meetings of
4 Assange with his lawyers as this was required by ‘our US friends’. 19. Morales in December
5 2017 asked me to take pictures of various decorative objects in the meeting room so that
6 microphones could be concealed inside them”. The witness challenged this and, as far as he
7 is aware, the measures were not taken. “21. Morales asked the security personnel to obtain
8 Assange’s fingerprints which were taken from an imprint on glass”. He is also aware that the
9 personnel at the Embassy stole documentation from Mr Assange and it is clear to him that the
10 requests came from US Intelligence to David Morales.

11 “22. Morales asked me to steal a nappy of a baby that regularly visited Mr Assange
12 to establish whether the baby was a child of the asylee, Mr Assange”. Morales expressly
13 stated that “the Americans were the ones who wanted to establish paternity”, but confronted
14 with this the witness approached the mother and indicated to her that there was a plan to steal
15 her nappies.

16 “23. In January 2018, Morales told me I should place certain stickers on all the
17 external windows of the Embassy. The stickers would indicate that CCTV was in operation,
18 which was strange and did not make sense”. Nevertheless, the witness placed the stickers.

19 “When he returned to Spain, Morales explained that “our American friends” had laser
20 microphones outside the Embassy, which were directional and pointed at the windows and
21 extracted noise allowing them to capture all conversations. However, Mr Assange was using
22 a white noise machine to make it difficult to obtain sound recordings which produced a
23 vibration in the window, thus the stickers eliminated the vibration. 24. Morales had received
24 explicit requests for information from the US in the form of a list of targets via email,
25 telephone and verbally. Among them, special attention had to be given to Mr Assange’s
26 lawyers. Security personnel had to write detailed profiles of these targets, photograph their
27 documentation. Their electronic equipment had to be left at the entrance of the Embassy and,
28 as far as possible, their conversations had to be listened to. They were also followed”.

29 And the witness, at the top of page 6, what would be paragraph 25, madam, states he
30 has evidence of this. “26. I specifically recall that during the initial months of 2016 one of
31 the members of UC Global showed me an iPad of one of the lawyers with messages and
32 emails in the home screen. I believe with 99 per cent certainty that this was a man by the
33 name of Goodwin-Gill. I was told that the iPad had been copied”. 27, he talks about the
34 opening of a suitcase of Andy Müller and the photographing of all his electronic equipment.

1 Andy Müller is a personal friend of Mr Assange who was a journalist.

2 At 29, madam, “At the end of 2017, the company learnt Mr Assange would receive a
3 diplomatic passport from the Ecuadorian authorities with the aim of transiting to a third state.
4 I recall that the personnel deployed at the Embassy were closing monitoring the consul who
5 was in charge of the relevant documentation. 30. I also recall that Morales saying in the
6 office that the Americans were very nervous about a Californian politician who was going to
7 the Embassy of Ecuador in order to meet with Mr Assange”.

8 Of course, madam, you have heard evidence about this from Ms Robinson.
9 According to Morales, says witness 2, the Americans had asked Morales to personally control
10 and monitor absolutely everything that had to do with that visit. “31. At the end of
11 November 2017, David Morales told the company that the Americans were very happy with
12 the information we had supplied but would need more. They spoke about the possibility of
13 entering the offices of the law firm of Mr Garzón and, two weeks later, the national media
14 reported that men in balaclavas had, indeed, entered Garzón’s law offices.

15 “33. I recall on one occasion around December 2017 that Morales said the Americans
16 were desperate and that they had even suggested that more extreme measures should be
17 employed against the guests of Mr Assange to put an end to the situation of his permanence
18 in the Embassy. Specifically, there was suggestion that the door of the Embassy would be
19 left open, allowing persons to enter from the outside and kidnap him and even the possibility
20 of poisoning him was discussed. All these suggestions, Morales said, were under
21 consideration with his contacts in the US”.

22 Then, 34, Morales instructed that Mr Garzón should be followed and, 35, the witness
23 has possession of photos of Mr Garzón’s personal home address. 36, “As I have explained
24 already, it was obvious that all this escalated after mid-2017 coinciding with Donald Trump’s
25 accession to the Presidency. All the documentation was transmitted to the US through two
26 channels. Firstly, daily reports from the Embassy personnel were copied onto servers which
27 the US had remote access to and, secondly, recordings from the cameras were saved onto
28 hard drivers, extracted every 15 days and then personally transported by David Morales on
29 his regular trips to the US”.

30 At 37, the witness talks about how he was asked to replace the server in order to
31 enable remote access. At 39, “So far as the recordings from the security cameras inside the
32 Embassy were concerned, they were managed in person. I was instructed by Morales to
33 travel to the Embassy in London every 15 days to change the hard drives. I was required to
34 take the original recordings, never copies, I assume as a requirement by the Americans. In

1 fact, on a couple of occasions Ecuador requested the original recordings which meant that
 2 David Morales had to travel to the US to ask for the originals back. The recordings were
 3 taken personally by David Morales to the US and, while Mr Morales was in meetings with his
 4 contacts in the US, he would write to us, employees and chat groups, asking for further
 5 details about visits or details about the recordings”.

6 And, then, madam, page 9, what would be 44, “Between mid-2017 and mid-2018,
 7 when the contact with UC Global came to an end, Morales displayed a noticeable increment
 8 in his assets. He had a new home, high-end vehicles, and it was said that he was being paid
 9 €200,000 a month by the US. 45, “At, finally, the end of 2018 there was a request by
 10 Baltazar Garzón’s law firm under the GDPR on behalf of Mr Assange for the material
 11 possessed by UC Global. Morales proceeded to remove all the material from ‘operation
 12 hotel’, the name that was given to the security contract with the Embassy, as well as all the
 13 material relating to Mr Assange”.

14 Madam, you also have witness statements from Mr Martinez, the Spanish lawyer,
 15 which I think I can take very briefly. So, tab 2. These statements, so far as remains relevant,
 16 detail the subsequent Spanish proceedings which have flowed from this. So at paragraph -
 17 again, I am sorry, madam, they are not paginated and the paragraphs are not numbered in the
 18 statements.

19 So, first paragraph, Mr Martinez is the Spanish lawyer in Mr Garzón’s law firm. In
 20 May 2019, he received contact from witnesses 1 and 2. Third paragraph, over the page, in
 21 July 2019 he filed a criminal complaint. Madam, we have that. It is at tab 10 and runs to
 22 some detail. Fourth paragraph, the Spanish court in Madrid, the Audiencia Nacional, issued
 23 an order in August 2019 admitting the criminal action, that is criminal proceedings against
 24 Morales and UC Global. In September, the fifth paragraph, 2019, the court ordered the arrest
 25 of Morales, search of his home and of UC Global and, as you already know, madam, ordered
 26 the protection of the two witnesses. The next statement, I am not sure it adds anything,
 27 actually, is at tab 9. Same information, madam, but at paragraph 5 Mr Martinez exhibits the
 28 criminal complaint, your tab 10, and the statements of witnesses 1 and 2 that were taken in
 29 Spain before the public notary.

30 Then, his final statement, madam, we looked at it briefly yesterday, is tab 45 and tells
 31 us a little more about the progression of the proceedings, I think, but perhaps I might - so it is
 32 at paragraph 2, the filling of the criminal complaint and the granting of anonymity. At
 33 paragraph 4, madam, that which you already know, how witness 2 came to the attention of
 34 Mr Martinez and requested reassurance as to his identity. Paragraph 4, the fears of

1 repercussions held by witness 2 and then witness 1 as well. Paragraph 10, their requests for
2 protection were granted by the Spanish court.

3 Madam, we looked yesterday at the reasons underlying their requests for protection.
4 You already have it. It is at paragraphs 13 onwards and it pertains, for example, to the
5 seizure of firearms in the possession of Mr Morales which, whilst it might not raise many
6 eyebrows in America, certainly does in Europe. Madam, it is our intention to assist you
7 further in what we hope will be an entirely uncontentious way with an update as to where the
8 Spanish investigation and proceedings have got to but that, we hope, will follow either later
9 today or early tomorrow morning, but just by way of update. Madam, that is the Spanish
10 evidence.

11 I think Mr Fitzgerald will move to Mr Chomsky.

12 MR FITZGERALD: My Lady, the statement of Noam Chomsky is at tab 39 in the bundle. It
13 is the expert report of Professor Noam Chomsky and, madam, of course, the issues that it is
14 relevant to are the question of whether the offence is political and whether Julian Assange is
15 being persecuted for his political opinions, and we say that it strongly supports our case both
16 that it is political and that he is being sought for his political opinions.

17 My Lady, one has at paragraph 1 of the statement of Professor Noam Chomsky, “I am
18 currently based at the University of Arizona where I am Laureate Professor of Linguistics and
19 a Chair of the Agnese Nelms Haury Programme in Environmental and Social Justice”, and he
20 sets out then, my Lady, the history of his distinguished academic career as a member of the
21 staff of the Massachusetts Institute of Technology from 1955 and being full Professor of
22 Modern Languages and Linguistics from 1961 onwards. He sets out the many honours that
23 he has received over the course of his academic lifetime.

24 Received honorary degrees from many universities, including the University of
25 London, the University of Chicago, Leonie University of Chicago, Swarthmore College,
26 Delhi University, Bard College, University of Massachusetts. I will not read all of them out,
27 but, of course, you can see also Cambridge University, the University of Buenos Aries,
28 Columbia University, the University of Toronto, Harvard University, the University of
29 Calcutta and the University Nationale of Colombia.

30 He is a fellow of the American Academy of Arts and Sciences and of the National
31 Academy of Science. In addition, he is a member of other professional and learned societies
32 in the United States and abroad and a recipient of the distinguished scientific contribution
33 award of the American Psychological Association, the Kyoto Prize in basic sciences, the

1 Helmholtz medal, the Dorothy Eldridge peacemaker award and the Ben Franklin medal in
2 computer and cognitive science, and many other awards.

3 He sets out the fact that he has written and lectured widely on linguistics, philosophy,
4 intellectual history, contemporary issues, international affairs and US foreign policy.

5 My Lady, I am not going to read out all the publications, but you will see at the end a
6 number of matters where he has dealt with issues of great political importance: JFK, the
7 Vietnam War and US Political Culture, Understanding Power, Hegemony or Survival, Hopes
8 and Prospects and What Kind of Creatures are We? and Who Rules the World?

9 Then he deals with the fact that he has been asked whether Julian Assange's work and
10 actions can be considered as political, which is obviously relevant to the treaty issue. "A
11 question I am informed is of significance to the extradition request by the United States for
12 Mr Assange to be tried for espionage for having played a part in the publication of
13 information that the United States' government did not wish to be publicly known.

14 "I have previously spoken of the subject matter on which I am asked now to
15 comment. In relation to Mr Assange the following paragraphs constitute my views. I
16 confirm my assessment that Mr Assange's opinions and actions should be understood in their
17 relationship to the priorities of government." And then he says at paragraph 8, "As Professor
18 of the Science for Government at Harvard University, the distinguished liberal political
19 scientist and government adviser, Samuel Huntington, observed that (quote) 'The architects
20 of power in the United States must create a force that can be felt but not seen. Power remains
21 strong when it remains in the dark. Exposed to the sunlight it begins to evaporate.'" I will
22 not read all of what follows in paragraph 8, but paragraph 9: "Julian Assange's actions which
23 have been categorised as criminal are actions that expose power to sunlight, actions that may
24 cause power to evaporate if the population grasps the opportunity to become independent
25 citizens of a free society rather than the subjects of a master who operates in secret. That is a
26 choice and it has long been understood that the public can cause power to evaporate."

27 Then he cites from the writings of the 18th century philosopher David Hume, and I
28 just quote the two key passages. Hume found nothing more surprising than to see the
29 easiness with which the many are governed by the few. And then further on, that as force is
30 always on the side of the governed, the governors have nothing to support them but opinion.
31 And then he goes on at paragraph 11, "Actually Hume underestimates the efficacy of
32 violence, but his words are particularly appropriate to societies where popular struggle over
33 many years has won a considerable degree of freedom. In such societies, such as ours, of
34 course, power really is on the side of the governed and the governors have nothing to support

1 them but opinion. That is one reason why the huge public relations industry is the most
2 immense propaganda agency in human history. A reach that has developed and reached its
3 most sophisticated forms in the most free societies, the United States and Britain. That
4 institution arose about a century ago when elites came to understand that too much freedom
5 had been won for the public to be controlled by force, so it would be necessary to control
6 attitudes and opinions.”

7 And then if I can go on to paragraph 12. “One device to control the population is to
8 operate in secret so that the ignorant and meddling outsiders”, that is obviously referring
9 back to a characterisation that he does not agree with, “will stay in their place, remote from
10 the leaders of power, which are none of their business. That is the main purpose for
11 classification of internal documents. Anyone who has poured through the archives and
12 released documents has surely come to realise pretty quickly that what is kept secret very
13 rarely has anything at all to do with security except for the security of the leadership from
14 their domestic enemy, their own population. The practice is so routine that illustration is
15 really quite superfluous.” And then he gives an example in relation to the trade agreements
16 and the misleading nature of that.

17 And then he says at the end, “The public, on the contrary, is an enemy that must be
18 kept in ignorance.” And that is the characterisation again of the approach of government.

19 At paragraph 13 he says, “Julian Assange’s alleged crime in working to expose
20 government secrets is to violate the fundamental principles of government, to lift the veil of
21 secrecy that protects power from scrutiny, keeps it from evaporating, and again it is well
22 understood by the powerful that lifting the veil may cause power to evaporate. It may even
23 lead to authentic freedom and democracy if an aroused public comes to understand that force
24 is on the side of the governed and it can be their force if they choose to control their own
25 fate.”

26 And then paragraph 14 finally, “In my view, Julian Assange in courageously
27 upholding political beliefs that most of us profess to share, has performed an enormous
28 service to all the people in the world who treasure the values of freedom and democracy and
29 who therefore demand the right to know what their elected representatives are doing. His
30 actions in turn have led to him to be pursued in a cruel and intolerable manner.”

31 My Lady, that is the statement.

32 MR SUMMERS: My Lady, that leaves us four outstanding witnesses: Mr Worthington is
33 due to give evidence this afternoon. I ought to warn you there is a possibility we might be
34 able to reach agreement in relation to him, but a possibility only. And then there is Mr Jaffer

1 and Mr Tigar and the editing of the Peirce statements. May we ask now for a little time to
2 progress those discussions? You will appreciate, I am sure, that the editing of reports such as
3 that authored by Mr Tigar, in particular, is no easy task and we would appreciate a little time
4 to try and progress it, please.

5 JUDGE BARAITSER: How long would you like?

6 MR SUMMERS: Until 2 o'clock.

7 JUDGE BARAITSER: Yes, all right. Thank you. You can have until 2 o'clock and I
8 adjourn the hearing until then. Thank you very much everybody.

9 (Luncheon adjournment)

10 JUDGE BARAITSER: Thank you. Please sit down. Have you reached agreement in
11 relation to Mr Worthington?

12 MR SUMMERS: Not yet, madam, and my first request is for a little more time. Can I
13 explain why? We have been working hard, we promise. We have reached agreement in
14 relation to Mr Jaffer and I can tell you that was not an easy task given the nature of his
15 evidence.

16 Mr Worthington is not well. We are in discussion about whether we can avoid him
17 having to come to court. He has produced today a short supplemental statement dealing with
18 one of the issues that was problematic in his statement. Mr Lewis has just been given it and
19 he is considering it outside of court now. That is the reason, madam, that we need a little
20 time. It is our fault. We have provided it as quickly as we could but it presents obvious
21 difficulties for Mr Lewis in digesting it.

22 The progress with Mr Jaffer is, I hope, welcome. We hope that we can also use a
23 little more time now to work on Mr Tigar's evidence having made the breakthrough that we
24 have in relation to Mr Jaffer.

25 And by way of other homework, madam, signatures on statements that you raised, I
26 believe Mr Cobain's signed statement has been located. We can provide you with a copy if it
27 would assist?

28 JUDGE BARAITSER: No, I take it from you.

29 MR SUMMERS: And the explanation for witnesses 1 and 2 is a little more complicated than
30 I had appreciated. Because they are giving their statements anonymously they cannot sign
31 them so they have been notarised. There is a copy with a notary's stamp and signature on but
32 obviously not a signature in their own name for obvious reasons.

33 JUDGE BARAITSER: Yes. And Miss Peirce's statements, have you reached agreement in
34 relation to those?

1 MR SUMMERS: We are working through those. I am not able to say any more than that.

2 JUDGE BARAITSER: And how long do you think this process is going to take?

3 MR SUMMERS: Can I ask in the first instance for half an hour now and at the very least
4 when we come back we will be able to deal with Mr Jaffer's evidence.

5 JUDGE BARAITSER: Right, yes, you can have that. So, ---

6 MR SUMMERS: Madam, thank you for your indulgence.

7 JUDGE BARAITSER: --- just after half past 2 to read Mr Jaffer's evidence.

8 MR SUMMERS: Thank you for your patience.

9 JUDGE BARAITSER: Thank you.

10 (Short adjournment)

11 JUDGE BARAITSER: Thank you. Yes, Mr Summers.

12 MR SUMMERS: Thank you, madam. Madam, we have been able to reach agreement in
13 relation to Mr Worthington and as I said before, we are able to proceed with Mr Jaffer's ---

14 JUDGE BARAITSER: Are we?

15 MR SUMMERS: --- statement. Can I deal with those now then?

16 JUDGE BARAITSER: Yes, please.

17 MR SUMMERS: Can I deal with Mr Worthington first? Firstly, madam, there is a single
18 edit to his existing statement and as I hope I mentioned before, he has provided a short
19 addendum statement today with an exhibit to which there are too short edits as well.

20 JUDGE BARAITSER: There is objection then to the late amended or additional statement
21 going into evidence?

22 MR LEWIS: I take a pragmatic view on it, my Lady.

23 JUDGE BARAITSER: All right. Well, if there ---

24 MR LEWIS: And therefore ---

25 JUDGE BARAITSER: --- is no objection they are admitted on that basis.

26 MR LEWIS: Yes. It is still de bene esse.

27 JUDGE BARAITSER: All right.

28 MR LEWIS: On that view.

29 JUDGE BARAITSER: In the sense that you do not believe it is relevant and that is a
30 decision that I will take at the end of the day?

31 MR LEWIS: Precisely, my Lady.

32 JUDGE BARAITSER: All right. Thank you. Yes.

33 MR SUMMERS: So, if I may summarise please Mr Worthington's evidence. His evidence
34 concerns the Guantanamo detainee assessment briefs. Madam, at paragraph 3 of his first

1 statement he sets out his expertise in relation to Guantanamo issues. He has been responsible
 2 for a significant amount of published research on Guantanamo Bay including publications
 3 that he sets out from 2007. I should add, as emerges from his second statement, that he was
 4 the lead author of the UN report on secret detention there from 2009. You can see that,
 5 madam, at paragraph 9 of his second report by way of establishing his credentials.

6 As a result of his credentials generally concerning Guantanamo he was approached by
 7 WikiLeaks in March 2011 on the basis that he was an expert on the issues and WikiLeaks
 8 being in possession of files on that subject wished to ensure that publication took place and
 9 was entered into in the best way. He was asked therefore, although he was not a media
 10 journalist, he was asked to join the media partnership acting with a number of well-
 11 established news organisations. The understanding between WikiLeaks and in particular Mr
 12 Assange and him was that the confidentiality of the files would be maintained unless and
 13 until it was understood and agreed that they could and should be published as fully as
 14 possible but without risking damage to persons who could not be protected.

15 Madam, at the end, paragraph 4, at the end of March 2011 he was provided with the
 16 files. He took on the role of a media partner and his role was to contribute to their
 17 understanding of the content and implications of the content of the files. The UK media
 18 partner in question here was The Telegraph. Madam, if you could briefly turn to paragraphs
 19 1 and 2 of the second statement he elaborates on paragraphs 3 and 4. He there says that his
 20 work was as a result of his longstanding researches and published works on Guantanamo.

21 He was in a position to investigate and interpret data in the detainee assessment files
 22 and contribute to the knowledge and context of those publishing the raw data. There were
 23 media partners in different countries. The UK media partner was The Telegraph. The
 24 intention was that publication would take place simultaneously after the different media
 25 partners had had an opportunity of assessing the data assisted by analysts such as himself.

26 So, madam, back to the first statement, the evidence that the files revealed was of
 27 extraordinary potential importance that the full implications of which are continuing to be
 28 properly understood even in 2020. In paragraph, they contained a wealth of important and
 29 previously undisclosed information including health assessments, photographs, summaries of
 30 evidence and tribunal transcripts, and at the end of that paragraph the majority of the new
 31 documents revealed accounts of incompetence with innocent men detained by mistake or
 32 because the US was offering substantial bounties to its allies for Al-Qaeda or Taliban
 33 suspects.

1 At paragraph 8, madam, crucially, the files contained detailed explanations of the
2 supposed intelligence used to justify the prisoners’ detentions. Over the page, but still,
3 madam, within paragraph 8, the majority of the cases, the witnesses, that is to say the
4 witnesses whose testimony was used to justify the prisoners’ detentions were fellow prisoners
5 who themselves had been subjected to torture or other forms of coercion even in Guantanamo
6 or in secret prisons run by the CIA, or equally unreliable because fellow prisoners had
7 provided false statements to secure better treatment in Guantanamo.

8 Madam, he then names three of the prisoners whose statements were used to justify
9 the detention of other prisoners. Madam, you will see three names in that paragraph. The
10 first, Abu Zubaydah, who Mr Worthington asserts had been held in a secret CIA prison and
11 subject to amongst other things, waterboarding. Ibn al-Sheikh al-Libi had been rendered,
12 madam, at the middle of that paragraph to Egypt where under torture he had falsely confessed
13 to Iraq-related matters which confession was then used to justify the invasion of Iraq. And
14 then at the bottom, madam, prisoner Nashiri, that was tortured in Thailand in a black CIA
15 site.

16 Now, the principle purpose, madam, of the second supplemental statement Mr
17 Worthington provides is to explain the basis for those assertions. That you will find, madam,
18 at paragraph 9 of the second statement where he says this in the second section at paragraph
19 8. “I refer to the general phenomenon of evidence that should have been regarded as
20 untrustworthy but which evidenced the criminal use of torture.”. I referred to examples, Abu
21 Zubaydah, Al-Nashiri, and Al-Libi.

22 Madam, paragraph 10, “The basis upon which I could assess in 2011 that some
23 prisoners had been tortured emanated from a number of sources including ...”, and then he
24 gives them. Firstly and primarily, madam, for my purposes, “The 2009 UN report on secret
25 detention of which I was the lead author ...” – now, madam, that is the large document that I
26 handed to you and which is his exhibit 1 – “in which it was noted that the existence of the
27 torture programme was established via a memo released by the Obama Administration in
28 2009”, and he gives, madam, the paragraph references to the report of which he was the lead
29 author that referred to the treatment that has been revealed or had been revealed before then
30 in relation to these three individuals. We can look at them in detail but I am not sure it is
31 necessary. The point he makes is he knew that these people were already the subject of
32 findings in amongst other places that UN report of having been mistreated.

33 Then he says, staying with this, “Subsequently, 14 of these individuals including
34 Zubaydah, were transferred to Guantanamo as announced by George W Bush in 2006 and” –

1 in relation to Zubaydah and Nashiri. “Their treatment has subsequently been confirmed by
2 the European Court of Human Rights and the Senate Intelligence Committee Report from the
3 investigation into the use of torture at black sites.”.

4 May I make clear, madam, that that third sub-paragraph post-dates his work on the
5 Guantanamo files. So, what the witness is saying here is as at 2011 whilst working on the
6 Guantanamo files he knew what was in the UN report because it was his report and dated
7 from 2009. He knew what had been revealed by George W Bush’s announcement in 2006
8 and those matters for what it is worth, madam, have been subsequently confirmed by the
9 European Court of Human Rights and the Senate Intelligence Committee Report but I do not
10 suggest they were within his knowledge at the time. They could not have been, they date
11 from 2014.

12 So, madam, coming back please to his original report. Having made the point that the
13 WikiLeaks’ files revealed that the basis on which various prisoners were being detained at
14 Guantanamo was the statements provided by these other detainees who themselves were
15 known to have been tortured, he says at paragraph 9, “The reliance upon the testimony of
16 these ‘witnesses’ to justify the detention of many prisoners who continued to be held in
17 Guantanamo was of enormous importance”. He describes it, madam, in paragraph 9 as, “The
18 anatomy of a crime of colossal proportions perpetrated by the US Government on the
19 majority of the 779 prisoners held in Guantanamo.”

20 At paragraph 11, “I agreed to take part in the exercise ...” - that is to say the
21 publication exercise with the media partners - “... not only because of its potential for the
22 opportunity of analysing new and revealing material but because I was satisfied that the
23 arrangements for publication were professionally carried out and newsworthy, legal and of
24 historical importance”.

25 Madam, I am sorry to flit between the two statements, but he expands on that
26 statement in paragraphs 6 and 7 of his second statement, where he reiterates that, “The
27 publication by the media partners, as well as by WikiLeaks, were the subject of careful
28 thought”, paragraph 6; and, paragraph 7, “Were professionally carried out and newsworthy,
29 of legal and historical importance”. And in paragraph 12, madam, “In the face of pressure
30 from other media partners to publish soon, Julian Assange and The Telegraph and myself
31 pressed for publication in the most responsible format”.

32 At 13, in response to that publication, he recounts that, “Within a week the US
33 Government publicised the killing of Osama Bin Laden with the official narrative that torture
34 in Guantanamo had led to the US being in a position to locate Bin Laden, a claim which has

1 subsequently also been found to be untrue”.

2 He concludes, madam, that, “The publication of the detainee assessment briefs was of
3 extraordinary journalistic importance, particularly in the insights they provided into the
4 workings of US Intelligence by shining a light of truth on rendition and torture programs
5 which the US had embarked upon during the ‘war on terror’.” So, madam, that is Mr
6 Worthington’s evidence. Can I invite you to put the second statement behind his first in tab
7 33.

8 JUDGE BARAITSTER: Yes, I have done that, thank you.

9 MR SUMMERS: Madam, the next statement we are able to read is that of Mr Jaffer. It has
10 been edited. Can I hand up an edited version, please.

11 JUDGE BARAITSTER: Is there something you want to say, Ms Dobbin?

12 MS DOBBIN: Yes, my Lady, simply this. This is a witness who gives evidence about the
13 content of law in a similar way that Mr Shenkman did and there are a number of cases and
14 articles that might have been put to him had he given evidence. My learned friend and I
15 though were agreed that those are the sorts of points that can be made in submissions and that
16 they do not necessitate the witness being called.

17 JUDGE BARAITSTER: All right.

18 MS DOBBIN: In order that they be put, but I thought that it was important simply to make
19 that clear that, obviously, those are things that he would have been asked about had he been
20 called to give evidence.

21 JUDGE BARAITSTER: Thank you, that is very helpful.

22 MS DOBBIN: I am grateful.

23 JUDGE BARAITSTER: Now this is ---

24 MR SUMMERS: This is tab 22, madam.

25 JUDGE BARAITSTER: Thank you. And this is an edited version, is it not?

26 MR SUMMERS: Yes, you have a version with edits marked.

27 JUDGE BARAITSTER: Thank you.

28 MR SUMMERS: Mr Jaffer is Executive Director of the Knight First Amendment Institute at
29 Columbia University. He has served on the staff of the American Civil Liberties Union. He
30 oversaw that organisation’s work relating to free speech. He has litigated, testified and
31 written before the US courts at all levels, at Congress and other Government bodies. He is a
32 graduate of Cambridge and Harvard, madam.

33 Madam, his evidence begins by way of overview at paragraph 3, “The indictment of
34 Mr Assange poses a grave threat to press freedom in the United States. This case is the first

1 in which the US Government has relied on the Espionage Act as the basis for the prosecution
 2 of a publisher. The indictment focuses almost entirely on the kinds of activities that national
 3 security journalists engage in routinely and as a necessary part of their work, namely
 4 cultivating sources, communicating with them confidentially, soliciting information from
 5 them, protecting their identities from disclosure and publishing classified information. The
 6 indictment’s implicit but unmistakable claim is that activities integral to national security
 7 journalism are unprotected by the US Constitution and are even criminal.”

8 He goes on, madam, to explain why he says that. Can I take you, please, to paragraph
 9 5 where he sets out an overview of the Espionage Act beginning at paragraph 5 with its
 10 history, “Immediately after the First World War, President Wilson’s administration relied on
 11 it to prosecute more than 2,000 dissenters for speech the US courts would ultimately
 12 recognise today as fully protected by the Constitution”, and he gives an example of anti-war
 13 speech then prosecuted.

14 Paragraph 6, “Congress made significant changes to the Act through the McCarran
 15 Act in 1950”, and you heard Mr Shenkman speak about that. “It split the principal provision
 16 governing leaks into two: those who lawfully have possession and those who have
 17 unauthorised possession. It also distinguished between leaks of tangible materials and
 18 information. In its current form, the Act is notoriously convoluted. In essence, however, and
 19 as relevant here ...” and then he sets out the sections and a brief summary of them.

20 Paragraph 7, madam, “These provisions are extremely broad, as many others have
 21 observed, and they criminalise a wide range of activities that may bear little resemblance to
 22 classic espionage. The Act exposes leakers to severe penalties without regard to whether they
 23 acted with intent to harm. It is indifferent to their motives and indifferent to whether the
 24 harms caused by disclosure were outweighed by the value of the information to the public”.

25 Paragraph 8, “The Act also seems to expose those who publish to the same severe
 26 penalties imposed on leakers”. It has been described, madam, as a loaded gun pointed at the
 27 newspapers and the reporters who publish foreign policy and defence secrets. At paragraphs
 28 10 to 12, madam, he deals with selectivity. Paragraph 10, “Because the Act is so sweeping
 29 and leaks are so frequent, it would be impossible to prosecute every violation of the Act or
 30 even most. Many leaks are useful to the Government. Some are officially sanctioned. There
 31 is an ecosystem of leaks”, and he quotes Professor Pozen in support of that.

32 Paragraph 11, madam, “As a general rule, the Government has not used the statute
 33 against senior Government officials, though most leaks probably originate with them”. And
 34 he gives, by way of example of what he says is selective prosecution, the example of General

1 Petraeus who shared classified information and was allowed to plead guilty to a
2 misdemeanour charge.

3 The next section, madam, deals with public deliberation about war depending on the
4 ability of the press to publish classified information and he says this, “At least in the US,
5 informed public deliberation about matters relating to war and security would be impossible
6 if the press did not publish classified information. Max Frenkel explained this in the affidavit
7 he filed in the Pentagon Papers case”, and you have seen that from ---

8 JUDGE BARAITSTER: It is quoted more than once.

9 MR SUMMERS: Sorry?

10 JUDGE BARAITSTER: That comment is quoted in more than one place.

11 MR SUMMERS: Yes, absolutely. And, yes, madam, there you have the quote from it.
12 “There are structural reasons why unauthorised disclosure for classified information are so
13 vital to the public’s ability to understand, evaluate and influence Government policy relating
14 to war and security”, and he gives some of those reasons. One is Executive Order 13526,
15 which establishes the classification system allowing the Government to classify information
16 without regard to the extent that it would aid public deliberation.

17 Even if it is plain that the benefits of disclosure would outweigh the harms, Mr Jaffer
18 tells us that it can, nonetheless, be classified. He says, “In practice, it is common for the
19 Government to classify the kind of documents that could be expected to be especially
20 important to the public’s ability to understand, evaluate and influence the national security
21 policy, including, amongst other things, documents that describe unlawful conduct. The
22 Executive Order gives decisive weight to the security interest and no weight at all to the
23 interest in informed public deliberation”.

24 Relatedly, madam, another reason he gives is the Government’s routine classification
25 of information where disclosure could not reasonably be expected to cause damage to the
26 national security, as many Government studies have found, and then he gives quotations of
27 various studies which have examined the extent to which over-classification occurs and cites
28 one that concludes that half of all classified information is overclassified and another that
29 suggests three-quarters. He, Mr Jaffer, says that classifying information could shield
30 controversial decisions from scrutiny.

31 Paragraph 15, “For these reasons and others, madam, the ability of the press to publish
32 classified information is vital, in a sense, to the public’s ability to understand, evaluate and
33 influence Government policy. If the press did not publish classified information without
34 authorisation, public debate would take place in an information environment controlled

1 almost entirely by executive branch officials”.

2 And, paragraph 16, “Recent experience has only underscored the extent to which
3 public deliberation depends on the freedom of the press to publish classified information
4 without authorisation” and he gives a number of examples in support of that. So the first is
5 reporting surrounding, and he is talking about, madam, the publishing of classified
6 information without authorisation, firstly, surrounding the Bush administration’s torture
7 policies and their reliance on anonymous sources who disclosed classified information.

8 Another example would be the reporting of the unlawful surveillance by the NSA.
9 Another he gives as the Obama administration’s policies relating to the use of armed drones
10 to carry out extrajudicial killings. If the American press had not published classified
11 information without authorisation, informed public deliberation on these and other
12 momentous questions relating to the war on terror would have been impossible.

13 The next section, madam, on that is 17 to 20 deals with the prosecution of insiders,
14 that is to say whistleblowers. At 17, “Recently, the Government has begun using the Act
15 aggressively against Government insiders who supply classified information”. Then, 18,
16 “During the 20th century, only one person was convicted for this”, and that is Morison - and
17 we have looked at the *Morison* judgment, madam, that is the Fourth Circuit decision - who
18 was ultimately pardoned in 2001. You see that in the middle of paragraph 18.

19 At 19, “Since 9/11, the Government has increasingly used the Espionage Act against
20 sources. The Obama administration indicted nine”, and then he gives examples which
21 include Chelsea Manning, madam. At 20, he observes that sentences for whistleblowers have
22 become more severe as the years have passed and, madam, again, Chelsea Manning is given
23 by way of one of the examples, “... Reality Winner, Terry Albury, Chelsea Manning received
24 the heaviest ever imposed under the Act”.

25 Then, madam, he turns, finally, to this prosecution and this, he says, under the general
26 heading that it raises serious press freedom concerns, paragraph 21, “The Government’s use
27 of the Espionage Act against Government insiders poses a serious threat to the ability of the
28 press to inform the public. The government’s indictment of a publisher under the Act,
29 however, crosses a new legal frontier. According to news reports,” he says, “the Obama
30 administration considered indicting Mr Assange, but abandoned the idea after concluding that
31 it would be difficult to pursue him without calling into question the legitimacy of national
32 security journalism.”

33 22, “The conviction of Mr Assange would have a significant chilling effect on
34 journalism that is vital to the proper functioning of American democracy,” and he then gives

1 reasons for that. “First, the American courts have not fully resolved the scope of the
2 protection that the First Amendment provides to those who publish, but the US Supreme
3 Court in the Pentagon Papers case held in the face of a government assertion,” madam, “that
4 the publication of the report would cause grave harm to nationality security. The Supreme
5 Court nonetheless held that the government could not constitutionally enjoin the newspapers
6 from publishing it.

7 The Pentagon Papers case is widely and appropriately considered a pillar of American
8 press freedom, but,” he adds, “it involved a prior restraint, not the imposition of criminal
9 penalties.”

10 24, “In subsequent cases, the Supreme Court has repeatedly emphasised that, ‘State
11 action to publish the publication of truthful information seldom can satisfy constitutional
12 standards, absent a need to further a state interest of the highest order.’ It has read the
13 Pentagon Papers case broadly as having upheld the right of the press to publish information
14 of great public concern obtained from documents stolen by a third party. It expressly
15 reaffirmed this right in *Bartnicki*, where it upheld the right of a radio station to broadcast
16 intercepted, unlawfully intercepted telephone calls.”

17 The court wrote, “A stranger’s illegal conduct does not suffice to remove the First
18 Amendment shield from speech about a matter of public concern.”

19 Important to the court’s reasoning in that case, however, was its conclusion that the
20 broadcaster had not been involved in the illegality. That is that the broadcast had not
21 participated in the illegal interception of the conversation.

22 Secondly, in Mr Jaffer’s opinion, many of the activities described in the indictment
23 are integral to national security journalism and can I make clear, the indictment he is talking
24 about, because this witness statement is dated January of this year, is the first superseding
25 indictment. For example, the indictment gives significance to the fact that Mr Assange
26 sought, obtained and disseminated classified information, that he solicited information from
27 Miss Manning, that he knowingly received classified information that he received through a
28 Cloud Dropbox, that he discussed with Miss Manning measures to protect the discovery of
29 her as his source, that he used encrypted chat service to communicate with Manning and he
30 took measures to conceal Manning as the source of the disclosure, that he encouraged
31 Manning to provide him with classified information and the Dropbox again.

32 These kind of activities which he summarises again, are activities that national
33 security journalists engage in routinely. As one prominent scholar has written, this is exactly

1 what national security reporters and their news publications often ask government officials or
2 contractors to do.

3 Madam, 27, finally, “Some government officials have argued that Mr Assange is not a
4 journalist. This argument misses the point. The indictment is mainly a description of Mr
5 Assange engaging in core journalistic activities. These are the activities that the
6 government’s apparent theory of liability would criminalise.”

7 Madam, that is Mr Jaffer. That leaves the statement of Mr Tigar – I think it is Tiger,
8 not Tigar. Can we have a little longer to deal with that? Mrs Peirce’s statements I think are
9 going to need a little time to finalise as well, not least of all because they pertain to issues on
10 which Mr Assange’s instructions need to be taken.

11 The result of that is that I suspect, and I say this knowing that we have also promised
12 you, madam, an update to the Spanish court process as well. I suspect first thing tomorrow
13 morning will be the opportunity for us to member of the public up and finish rather than this
14 afternoon.

15 JUDGE BARAITSER: I have just received an email, which I was expecting, which relates to
16 the disclosure of the anonymous witness statement. The press would like to publish in full
17 the statements. Do you have any objection to them receiving those statements?

18 MR SUMMERS: No, they were not edited, madam.

19 JUDGE BARAITSER: In that case, on request, can you provide them?

20 MR SUMMERS: Yes.

21 JUDGE BARAITSER: We still have not resolved the issue of the transcripts. Tomorrow
22 may well be our last day so I would like to hear what you have to say about it.

23 MR SUMMERS: Madam, I have to say it has not been foremost in our work, but we will
24 give it proper thought and tell you our position.

25 JUDGE BARAITSER: From the press perspective, I suspect it is important to them.

26 MR SUMMERS: Yes, I do understand that. I am not trying to belittle it.

27 JUDGE BARAITSER: Alright, so ten o’clock in the morning then.

28 MR SUMMERS: Please, madam. Thank you.

29 JUDGE BARAITSER: Again, we are going to have to adjourn the case until tomorrow
30 morning. You remain in custody as always. Back in the morning then, please. Thank you.

31

ADJOURNED AT 15.06 UNTIL THURSDAY, 1st OCTOBER 2020

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