JUDICIARY OF
ENGLAND AND WALES

District Judge Vanessa Baraitser

In the Westminster Magistrates' Court

Between:

THE GOVERNMENT OF THE US OF AMERICA

-v-

JULIAN PAUL ASSANGE

CONSOLIDATED ANNEX **Page**

THE CRIMINAL PROCEEDINGS

Eric Lewis

1. Dr Lewis gave evidence and adopted his five witness statements dated 18 October 2019 (EL1), 12 February 2020 (EL2), 17 January 2020 (EL3), 18 July 2020 (EL4) and 25 August 2020 (EL5), confirming that they were true to the best of his knowledge and belief. All paragraph references below refer to his statements. He sets out his qualifications at EL1 §1-3. Dr. Lewis is a partner in the US law Firm Lewis Baach Kaufmann Middlemiss PLLC in Washington DC. He has been an attorney in private practice for 35 years.

2. Regarding pre-trial detention, Dr. Lewis believes Mr. Assange is very likely to be held in the William G Truesdale Detention Centre in Alexandria, Virginia also known as the Alexandria Detention Centre ("ADC") as it is close to the trial court. A second less likely possibility is the Northern Neck Regional Jail in Warsaw, Virginia.

3. Regarding administrative segregation ("ADSEG") he stated that it is a "certainty" that Mr. Assange will be held under this regime of for a significant portion of his sentence, in light of the severity of his likely sentence, the fact the charges are concerned with espionage (and the usual practice with respect to defendants charged with national security related offences) and the great hostility that has surrounded the "Manning" publications.

4. There is also a "material risk" (EL1 §20) or "high likelihood" (evidence-in-chief) that Special Administrative Measures ("SAMs") will be applied both pre-trial and post-conviction out of concern for Mr. Assange's access to secret information and the risk of its disclosure. SAMs is a restrictive regime. Mr. Lewis represented Ahmad Abu Khatallah, who was held pre-trial at the ADC for 3 years between 2015 and 2018. In his fourth statement he describes Mr. Khatallah's conditions of detention (EL4 §37). He was detained in a SAMs regime over a period of years: his exercise period was normally in the middle of the night when no other prisoners were in common areas; he was held in solitary confinement in cramped concrete sells for 22 to 23 hours per day; his time spent out of his

cell was spent exercising in a small room or cage alone; there was generally little natural light and no outdoor recreation or access to fresh air. SAMs prisoners are forbidden from communicating with other prisoners, and he was only permitted to leave his cell for meetings with counsel (EL4 §37). He declined exercise rather than be awakened to walk around a darkened empty area (EL4 §37). He was not permitted to retain any documents in his cell (EL4 §37). Generally, SAMs prisoners are limited to one 15-minute call per month, their calls are monitored, as are meetings with lawyers, and nonlegal visits are "sharply curtailed". (EL1 §20). As materials are censored and information redacted, they are denied access to information about current events. He considers SAMs is not used sparingly, referring to a study entitled "Reforming Restrictive Housing" from 2018 which states that roughly 4.5% of federal prisoners are kept in solitary confinement (EL4 §31). He noted that the likely decision maker for the imposition of SAMs in Mr. Assange's case is the CIA head Gina Haspel and notes that Mr. Assange campaigned against her nomination by President Trump (EL4 §31). He repeats evidence provided by others regarding the impact of solitary confinement. He is concerned that Mr. Assange has already been characterised as a threat to national security without real analytical scrutiny of his actual risk and consequences this might have for the conditions of his incarceration.

5. Regarding post-trial detention, Dr. Lewis confirmed that the U.S Bureau of Prisons ("the BOP") is solely responsible for the designation decision. There are five classifications for prisons: minimum, low, medium, high and administrative security. After conviction SAMs prisoners are generally held in ADX Florence. There are at least four Espionage Act national security prisoners held there now and they tend to be located on H block. He describes the conditions at the prison from open source materials. He states there is no meaningful review of this confinement (EL4 §29).

6. Regarding mental health treatment in prison, he considers US prisons to be woefully understaffed especially in relation to mental health services. Whilst a protocol exists for dealing with suicidal prisoners, Mr. Kromberg cannot vouch for its efficacy. He referred to the failure to prevent Jeffrey Epstein, one of the highest profile prisoners in the US prison estate, committing suicide notwithstanding the measures that had been put in place. He considered Mr. Kromberg's account of conditions to offer an inaccurate picture within the BOP. He referred to a report from 2018 by Christie Thompson and Taylor Eldridge which states that although the BOP in 2014 implemented a new mental health care policy, it did

so by lowering the number of inmates designated for high care levels by more than 35%. The report states that increasingly prison staff are determining that prisoners, some with long histories of psychiatric problems, do not require any routine care at all (EL4 §22). He referred to a report from the Marshall Project, which analysed records obtained from the BOP and concluded that "*[t]he combined number of suicides, suicide attempts and self-inflicted injuries have increased 18 percent from 2015—when the bureau began tracking such figures—through 2017*" (EL4 §23). He noted budget cuts to the BOP lead to a hiring freeze in 2017 which became permanent and which has led to a 14% staffing decrease in the prison system (EL4 §24).

7. He is aware of the decision of the European Court in *Ahmad & Ors. v. UK* but considered the finding regarding solitary confinement to be out of date. He considered segregation in the US to be more prevalent, less closely monitored and imposed for "vastly longer" periods of time then envisaged by the European Court (EL4 §28). He states all 400 prisoners at ADX Florence live in a form of solitary confinement and referred to the 2017 "Darkest Corner" report on the BOP's use of SAMs.

8. He considers the risk to Mr. Assange's health is especially acute during the coronavirus. crisis (EL4 §38) noting that in July 2020 the BOP reported that 4.7% of its prison population had tested positive for Covid-19. He considers Mr. Assange's ability to meet with his lawyers in person will be impacted during this crisis noting the ADC website indicates that inmates can only meet their counsel via video conference. No assurance has been given that videoconferences are not monitored and he has reason to fear that they will be.

9. In relation to accessing classified prosecution material, Mr. Assange's defence team will be "severely limited". The Classified Information Procedures Act (the "CIPA") provides the statutory framework. It enables the Government to apply for a "protective order" restricting disclosure to information the court considers "relevant and helpful". The defence are hampered by not being able to review the information they seek. From his personal experience the process is "extremely slow and cumbersome" and in this case the number of documents will prolong this process. Even when security clearance is granted, there are restrictions on downloading and printing materials. Although the court has the power under the CIPA to dismiss an indictment where the Government insists classified information

ought not to be disclosed, the court may not do so where the "interests of justice would not be served". In addition, the Government uses classification "extremely aggressively" in relation to documents which did not implicate national security. He concluded that it was exceedingly unlikely that documents critical to Mr. Assange's defence will be made available to him or his counsel and that "it will also make defence preparation extremely difficult, if not, in some regards, impossible".

10. Regarding Mr. Assange's possible sentence, Dr. Lewis concludes (EL1 §48) that he is highly likely to receive a sentence that will constitute the rest of his natural lifespan. The sentencing judge has a discretion to impose consecutive or concurrent terms and would take account of sentencing guidelines, the defendant's previous convictions or "bad acts", the nature and gravity of the offences, the character of the defendant and his remorse. The guidelines are not mandatory but authoritative. He considers a "best case scenario" is 20 years imprisonment. He noted that Ms. Manning received a sentence of 35 years for 17 charges (and that the Government asked for 60 years) although he accepts there are some differences in the military court in which her sentence was imposed. He notes that the Government has the power to seek, and the court to impose the maximum sentence and that the court is not restricted to considering conduct alleged in the indictment. He names other WikiLeaks revelations which could be taken into account for sentencing purposes. He considers that high profile espionage cases are generally treated as unusually severe. He refers to the hostility expressed by the president that such conduct is deserving of the death penalty. He refers to other espionage cases which have resulted in "extreme" sentences. He notes that no assurances regarding the sentence the government will seek have been offered. Nor has he offered assurances about the location and conditions of his detention, something he regards as "extremely concerning" (§19). Regarding the possibility of parole he stated this was eliminated by the Sentencing Reform Act 1984 but accepted that prisoners are able to receive reductions in their sentences for good conduct, limited to a maximum reduction of 15% of the total sentence.

11. Regarding the role of "plea bargains", Dr. Lewis stated that the possibility of being convicted of offences that will result in a de facto whole life sentence, will result in substantial pressure on Mr. Assange to plead guilty to lesser charges that result in a lower sentence. He considered that the severe sentences available to the court and the prosecutor's "unparalleled" discretion to prefer charges, have led to a situation where few federal

defendants are able to exercise their right to trial. He stated that sentences in the US criminal justice system are longer then are found elsewhere in the world, brought about by sentences that run for longer than 100 years, sentences of life without parole, the death penalty and a system of "mandatory minimum" sentences.

12. Regarding the political motivation behind the Request, Dr. Lewis deals with the history of the proceedings in his second and third statements before concluding at EL2 §4 that there is overwhelming evidence that the prosecution is politically motivated. During his campaign, Donald Trump celebrated Wikileaks by proclaiming "I love WikiLeaks", and welcomed the benefit that came from Wikileaks' release of the hacked Democratic National Committee emails (EL2 §11). However later according to Dr. Lewis he "very much wanted" to prosecute him (EL2 §11). He stated his various opinions that WikiLeaks and Mr. Assange posed a threat to the legitimacy of President Trump's 2016 election campaign that the President as "desperate to squash [the threat] by diverting attention and imprisoning Mr. Assange" (§33); President Trump wished to prosecute Mr. Assange "to deflect attention away from the 2016 election leaks and to attack an unpopular foreigner and try to put him in jail for the rest of his life" (EL2 §12); and later "[President Trump] wants to put Mr. Assange in jail and keep him quiet" (EL2 §36). He considers President Trump to have a "special personal vitriol towards leakers" (EL2 §C) His campaign and presidency had been plagued by leaks and he became "furious" about embarrassing leaks (EL2 §21). On 16 February 2017, shortly after his election as President he stated "*We're gonna find the leakers We're going to find the leakers, they're going to pay a big price for leaking*". In addition there was "tremendous anger" by the incoming administration that Ms. Manning's sentence was commuted by President Obama. He refers to comments made by the administration against those involved in leaks including Vice President Elect Pence who stated "*to commute Pte Manning's sentence was a mistake. Pte Manning is a traitor and should not have been turned into a martyr*" (EL2 §22); comments made by Mike Pompeo, then CIA Director on 13 April 2017 calling WikiLeaks a "*non-state hostile intelligence agency*", later stating that "*WikiLeaks will take down America any way they can*"; and comments made by Attorney General Sessions during 2017 of his intention to "*go after and imprison leakers of all kinds*" (§25).

13. He notes the procedural history; that Ms. Manning was arrested in 2010 and convicted in 2013 but that Mr. Assange was not indicted on related charges until 2018. He accepts that

he does not work in the DOJ but he has watched the signals from the Department. He cites the report by Sari Horwitz in the Washington Post from 25 November 2013 which quotes Matthew Miller, the former spokesman for the Obama Justice Department, stating: "*The problem the department has always had in investigating Julian Assange is there is no way to prosecute him for publishing information without the same theory being applied to journalists. And if you're not going to prosecute journalists for publishing classified information, which the department is not, then there is no way to prosecute Assange"* subsequently called "The New York Times problem". Ms. Horwitz quotes a senior official stating that the DOJ had "*all but concluded*" that it would not bring a case against Mr. Assange. Dr Lewis regards this statement as a clear indication that the Obama administration had reviewed Mr. Assange's conduct and determined that it could not, consistent with the First Amendment, prosecute him (EL2 §14). Ms. Horwitz quotes a senior US official, she is a well-respected journalist (a four-time Pulitzer Prize winner) and no one has denied Mr. Millar's account. Nothing had changed regarding the facts and evidence (EL2 §18) yet the Trump administration sought an indictment.

14. President Trump has publicly stated that he expects the Attorney General to pursue his political agenda, and Dr. Lewis considers it "a virtual certainty" that the decision to seek this indictment was made by the Attorney General. The initial single count indictment was returned whilst Jefferson Sessions was Attorney General and four months after Attorney General Barr took office prosecutors filed an 18-count superseding indictment. On 21 April 2017 Attorney General Sessions publicly stated that Assange would be pursued as part of a new initiative to go after and imprison leakers: "*We are going to step up our effort and already are stepping up our efforts on all leaks*" (EL2 §25). After Attorney General Barr was appointed, the Superseding Indictment and the maximum prison sentence increased from 5 years to 175 years. He is described by Dr Lewis as a longtime Republican lawyer who has "*exhibited an unprecedented willingness to bend the DOJ to serve Trump's personal political agenda and the superseding Indictment is evidence of that*" (§37). He held up publication of the Meuller report and (§39) and has taken an unprecedented role in trying to investigate the president's political rivals, for example in relation to Vice President Biden and his son in the Ukraine. He has indicated he will have sole and final power on who is prosecuted where there are political issues involved (EL2 §41). Dr. Lewis refers to the case of Roger Stone, in which the DoJ withdrew its sentencing memorandum after a tweeted intervention by President Trump. Dr. Lewis describes this as "*transparent political*

overruling of the DOJ sentencing recommendation of a political friend of a US President" (§43), stating that he has never seen anything like it. He also referred to the case of Retired General Michael Flynn against whom the Department dropped charges, notwithstanding his guilty pleas. 2000 former FBI and DOJ officials called on the Attorney General to resign in light of this decision.

15. In summary he considers the absence of charges between 2010 and 2018 to be a clear signal that the decision had been made not to prosecute Mr. Assange. It was only when President Trump took power and began to use the Department to further a political agenda that this decision was reversed. He stresses that if Mr. Assange is extradited, he will be prosecuted by an agency led by an attorney general who has repeatedly ordered prosecutors to follow President Trump's personal and political agenda, and that this agenda is strongly biased against Mr. Assange (§63).

16. In relation to the International Criminal Court (the ICC) he states that in November 2017, ICC Prosecutor Bensouda made a request to the pre-trial chamber to open a formal investigation into US war crimes in Afghanistan (EL5 §13). He is in no doubt that the 91,000 "Afghan War Diary" documents would have been important to any ICC investigation (EL5 §16). He identifies the hostility shown by the Trump administration towards the ICC including a statement by Secretary of State Pompeo on 4 December 2018 that he was denying visas to ICC personnel involved in the investigation of US personnel in Afghanistan or their allies (EL5 §20); and on 11 June 2020 the issuing of an Executive Order blocking assets of any non-nationals who had assisted the ICC in their investigations.

17. He noted that the Espionage Act has not been used in over a century to prosecute the publication of information by a person who is not the leaker of the information (§11). He stated his view that Mr. Assange is a journalist who received confidential documents of public interest and published what he believed the public had a right to know.

18. In cross-examination Dr. Lewis accepts prior to giving evidence he had written an opinion piece for the Independent newspaper and had given a radio interview with RN Breakfast, Australian Broadcasting expressing the view that Mr. Assange should not be extradited.

19. He confirmed he has never visited the ADX in Florence. He has not visited the ADC since 2018. Dr. Lewis did not consider Mr. Khattala's trial a complete denial of justice. Mr. Khattala had been on trial for some very serious terrorism offences and was acquitted of 14 out of the 18 charges including 4 murder charges. He accepted that prosecutors had taken the courageous decision to withdraw the capital offence, and that the government argued for a life sentence but received a sentence of 22 years imprisonment. He accepted that although Mr. Khattala was subject to SAMs, he and his team managed to spend many hours with him, although the process was neither easy nor rapid and there were serious issues with classified information. He accepted that SAMs did not prevent him going to trial, nor did SAMs prevent his acquittal on some charges. Legal visits were recorded although he accepted they were told that the team who reviewed the recordings were different from the prosecution team. He pointed out some practical and logistical obstacles which prevented unlimited legal visits, such as the fact only one room could be used and if it was in use the legal visit could not take place. He confirmed he has not visited the ADC since the Covid-19 pandemic. His response to being told there is not a single case of Covid-19 at the ADC was that nearly 12% of the prison population have it.

20. Regarding detention conditions, he considered 22 hours a day with no contact with the rest of the prison population, over a long period of time, causes people to deteriorate markedly. He accepted there was a break schedule but this typically took place in the middle of the night. He agreed there was a procedure for deciding whether to impose ADSEG. He accepted that the ECrtHR in the *Ahmed* case rejected complaints made regarding the imposition of pre-trial SAMs and conditions in the ADX as manifestly ill-founded and that the court took into account the mental state of the applicants when considering whether their incarceration in the ADX met Article 3 standards. He believes there is much more information available now and that if the court had this body of evidence he would expect it to have reached a different conclusion. In relation to his statement that Mr Assange will not receive adequate mental health care in a US prison he accepted he was not a medical expert but relied primarily on the published statement by the Inspector General of the BOP and the Yale law school study of Supermax prisons and other material. In relation to the *Cunningham* litigation he considered it had improved conditions in some ways but in other ways things had got worse.

21. Regarding sentence he accepted that a tiny fraction of federal defendants receive a statutory maximum sentence. He accepted the differences in the parole procedure between the military and criminal justice systems. The case of *Sterling* was put in which the defendant was charged with the same counts as Mr. Assange but faced an additional count of mail fraud and the obstruction of justice. He faced a total of 130 years imprisonment and received 42 months. The case of *Allbury* was put in which an FBI agent who passed on an internal FBI document faced a maximum of 20 years and on 18 October 2018 received 49 months. He accepted that the longest sentence ever imposed for a case tried under the Espionage Act is 63 months. He accepted Mr. Assange does not face a mandatory minimum sentence and that any sentencing decision is for the federal judge to make. It was put to him that in Mr. Assange's case Judge Claude Hilton has been assigned. Dr. Lewis agreed he is highly experienced and although his reputation is for strict sentences he did not question his integrity.

22. Regarding political motivation he did not accuse Mr. Kromberg of bad faith but considered that Mr Sessions pressured the eastern district of Virginia to bring an indictment. He confirmed his opinion that President Trump wishes to put Mr Assange in jail and keep him quiet which was based on an extensive review of documentation. He accepted he had written no peer reviewed academic publications on political science.

Thomas Durkin

23. Mr. Durkin gave evidence and adopted his witness statements dated 17 December 2019 and 10 February 2020 confirming that they were true to the best of his knowledge and belief. All paragraph references below refer to his statements. He is a US attorney and partner at Roberts & Durkin. Between 1978 to 1984 he served as Assistant US Attorney for the Northern District of Lenoir in Chicago, prosecuting a wide variety of federal criminal cases, before setting up his own defence practice in 1984, largely defending in federal criminal cases His qualifications are set out in full in §§1 to 6. The materials made available to him are set out at §7.

24. Regarding access to classified material, Mr Durkin describes how this is accessed and viewed. It can only be viewed by lawyers granted security clearance, in a Secured Compartmentalised Information Facility (SCIF), a sealed soundproofed and electronically regulated room in the federal courthouse. The computers kept in SCIF he describes as

cumbersome to operate and an advocate must manage without their usual support from secretaries or paralegals. Communications are limited to cleared co-counsel in the SCIF or over a specifically secured telephone line. The classified materials themselves or information derived from them cannot be shared with the defendant. As Mr. Assange's case will almost exclusively involve classified evidence, he questions his lawyers' ability to mount a meaningful defence. These factors will also vastly increase the cost of representation (§s 9 to 13).

25. Regarding his access to the material from prison, Mr Durkin states that pre-trial detention severely compromises attorneys' ability to meaningfully review materials with their client. This will be exacerbated if he is placed in administrative segregation or SAMs. Visiting hours are limited to three three-hour windows between 8am and 10pm for six days per week (§16).

26. Regarding plea bargains Mr Durkin refers to a report, "The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save it (2018)" and in particular to its conclusion that "there is ample evidence that federal criminal defendants are being coerced to plead guilty because the penalty for exercising their constitutional rights is simply too high to risk". He notes the government's ability to limit a defendant's exposure to the number of counts in the plea agreement, a further incentive not to risk trial. He confirmed that the requirement of a plea would be full co-operation with the authorities and this could include the disclosure of source information. Trial by jury occurs in less than 3% of state and federal criminal cases. In his view Mr. Assange will face enormous pressure to plead guilty (§18).

27. Regarding sentence, he considered that Mr. Assange would likely receive a sentence of imprisonment that will constitute the rest of his natural lifespan (§23). In the sentencing exercise, after identifying an appropriate starting point he arrives, on the guidelines, at a range from 38 to 40 to 43 which translates to a range of between 30 and 40 years imprisonment although he acknowledges that the sentencing decision is for the court. He considered it quite likely that Mr. Assange would be sentenced for conduct totally unrelated to the charge for which he was extradited (§22). His opinion is based on the fact that a sentencing court has almost unfettered discretion to determine the information it will hear, including conduct that has been proved by "a preponderance of evidence".

28. He considered it "virtually unheard of "for a grand jury to refuse to go along with charges presented to them, this happens once every four or five years

29. In cross-examination he did not accept that the defendant would be able to review classified evidence; he did not know what issues Mr. Assange would raise at trial; his view that it would be impossible for Mr. Assange to review discovery information was based on the number of documents disclosed in the case. In relation to sentence he accepted that "other" conduct in the sentencing exercise was taken account of as an aggravating feature and not as punishment. Regarding political motives he considered that the Obama administration, under Attorney General Holder had made a decision not to charge Mr Assange; his guess is that the case was probably declined, that is they decided not to go ahead, and that President Trump decided to reinstate the charges. He accepts that his knowledge is based only on newspaper reports. He did not know that Matthew Millar when he gave his interview to the Washington Post had left the DOJ two years earlier.

30. In re-examination he was taken to the news report of 15 November 2013. He noted that the DOJ did not contradict the report at the time, and that in his experience they would have corrected this. He regarded the comments that two senior prosecutors, James Trump and Daniel Grooms, strongly disagreed with the charging-decision, as a reliable source as their position is "legally sound" and it made sense. Regarding the "trial tax" he confirmed that it was a matter for the prosecutors to decide which charges to bring, and a plea to fewer charges could protect a defendant from going above the maximum penalty.

JOURNALISM

Professor Mark Feldstein

31. Professor Feldstein gave evidence and adopted his witness statements dated 12 January 2020 (MF1) and 5 July 2020 (MF2), confirming that they were true to the best of his knowledge and belief. All paragraph references below refer to his statements. His background and qualifications are set out in full in §1 of his first report and a full curriculum vitae is appended. He is a journalism historian and professor at the University of Maryland. Between 1979 and 2002 he worked as an investigative reporter at CNN, NBC News, ABC News and local television stations in the US. He was asked to evaluate whether Mr.

Assange is a journalist and entitled to protection under the Constitution, the implications of this indictment for journalism, and the political dimensions of the case. He was not paid to give evidence in this case but attended on a "pro bono" basis.

32. Regarding President Trump's campaign against the press, Professor Feldstein states that President Trump has waged an unprecedented and relentless campaign against individual journalists and the news media. He cites examples of the president's denunciation of the news media including his description of journalists as "*enemies of the people*" or purveyors of "*fake news*" more than 600 times. He states these attacks are not limited to words and provides examples of the interventions by the Trump administration, including an escalation in the number of criminal investigations into journalistic leaks. In Professor Feldstein's view the prosecution of Mr. Assange is part and parcel of its campaign against the news media as a whole (MF1 page 3).

33. He described journalists and news media outlets as "information brokers" (page 4) and the essence of journalism as gathering and publishing newsworthy information and documents for the public. He believes that WikiLeaks is a digital publication, however unorthodox, and that Mr. Assange is unmistakably its publisher (page 5), describing him as one of the most consequential publishers of our time (page 6) as a result of the significance of the information he has revealed, and his pioneering use of the encrypted digital dropbox to protect whistleblowers. He acknowledged this view is not shared by all journalists. Regarding the allegation that Mr. Assange attempted to help Ms. Manning crack a passcode hash, he stated that generally speaking, trying to help protect a source as a journalist is an obligation. This includes techniques from the use of pay phones to code words, encryption and removing fingerprints.

34. Professor Feldstein at §4, set out some of the disclosures made by Mr. Assange (page 7) and reports their huge importance.

35. At §5 he provides a brief history of the publication of government secrets beginning in the 1790s. He quotes Max Frankel who, in summarising the relationship between government and the press describes a "game" in which "the Government hides what it can, pleading necessity as long as it can, and the press prize out what it can, pleading the need and the right to know" (page 11).

36. Regarding the harm caused by publishing national security information, he argues that the government has frequently exaggerated harm. He questions whether records described as "secret" have been over-classified, even to the point of absurdity, quoting a Supreme Court Justice, Potter Stewart, as stating "*when everything is classified, then nothing is classified, and the system becomes one to be… manipulated by those intent on self-protection or self-promotion*" (page 12). He quotes a scholar of the history of journalistic leaking saying: "*there is scant evidence that national security has been harmed in any significant way by the disclosure of government secrets*" (page 13). He refers to the Pentagon Papers as the most famous example of the government invoking national security to cover up its mistakes. He also considers there to be a "leaking double standard" (page 15): the government denounces officials who leak national security information they find embarrassing but leak their own classified information "with abandon" when it serves their needs. He stated there were thousands of examples and provides several on pages 15 and 16.

37. At §8 Professor Feldstein describes how whistle-blowers usually unsuccessfully try to get a response to their concerns from a government agency and then go to the media. He confirmed that there is a long history of the press publishing this kind of material yet no administration has ever before indicted a publisher. Material from whistle-blowers is published on a daily basis but the publisher is not prosecuted because the government fears breaching the First Amendment. Further there has always been a source/distributor divide. He cites examples of highly politicised cases in which presidents have tried unsuccessfully to exert pressure on their Justice Department appointees to file criminal charges against journalists (page 16). There are examples of presidents "going after" journalists but never to the point of a grand jury returning charges. He gives the example of President Nixon's wish to have Jack Anderson prosecuted.

38. He considers the decision to indict Mr. Assange to be a political one. In summer of 2010 the Obama administration began an "aggressive criminal investigation" of both Mr. Assange and Ms. Manning. FBI and CIA officials argued that Mr. Assange should be indicted. In 2013, after a three-year probe and months of internal debate, the Justice Department concluded that the First Amendment protected Mr. Assange's disclosures. Professor Feldstein cited the report by Sari Horwitz in the Washington Post from 25

November 2013 This he considers appears to be an authorised article coming from top levels of the justice department. He considers the account reliable and based on reliable sources.

39. He cited reports in both the New York Times and the Washington Post from 20 April 2017 as stating that the new leadership at the Justice Department dismissed the interpretation that Assange was legally indistinguishable from a journalist and reportedly began "pressuring" prosecutors to outline an array of potential criminal charges against him, including espionage. He cites a report from the Washington Post of 24 May 2019 stating that two prosecutors, James Trump and Daniel Grooms, argued against this on First Amendment grounds. The article states "*the Justice Department did not have significant evidence or facts beyond what the Obama-era officials had when they reviewed the case*" and concluded that the decision to indict Assange was not an evidentiary decision but a political one. He also referred to the report of April 2017 in which CIA director Mike Pompeo publicly attacked WikiLeaks as a "hostile intelligence service" that uses the First Amendment to "shield" himself from "justice." (p.21). He notes that a week later, Attorney General Sessions said at a news conference that journalists "cannot place lives at risk with impunity," that prosecuting Assange was a "priority" for the new administration, and that if "a case can be made, we will seek to put some people in jail (p.21).

40. Professor Feldstein notes that Mr. Assange is not charged with spying, but with soliciting, receiving and publishing national defence information. He considers that Mr. Assange is doing no more than what many investigative reporters in the US already do. The reporter-source relationship as a constant back-and-forth between parties, and good newsgatherers actively solicit their sources for information including by aiding and abetting their whistleblowing sources (page 22). Mr. Assange is accused of posting a detailed list of "Most Wanted Leaks" but this is merely a bolder and more imaginative form of newsgathering, differing only in degree from the kind of solicitations journalists routinely post on social media sites (page 21). Mr. Assange is accused of receiving these documents through the WikiLeaks dropbox, but these are routinely used by leading news outlets in the US to solicit anonymous leaks of sensitive records (page 21). In his view "*good reporters don't sit around waiting for someone to leak information, they actively solicit it*" (MF2 §2). Mr. Assange is accused of receiving documents, but says Professor Feldstein, "*obtaining or receiving information is the whole point*". He is accused of publishing information, but

this is the fundamental purpose of journalism, to inform the public (page 22). Mr. Assange's protection of confidential sources is not only standard practice but "*a crucial professional and moral responsibility for reporters*" (page 22). He describes a range of tactics which he and countless other journalists use in order to protect confidential sources, including by granting anonymity, using code words and encrypting electronic communications.

41. By way of conclusion he acknowledges Mr. Assange's deep unpopularity but states this is all the more reason for defending him. He considers Mr. Assange to be a publisher and protected by the American constitution, and the decision to charge him as "*perhaps the administration's most menacing move yet in its battle with the press*" (page 25). He concludes that "*Mr. Assange faces lifetime imprisonment for publishing truthful information about government criminality and abuse of power, precisely what the First Amendment was written to protect*".

42. In cross-examination he accepted that the government's investigation of Mr. Assange continued through the Obama administration into the Trump Administration but maintained that he was not indicted until the Trump \administration took office and it is said there was no significant new evidence in the case. He confirmed that he had never said there was not an on-going investigation, merely that the Obama Administration had made a decision not to prosecute.

43. Regarding the "New York Times principle", Professor Feldstein accepted that journalists are not above the law. He accepted that journalists are not entitled to hack into computers to get newsworthy material and that government insiders can be prosecuted for leaking. He accepted that third parties are not allowed to help government employees but "help is where we start to get into squishy areas about what exactly was done". He did not contest that publishing the names of people who could easily be killed created an obvious risk to their safety and agreed that their names should not have been published. He accepted that there is information that it is proper for the US government to be able to keep secret. He accepted he has not read the evidence against Mr. Assange. He stated that his belief that the prosecution was politically motivated was based on the unprecedented nature of the prosecution, the framing of the indictment in such broad terms, and President Trump's poisonous vitriol when it comes to the press. He considered a theory put forward by Eric

Lewis that President Trump is seeking Mr. Assange's prosecution to keep him quiet, following the help WikiLeaks gave to him, not to be credible but to be sheer speculation.

44. In re-examination he confirmed that in relation to the Pentagon Papers case, the New York Times was very active in obtaining records including Neil Sheehan, a reporter, using a key to the room in which the documents were and looking at them, perhaps copying them. He confirmed tabloid newspapers paid sources for information. He considered that if cajoling sources by directing them to what information is needed, and sending them back to get more information is conspiring with the source, then investigative journalists would be criminals.

45. He confirmed the phrase, "a grand jury would indict a ham sandwich" is a common expression.

Trevor Timm

46. Mr Timm adopted his undated witness statement confirming that it was true to the best of his knowledge and belief. All paragraph references below refer to this statement. His qualifications are set out in statement at §§ 1 to 4. Mr Timm is co-founder and executive director of the Freedom of the Press Foundation, a non-profit organisation founded in 2012. He graduated from law school in 2011 and has been writing about press freedom and how it interacts with the First Amendment for about 10 years.

47. In Mr. Timm's opinion the decision to prosecute Mr. Assange encroaches on fundamental press freedoms (§7). WikiLeaks pioneered a secure submission system for journalistic sources. FPF itself developed a tool described as an open source version of a whistle-blowers submission system called "SecureDrop". It is now available in ten languages and used by more than 80 media organisations worldwide including The New York Times, Wall Street Journal, Associated Press, USA Today, Bloomberg News, CBC, and The Toronto Globe and Mail. By way of example, David Fahrenthold from the Washington Post who recently won a Pulitzer prize, includes in every email that he sends "to peddle a source", a link to the Washington Post SecureDrop. Some news organisations advertise the existence of drop boxes in order to target whistle-blowers. He cites a tweet from his own organisation which states "*[i]f you work for the Trump administration and your conscience compels you to blow the whistle, you can use the SecureDrop to contact the press.*"

48. He does not consider that acts which encourage or solicit a whistle-blower to commit a crime to be criminal and WikiLeaks is not unique in asking for leaked documents. He describes, as others have in this case, the relationship between the journalist and their source in which journalists ask for information from their source, return to them for more information and ask for clarification, evidence or documentation to substantiate a claim. Every single reporter receives documents whether they have asked for them or not. Some outlets invite newsworthy information including explicitly stating "leak to us" (§14). Others have run advertisements or made requests through Twitter encouraging whistleblowers to get in touch through their SecureDrop. Mr Timm himself published an article in 2014 specifically calling for the leak of the classified version of the Senates Committee report on CIA Torture (§17) and dozens of journalists were asking for the same; it has never been suggested that this was a criminal activity.

49. WikiLeaks began as a "wiki", a publicly editable, collaborative project created by its contributors. WikiLeaks is not the only organisation involved in the development of a "Most Wanted Leaks" list; the Centre for Democracy and Technology maintained a similar list in 2009 (§28). He does not consider that posting a list positively asking for classified information to be criminal, but to be firmly entrenched in the free speech rights of anyone in the US.

50. The rest of his statement largely repeats evidence given by other witnesses in this case. It deals with President Trump's attacks on the freedom of the press. He repeats the well-known description of the relationship between Government and journalists of Max Frankel. He repeats the history of the prosecution under the Obama and Trump Administrations. He provides several examples of presidents who have threatened to use the Espionage Act against reporters but ultimately concluding that this would be unconstitutional. He considers these charges to be "*the most significant and terrifying threat to the First Amendment in the 21st century*" (§41).

51. In cross-examination he stated the FPF has contributed around $100,000 to the costs of Mr. Assange's case which will not be reimbursed. He is not a full-time reporter so does not personally feel threatened by this prosecution but believes everybody should be fearful of this case. He considers there are several charges in the indictment that deal with the mere

fact of possessing documents. Some charges relate all to documents and are not limited to those which name sources. The US Government is essentially saying that possessing these documents or communicating with a source and asking them for more information, is a crime. Also, the government is not alleging that Ms. Manning and Mr. Assange were conspiring to break a password to steal more documents, but to keep Miss Manning more anonymous. He accepted that he has not seen the evidence. He accepted that the grand jury found probable cause to indict Mr. Assange on all charges. Regarding the publication of unredacted documents he stated that no court has ever said that the publication of names is potentially illegal and many First Amendment scholars, would consider this conduct to be protected. He also considers that where, as happens in some cases, some harm might result, journalists are still protected.

52. In relation to the "war on journalism", since 2016 President Trump has tweeted over 2,200 times insulting the press, sometimes calling them the enemy of the people and threatening legal action. He considers that President Trump has had probably the most hostile relationship with the press since President Nixon. He referred to mountains of evidence that he and his administration have looked for ways to abuse the legal system to go after journalists. He accepted that federal prosecutors have rules against politically motivated prosecutions and was not saying they had breached these rules; he hoped they would be held to account if they did.

Nicolas Hager

53. Mr Hager adopted his witness statement dated 18 July 2020 confirming that it was true to the best of his knowledge and belief. All paragraph references below refer to this statement. His background is set out in §1. He is an investigative journalist and author living in New Zealand.

54. Mr. Hager set out his own work as an investigative journalist. He stated that events that had been hidden and denied for years only became possible to write about with the confidential sources found in open sources, and the most important of these were the WikiLeaks materials. He believed that claims of harm are frequently made by governments when classified information is revealed, and these claims are later shown to be wildly exaggerated. He deals with the importance of the Afghan and Iraq war diary releases to his own work. He had used them extensively. He considered that they provided the public with

an insight into the terrible everyday realities of the war and were an outstanding example of information that served the public interest. In relation to the Collateral Murder video he considered the words of the pilots involved in the incident to have had a profound effect on public opinion. The special tactical directive which changed all the rules on civilian casualty precautions in Afghanistan, were a direct result of these disclosures.

55. In November 2010 WikiLeaks offered him advance access to the US embassy cables relating to New Zealand and Australia and he visited the UK and met with Mr. Assange. He found WikiLeaks staff to be engaged in a careful and responsible process (§16). He was asked to identify cables that should not be released including for reasons of the personal safety of named people, as part of a rigorous process to use local eyes to recognise risks and decide which areas should be redacted.

56. On a personal note he found Mr. Assange to be thoughtful, humorous and energetic. He saw nothing of the awful, difficult person that he is often portrayed in the media but a principled person who had devoted himself to making the world a better place.

57. In cross-examination he accepted Mr. Assange is not charged with publishing the Collateral Murder video and has not been charged with the publication of any material that Mr. Hager relied on in his work. He confirmed that he has never conspired with a government official to crack a government password so they could hide their tracks when stealing classified information. However he stated, as other defence witnesses did, that an investigative journalist not only actively works with sources, they go out and find sources and encourage them to produce evidence that will back up what they have said. He confirmed that he would not publish the names of third parties where it was unnecessary to do so, knowing that to publish the unredacted story would put those persons lives in danger. Mr. Hager stated that he did not agree with the statement allegedly made by Mr. Assange in London in August 2010 "*We are not obligated to protect other people's sources, military sources or spy organisation sources except from unjust retribution and in general, there are numerous cases where people sell information or frame others or engage in genuine traitorous behaviour and actually, that is something for the public to know*". He confirmed that he did not need the names of informants in order to be able to extract value from the leaked sources and write his book. He confirmed that his comment regarding claims of harm being wildly exaggerated related to his own work and not the current allegations. He

confirmed he received a few hundred cables to look at but in relation to the countries he was looking at none involved human sources. He confirmed that it was the defence who suggested that he included reference to the rules of engagement in his statement alongside the Collateral Murder video account.

58. In re-examination he confirmed that the rules of engagement are directions to staff about when to use force and that they provide a yardstick to judge whether staff were acting within these rules; their disclosure enabled the rules to be evaluated. He had been happy to include reference to these rules at the request of the defence and saw for himself the link to the Collateral Murder video.

Noam Chomsky

59. Noam Chomsky's statement dated 12 February 2020 was read by agreement. All paragraph references below refer to this statement. Mr. Chomsky is currently based at the University of Arizona where he is Laureate Professor of Linguistics and the Chair of the Agnese Nelms Haury Program in Environmental and Social Justice. He is the recipient of numerous honorary degrees from a number of prestigious universities and a member of a number of professional and learned societies both in the US and abroad. His qualifications are set out in full in §§1 to 5. He has been asked whether Mr. Assange's work and actions can be considered to be "political" (§6).

60. Mr Chomsky's opinion, set out at §9, is as follows "Julian Assange's actions, which have been categorised as criminal, are actions that expose power to sunlight – actions that may cause power to evaporate if the population grasps the opportunity to become independent citizens of a free society rather than subjects of a master who operates in secret. That is a choice and it's long been understood that the public can cause power to evaporate". Mr Chomsky states that power is the huge public relations industry that is used by the elite to control the attitudes and opinions of the public who had won too much freedom. One device to control the population is to operate in secret so that "the ignorant and meddlesome outsiders will stay in their place, remote from the levers of power which are none of their business" (§12) and "that's the main purpose of classification of internal documents" (§12). He states, "anyone who has poured through the archives of release documents has surely come to realise pretty quickly that what is kept secret very rarely has anything at all to do

with security, except for the security of the leadership from their domestic enemy, their own population" (§12).

61. He states his view that Mr. Assange "in courageously upholding political beliefs that most of us profess to share, has performed an enormous service to all the people in the world who treasure the values of freedom and democracy and who therefore demand the right to know what their elected representatives are doing" (§14).

Michael Tigar

62. Mr. Tigar's witness statement dated 17 January 2020 was read by agreement. All paragraph references below refer to his statement. Professor Tigar works in parallel as a practising lawyer and an academic. His qualifications are set out in full on page 1.

63. Professor Tigar provided a brief description of "whistleblowers" and journalists specialising in uncovering and reporting wrongful government and corporate conduct. He characterised the work of WikiLeaks and Mr. Assange as both, stating they have "proven to be that of a whistleblower news agency and journalists", using techniques common to both. He considers the dropbox to be a feature of 21st century journalism. He also states that "guidance as to areas of potential interest whether general or specific is the act of an editor who knows what is newsworthy and assistance with passwords, usernames and how to transmit relevant information safely, is what news agencies and journalists do" (page 2). He provides examples of news organisations who provide instructions and advice to would-be whistleblowers, including the online NBC News and ABC News in Australia.

64. Professor Tigar identifies the importance of many of the documents on the WikiLeaks website, in particular the Guantánamo detainee assessment briefs and rules of engagement. He commented on the overclassification of documents and considered it had become a mechanism to deny a defendant justice.

POLITICAL MOTIVATION

Professor Paul Rogers

65. Professor Rogers gave evidence and adopted his report dated 12 February 2020, confirming that it was true to the best of his knowledge and belief. All paragraph references below refer

to his report unless otherwise stated. He set out his qualifications at §§1 to 3. Broadly he describes himself as a political scientist specialising in issues on war and peace. He is Emeritus Professor of Peace Studies at Bradford University. He was asked whether Mr. Assange's opinions can be appropriately categorised as "political opinions" (§6) and if so whether his opinions might put him at risk of being the subject of a politically motivated trial. His source material is Mr. Assange's publicly expressed views, including in publications, books and a range of articles and commentary by others on Mr. Assange's work and opinions.

66. Professor Rogers considers Mr. Assange to have quite strong political views. He groups these into three broad propositions. First, Mr. Assange speaks of "collaborative secrecy induced by authoritarian regimes working to the detriment of a population". These views are expressed in a number of essays and he provides two quotations indicating that bad governance should be challenged and "evils" should not be allowed to grow until there is no remedy against them. Second, he puts forward Mr. Assange's views as encapsulated by Professor Yochai Benkler, quoting Professor Benkler's description of WikiLeaks at §B . Third he provides seven examples which illustrate Mr. Assange's view on war from his comments in the period between 2007 to 2019. By way of example, on 8 August 2011, speaking to a Stop the War Coalition rally in Trafalgar Square, Mr. Assange stated the following:

> "We must form our own networks of strength and mutual value, which can challenge those strengths and self-interested values of warmongers in this country and in others, that have formed hand in hand an alliance to take money from the US – from every NATO country, from Australia – launder it through Afghanistan; launder it through Iraq; launder it through Somalia; launder it through Yemen; launder it through Pakistan; and wash that money in peoples' blood". He refers to the "information we have revealed showing the everyday squalor and barbarity of war, information such as the individual deaths of over 130,000 people in Iraq, individual deaths that were kept secret by the US military who denied that they have counted the deaths of civilians… Instead, I want to tell you what I think is the way that wars come to be and that wars can come undone. … It should lead us also to an understanding because if wars can be started by lies, peace can be started by truth."

67. Mr. Assange was nominated for the Nobel Peace Prize by Mairead Maguire in 2019 and awarded the Sydney Peace medal in January 2012. In 2012 he helped form the WikiLeaks party to fight for a seat in the Australian Senate and in doing so made clear his view of the necessity to show far greater attention to human rights by a combination of transparency and accountability. Professor Rogers considers him at heart to be a libertarian, and that his views apply not just to government but to corporations, trade unions and non-government

organisations. In short, he considers that Mr. Assange has a political stance but that this does not fit into conventional politics.

68. Next, Professor Rogers considered the significance of the WikiLeaks materials. He stated that the US government maintained the "fiction" that both the Afghanistan war and the Iraq war had been a success until the WikiLeaks revelations (§25). The WikiLeaks disclosures allowed for a true assessment of the government's claims and brought about a shift in public knowledge. For example, they enabled a proper appreciation of the number of civilians that were killed in the Iraq conflict. The disclosures to have in his view played an exceptionally important part in providing a radically different account of the government's presentation of these conflicts.

69. In Professor Rogers's view the motivation for Mr. Assange's work is "the political objective of seeking to achieve greater transparency in the workings of governments" (§11). He credits the WikiLeaks project with the greater transparency that we now have. He considers that Mr. Assange has expressed views and opinions which demonstrate "very clearly" political opinions (§34). He believed that the "conflicting position on transparency" between Mr. Assange and the government, particularly in relation to the waging of war, leaves Mr. Assange in clear danger of a politically motivated prosecution (§32). He notes that the present administration is seeking to prosecute him for events of almost a decade ago. Mr. Assange is regarded as a political opponent of the government and his opinions and views place him in the crosshairs of dispute with the philosophy of the Trump administration. He referred to comments of Secretary of State Pompeo, the former Attorney General Sessions and the current Attorney General Barr and believes Mr. Assange "*must experience the full wrath of government, even with suggestions of punishment by death made by senior officials including the current President"* (§34). He believes the evidence supports the proposition that this prosecution is motivated by an ulterior political purpose rather than genuine criminal justice concerns. President Trump's reasons for prosecuting Mr. Assange would be: his concerns for transparency and accountability which the administration finds a threat: Mr. Trump's personal antipathy to President Obama; the fact that President Obama took one decision which would be one reason, a significant one, why President Trump would take a different view.

70. In cross-examination he stated that Mr. Assange's political opinion was not transparency at any cost and he did not see evidence that he believed transparency was necessary where it involved the safety of individuals; nor necessarily that secrecy must be exposed for the wider protection of the public. He confirmed the 2019 award was for "journalism, whistle-blowers and defenders of the right to information". It was put to him that the nomination for the Nobel Peace prize was based on the view that he had been arbitrarily detained.

71. He accepted that he had not seen the evidence against Mr. Assange; his opinion that the prosecution was not motivated by criminal justice concerns was based on evidence in the public domain; he accepted that generally prosecutors must act in a manner free from political motivation or bias but he considered there was a "certain degree" of direction coming from above and from a person who is political appointee; he repeatedly stated that he did not say the prosecutors in the case were acting in bad faith and considered staff in the Department would be acting diligently; he maintained there was strong motivation for Mr. Assange to be prosecuted; he also repeatedly queried why Mr. Assange had not been prosecuted when the evidence of the crime had emerged, particularly when there did not appear to be fresh evidence; from a political scientist's view he considered the question to be, "why he is being prosecuted now?" Some of the content of Sari Horwitz's article of 25 November 2013 was put, and he stated that he had no reason to believe the investigation was not ongoing but that its intensity was unclear. In response to Eric Lewis's theory that the prosecution has been brought in order to silence Mr. Assange, he responded that this may have been one motivation but was not the only one.

Daniel Ellsberg

72. Mr Ellsberg gave evidence and adopted his witness statement, confirming that it was true to the best of his knowledge and belief. All paragraph references below refer to his statement. His qualifications and background are set out at §§3 to 5. Mr Ellsberg together with his colleague, made copies of the Pentagon Papers, "top-secret" documents regarding the conduct of the war in Vietnam in 1969, and later in 1971 provided copies of to the New York Times and the Washington Post for publication. The Nixon administration unsuccessfully sought to prevent their publication. He was prosecuted under the Espionage Act for 12 charges carrying a possible maximum sentence of 115 years. He was not permitted at trial to rely on a "justification" or "public interest" defence. His trial ended on 11 May 1973 after it was revealed that a series of criminal actions had been taken by

officials in the Nixon Administration against him, including ordering his aides to look for damaging personal information to destroy his reputation, breaking into the offices of his psychiatrist, unlawful wiretapping surveillance, and a plan to physically attack him in order to "incapacitate" him. Mr Ellsberg is certain he would have been convicted but for these supervening illegal events and he fully expected to go to prison for the rest of his life. He had unsuccessfully tried alternative routes to get the documents into the public domain including attempting to get hearings in Congress.

73. He has studied the WikiLeaks publications of 2010 and 2011 and considers them to be of comparable importance to the Pentagon Papers. He notes the similarities to his own position whereby his exposure of illegality and criminal acts were crushed by the administration, out of revenge but also to prevent future exposure. He considers Mr. Assange's political opinions to be of direct relevance to this prosecution. He has heard and read many of Mr. Assange's public statements on the "anti-war" or "peace" movements and has met Mr. Assange on a number of occasions over the past ten years and engaged in lengthy discussions with him.

74. He considers that not all the documents disclosed were high-level or top-secret. He describes the Afghan and Iraq War Logs as "lower-level field reports" (§27) similar to those he had written as a foreign service officer in Vietnam. The "Collateral Murder" video and rules of engagement were something the American public needed to know about. He concludes with the observation "*I observe that this has been the pattern since in prosecutions under the Espionage Act of whistleblowers seeking to raise the public interest attaching to the publications in question. I noted that the military judge at the trial of Chelsea Manning did not allow Manning or her lawyer to argue her intent, the lack of damage to the US, over classification of the cables or the benefits of the leaks until she was already found guilty*" (§33).

75. In cross-examination he confirmed that he was aware Mr. Assange is not being prosecuted for publishing the "Collateral Murder" video however he is charged with retaining all of the Manning documents including the rules of engagement; Mr. Ellsberg accepted he withheld 4 volumes from publication as he was afraid that releasing documents relating to peace negotiations might lead to the government using the consequent revelations as an excuse for the failure of these negotiations and as an excuse for terminating them; however

he chose not to redact any of the 4000 pages so that no inferences could be drawn from what he had taken out. In one case a document caused risk of personal harm to a named person, a CIA agent involved in the assassination of President Ngo Dinh Diem. He confirmed he was aware of the views of Floyd Abrams (who acted for the New York Times in the injunction proceedings), that the Pentagon Papers were unlike the Wikileaks disclosures; excerpts of Mr. Floyd's article were read to him including his comment "*Can anyone doubt that he [Mr. Assange] would have made those four volumes public on WikiLeaks regardless of their sensitivity or that he would have paid not even the slightest heed for possibility that they might seriously compromise efforts to bring a speedier end to the war*". Mr. Ellsberg did not consider Mr. Floyd to have any understanding of his motives and there was no basis to make a distinction between his disclosures and those of Wikileaks. He considered names could have been redacted if the State Department had co-operated with Mr. Assange; he also considered that not a single person had suffered death, physical harm or incarceration as a result of the disclosures and his attitude would be entirely different if the threats had been carried out to harm these people. Mr Lewis read a passage from a recorded interview from August 2010 in which Mr. Assange stated that it was regrettable that sources disclosed by WikiLeaks may face some threat but that 'we are not obligated to protect other people's sources, military sources or spy organisations' sources, except from unjust retribution". He considered that the harm in having to leave a country or experiencing "momentary anxiety" should be put into the context of Mr. Assange trying to expose the unmitigated war being waged by the US, which has led to 37 million refugees and over a million deaths.

THE OFFICIAL SECRETS ACT

Carey Shenkman

76. Mr. Shenkman gave evidence and adopted his witness statement dated 18 December 2019, confirming that it was true to the best of his knowledge and belief. All paragraph references below refer to his statement. Mr Shenkman's qualifications are set out at the conclusion of his report. He describes himself as a First Amendment attorney, constitutional historian and litigator and an independent commentator on the Espionage Act of 1917. He accepted in cross-examination that he was admitted to the bar in June 2014; he does not currently hold an academic post although he has served on the "Law Review" and has been invited to give lectures at a number of law and journalism schools. Asked about the basis for his

description of himself as constitutional historian, he replied: "*the last decade, reading a lot of books and giving a lot of talks and writing a lot of papers that folks are hopefully reading about constitutional issues and also my experience as a constitutional litigator*". Between 2013 and 2016 he worked for the law office of Michael Ratner, whose firm provided advice to Mr Assange. He does not currently represent Mr. Assange and writes this report in an "individual capacity" (page 28).

77. Mr. Shenkman provided a legislative history of the US Espionage Act passed by Congress on 15 June 1917. When it was first proposed it was considered to be a political Act which not only established harsh penalties for spying for a foreign enemy in wartime, but could continue to apply in times of peace (§3). During the First World War it was used as a tool to target political opposition to the war and nearly 2000 federal prosecutions were brought under the Act during this period (§13). During the Second World War, it was used to curb seditious libel (§17). A number of investigations were also pursued against African American newspapers which advocated for greater civil rights. In summary he considers the Act to be expansive, describing it as having "breadth and malleability" and therefore to allow selectivity and "enormous discretion" (§17) in the initiation of prosecutions.

78. The Act was amended in the 1950s but concerns remained over the threat it posed to the acquisition and publication of defence information by reporters and newspapers (§18). An Executive Order issued by President Truman in 1951, allowed the executive rather than Congress to decide the scope of the phrase "national defence information" by determining what information was classified. In Mr Shenkman's view this allowed the president unprecedented power to effectively decide the scope of criminal law (§20). He cites a 1973 study by professors Harold Edgar and Benno C. Schmidt, Jr., who conducted their study in the wake of the Pentagon Papers litigation and argued that the Act suffered from drafting flaws making it "in many respects incomprehensible" and producing "incredible confusion surrounding the issue of criminal responsibility for collection, retention, and public disclosure of defense secrets." They considered this to be compounded by the absence of provision for a "justification defense . . . permitting a jury either to balance the information's defense significance against its importance for public understanding and debate, or to consider possible dereliction of duty by the employee's superiors".

79. At §34 Mr Shenkman identifies eleven examples of previous attempts to prosecute journalists. The first three (The Chicago Tribune, 1942, Amerasia, 1945 and Pentagon Papers and Boston Grand jury, 1971-1973) involved a grand jury being convened who refused to return an indictment. In Beacon Press, 1972-1974 an on-going investigation was dropped and no charges were issued; in the Jack Anderson case, 1971-1972 and in the remaining cases, threats were made to use the Act but none of these threats came to fruition. In the Pentagon Papers case, on the issue of the whether the press could be restrained from publishing classified information in their possession, the Supreme Court ruled that it could not. In another case, the successful prosecution of Samuel Morrison for disclosing classified photographs to British military journals, a judge of the Fourth Circuit Court of Appeals, in upholding the conviction warned of the "*staggering breadth*" of the Act but considered "*the political firestorm that would follow prosecution of one who exposed an administration's own ineptitude would make such prosecutions a rare and unrealistic prospect*" (§21). He noted the disagreement between the judges who heard this case on the propriety of prosecuting the press under these provisions, with Judge Harvey Wilkinson stating "*Press organisations are not being, and probably could not be, prosecuted under the Espionage Statute*" (§21).

80. In relation to Mr. Assange, Mr Shenkman stated that there is no precedent in US history for the indictment of a publisher for the publication of secrets or for conspiracy to disseminate secrets under the 1917 Act (§32). In addition, there is no precedent for the Act being applied to a publisher extraterritorially (§41). In 2010, the type of publication Mr. Assange is accused of was routine, and there was a practice by the Justice Department not to use the Espionage Act to indict the press. The reasons for this were: primarily First Amendment concerns; ambivalence within the Justice Department about the scope of the Espionage Act; and the difficulties in distinguishing between the individuals they wished to prosecute and media outlets;

81. The 1917 Act was also commonly criticised for not providing a defence of proportionality or public interest (§28). §793 refers to national defence information rather than classified information and there is no requirement on the prosecution to establish a specific intent to harm the US. The Act does not distinguish between categories of people so for example "classic spies, government insiders leaking materials, and private persons and the press who disclose information" are treated equally (§29) and this has led to a history of

capricious enforcement, highly susceptible to political considerations (§41). Defendants have no opportunity to argue "improper classification" of the information or that the disclosure of documents that should never have been kept secret in the first place (§29).

82. Under the Obama administration there were more prosecutions initiated under the 1917 Act then under all previous administrations combined (§23) as the administration aggressively pursued journalists for leaks (§25). The Trump administration has prosecuted disclosures of national security information more aggressively than any presidency in the US history (§30) and is on track to exceed the number of prosecutions under the 2017 Act of the Obama administration.

83. Finally, Mr Shenkman dealt with the Computer Fraud and Abuse Act 1986 ("the CFAA"), originally enacted in 1985 and codified in 1986. Aaron Swartz was prosecuted under this Act after he attempted to download and make free for the public, articles from academic repositories. He committed suicide before the case concluded. Kevin Poulson was prosecuted under the CFAA and 1917 Acts after he was found in possession of an email containing an image of the access screen for the Masnet network (belonging to and used by the army). The charges were dropped after "less contentious" charges were preferred (§39). According to Mr. Shenkman, the prosecution had been politically motivated as Mr Poulson, who had government contracts granting him security clearances, had gained notoriety for penetrating the Pac Bell phone company and uncovering evidence of unlawful FBI domestic surveillance and spying on embassies. He notes that the Act has been described as "one of the most politicized of laws in the US in its use" (§35).

84. Mr Shenkman notes the similarities between the CFAA and the 1917 Act. Subsection 1030(a)(1) of the CFAA which prohibits unauthorised access to a computer system with intent to obtain or disseminate national defence information to persons not authorised to receive it, is identical to §793 of the 1917 Act in all but the requirement that the access to the computer system is unauthorised.

85. Mr Shenkman concludes that just as the 1917 Act was used in World War I for the prosecution of individuals for their dissenting views in opposition to the US, it is still being used, now against publishers and extra-territorially (§42). He states, "what is now concluded, by journalists and publishers generally, is that any journalist in any country on

earth – in fact any person – who conveys secrets that do not conform to the policy positions of the US administration can be shown now to be liable to being charged under the Espionage Act of 1917" (§42).

86. In cross-examination he stated that he worked with Michael Ratner until 2016 as a junior associate; the firm provided advice to Mr. Assange on questions of international law and he worked on Mr. Assange's case as one of many; today it is his historical and academic analysis that he provides, detached from the case; he accepts he has a "by-line" on an article about Mr. Assange's detention in a UK prison in which he is described as "a First amendment and human rights lawyer and member of Julian Assange's legal team;"; he would have liked greater editorial control over this description as he was working for Michael Ratner in a limited capacity; he accepts that when Mr Assange was in the embassy, he considered the UK to be arbitrarily detaining him and refusing to honour the human rights machinery it helped to create; he had been surprised by Mr. Assange being indicted after the Washington Post article in 2013 which he had taken at face value stating, "*the bottom line is that an indictment was not brought and I can tell you, as a matter of policy and historically, if President Obama and Eric Holder truly believed that it was the right course of action to go ahead with this prosecution, why did they not bring charges and have that be part of their legacy*?... *Instead you had officials speaking to the Washington Post saying that they were rolling back this investigation*". In response to excepts from the judgment in the *US v Morrison* case, Mr. Shenkman replied that he considered this to be one opinion. The following excerpt from the decision of the Supreme Court in *Bartnicki v. Vopper* were put to him: "[it] *would be frivolous to assert and no one does in these cases, that the First Amendment in the interest of securing news or otherwise, does not confer licence on either the reporter or his news sources to violate valid criminal laws*." In response he asked the court to consider whether the alleged criminal act was linked to the act of news gathering and a part of that process. The following excerpt from the Supreme Court case of *Branzburg v Hayes* was put*:* "*Although stealing documents or private wiretapping can provide newsworthy information, neither reporter nor source is immune from conviction for such conduct whatever the impact on the flow of news*." Mr. Shenkman considered the facts of that case to be very different. It was put to him that that obtaining unauthorised access to government databases is not protected under the First Amendment, and he responded that this was a contentious issue dependent on the nature of the access and how authorised is defined.

87. Mr. Shenkman accepted that the Espionage Act was broad enough to include the prosecution of a publisher for the publication of leaked national defence information however he considered that the First Amendment would take serious issue with such a prosecution for publication of secrets, and that the Act has not been used against a publisher before.

Jameel Jaffer

88. Mr. Jaffer's witness statement dated 17 January 2020 was read by agreement. He provided a critique of the US Espionage Act and its application in individual cases over the years. He provided an opinion on the implications for press freedom from this indictment which did not add significantly to the evidence already before the court.

THE GRAND JURY/ FAIR TRIAL / CHELSEA MANNING

Robert Boyle

89. Mr. Boyle's witness statements dated 17 December 2019 and 16 July 2020 were read by agreement. All paragraph references below refer to his statements. His qualifications are set out in full at §1 to §10. The resources made available to him are set out at §7 to §10. He was asked to provide an opinion on the laws requiring a witness to testify before federal grand juries and how those laws have been applied in the case of Chelsea Manning. He is an attorney, admitted to the bar in 1981.

90. Mr Boyle sets out the history of proceedings against Chelsea Manning as follows:
    a. In October 2007 Chelsea Manning entered training for active duty in the US Army. She became an intelligence analyst deployed to eastern Baghdad, Iraq;
    b. In early 2010 Ms Manning transferred classified information onto a secure memory card. She took the memory card back to the US whilst on leave. She made unsuccessful efforts to contact The Washington Post and The New York Times before contacting WikiLeaks. In 3 February 2010 Ms Manning visited the WikiLeaks website. She anonymously uploaded the Iraq War Logs and the Afghan War Diary to WikiLeaks and later made additional disclosures including the Reykjavík 13 Cable and the Collateral Murder video. Thereafter she began an online conversation with the person she came to believe was an important part of WikiLeaks, identified as "Nathaniel". She also sent

a copy of a report she had prepared investigating claims by the Iraqi government relating to 15 individuals alleged to be part of a terrorist militia. WikiLeaks declined to publish the report without additional corroboration;

c. In May 2010 Ms Manning was arrested and charged with violating Articles of the Uniform Code of Military Justice.
d. On 28 February 2013 Ms Manning pleaded guilty to 10 of the 22 specified charges;
e. On 28 February 2013 she read a prepared statement to the court acknowledging her guilt to some charges. The military prosecutors elected to proceed with the remaining charges;
f. On 3 June 2013 Ms Manning's trial began at Fort Meade, Maryland;
g. On 30 July 2013 Ms Manning was acquitted of one charge of aiding the enemy and convicted of all remaining charges;
h. On 21 August 2013 Ms Manning was sentenced to thirty five years in prison;
i. On 17 January 2017 President Obama commuted Ms Manning's sentence to a total of seven years;
j. On 17 May 2017 Ms Manning was released from prison;
k. On 6 March 2018 a grand jury in the US District Court for the Eastern District of Virginia issued a sealed indictment against Mr. Assange charging him with conspiracy with Chelsea Manning to commit computer intrusion;
l. In November 2018 the indictment against Mr. Assange was inadvertently made public;
m. In January 2019 Ms Manning was served with a subpoena to testify before a federal grand jury sitting in the US District Court for the Eastern District of Virginia;
n. On 1 March 2019 Ms Manning filed a motion to quash the subpoena. The court held Ms Manning's arguments to be premature and speculative;
o. On 8 March 2019, the District Court found her to be in contempt and ordered that she be committed to custody. She was detained in the Alexandria Detention Centre in Alexandria, Virginia;
p. On 8 May 2019 Ms Manning was served with a new subpoena to appear before another grand jury;
q. On 15 May 2019 Ms Manning filed a motion to quash the new subpoena;
r. On 16 May 2019 a court denied Ms Manning's motion to quash. It found her to be in contempt;
s. On 23 May 2019 a superseding indictment was returned against Mr. Assange. This included 17 new charges of violations under the Espionage Act 1917;

t. On 31 May 2019 Ms Manning filed a motion for release, arguing that the superseding indictment rendered her grand jury testimony unnecessary, and that the "sole and dominant purpose" of her subpoena was to gather evidence for use at Mr. Assange's trial;

u. On 5 August 2019 to the court denied her motion to reconsider sanctions and for her release.

91. Mr. Boyle helpfully sets out the history of the role of the grand jury (§25 to §27). Historically it provided a buffer between government and its people, but in his view its powers have been usurped by the US Attorney Offices who now directs the grand jury on which witnesses to hear and which defendants to indict. The Court of Appeals for the Ninth Circuit have commented that a modern grand jury is no more than a rubber stamp for the prosecutor. For historical reasons a grand jury has broad investigatory powers and the combination of their wide powers and the appropriation of these powers by the prosecution have led, in Mr. Boyle's opinion, to prosecutorial abuse.

92. The US Supreme Court has ruled that grand juries must operate within the parameters of the First Amendment. However, to rely on this a witness must show that infringement of this right is the very object of the grand jury subpoena rather than an incidental effect. Nor can a witness refuse to testify on "their moral or political beliefs or their belief that the grand jury investigation is being used to disrupt legal political dissent". Examples from the 1970s and 1980s, show the grand jury system being used to harass and disrupt political movements including opponents of slavery, labor organisers and union leaders, and activists in the Black liberation movement. He provides two modern examples of subpoenas for activists at a 2008 Republican Convention.

93. He considers that the subpoena process for Ms. Manning has caused her grievous psychological harm. She has remained imprisoned since March 2019 pursuant to civil contempt sanctions arising out of her refusal to testify before a federal grand jury. He believes that the sole and dominant purpose of Ms. Manning subpoena was to gather evidence for use at Mr. Assange's trial or to otherwise interfere with Mr. Assange's defence. This view is supported by Ms. Manning who has stated that she suspects the government is simply interested in pre-viewing her potential testimony and attempting to undermine it. In his July statement Mr. Boyle updates the court, confirming Ms. Manning

has maintained her position in refusing to testify before the grand jury. He exhibits a letter from the United Nation's Special Rapporteur, Nils Melzer, dated 1 November 2019 in which he expresses concern that the use of the civil contempt sanctions to detain Ms. Manning is a violation of international law. In February 2020 Ms. Manning's lawyers filed a further motion for her release in part on the basis that there is no reason to believe she will change her mind. On 10 March 2020, three days before the release hearing, she attempted to take her own life. Two days later a US District Court Judge issued an order dismissing the grand jury and finding that her appearance was no longer needed. Her immediate release was ordered (§13).

Bridget Prince

94. Ms Prince provided a witness statement dated 18 December 2019. This was admitted into evidence by agreement. She works as an investigator and researcher for One World Research which she describes as a public interest research firm based in London and New York. Her qualifications are set out in §s 1 to 4. She had been asked to carry out research on the geographical area from which Mr. Assange's jury pool will be selected, and in particular the government agencies and contractors located in the area.

95. Mr. Assange has been indicted by the US District Court for the Eastern District of Virginia sitting in the Alexandria Division. Ms Prince identified what she describes as "a large concentration of government agencies that have offices and are headquartered in this area". At §8 she lists these agencies. At §9 she lists the government agencies included in the "list of the top 50 largest employers in these countries [stet]". She also discovered that the Northern Virginia area, in which the Alexandria Division is located, has a high concentration of companies which are government contractors working in military and intelligence sectors.

96. Ms Prince adopted her second statement also dated 18 December 2019. In this, she produces and exhibited public statements and reports from open sources relating to Julian Assange and WikiLeaks, the press and journalists, and whistleblowers

PRISON CONDITIONS

Joel Sickler

97. Mr. Sickler gave evidence and adopted his witness statements dated 15 January 2020 (JS1) and 16 July 2020 (JS2) confirming that they were true to the best of his knowledge and belief. All paragraph references below refer to these statements. He is the head of Justice Advocacy Group LLC in Alexandria, Virginia which he founded in 2003 and has worked in the field of sentencing and corrections for more than 40 years. His qualifications are set out in full in JS1 §§3 to 5. He has been provided with Mr. Assange's case materials including his medical records. He was asked to address issues relating to Mr. Assange's detention and imprisonment and the ability of the BOP to adequately address his mental health issues (JS1§8).

98. Regarding pre-trial detention Mr. Sickler confirmed that Mr. Assange will most likely be confined at the William G Truesdale Detention Centre, also known as the Alexandria Detention Centre (ADC). Mr. Sickler states he has visited the ADC on many occasions and has worked with dozens of clients held there. He has experience dealing with BOP prisoners subject to Special Administrative Measures ("SAMs") and held in Communication Management Units ("CMUs")

99. According to Mr. Sickler Mr. Assange is likely to be held in administrative segregation (ADSEG), stating in his second report that this is "extremely likely" (JS2 §8). He bases this opinion on the "extreme charges filed", the potential sentence of 175 years imprisonment and the hostile commentary from senior US government figures suggesting that he is dangerous and deserving of extreme punishment (JS1 §12). In evidence he stated that the ADC has a legacy of housing defendants in ADSEG based on charges involving national security and where there is broader international publicity. There is also the issue of safety and a need to protect him from other inmates who might target him because of his notoriety (transcript 28.09.2020 page 24). Mr. Sickler refers to the comments of a judge about conditions at the Metropolitan Correctional Centre (the MCC), which Mr. Sickler describes as similar to those at ADC, where he found the conditions to be punitive, excessively restrictive and unnecessary (JS1 §12).

100. Mr. Sickler describes an ADSEG unit in similar terms to other defence witnesses including Yancey Ellis. He confirmed he has never been to the ADSEG unit at the ADC although he

has been to several other Special Housing Units at federal centers (transcript 28.09.2020 page 24).

101. He states that at any one time there are approximately 100,000 inmates in solitary confinement in the US (JS1 §18). He states symptoms of mental illness are so common that academic papers refer to it as "special housing unit syndrome". Although Mr. Sickler is not medically qualified, he states he has worked extensively on the medical portion of his statement with his medical consultant Dr Richard S Goldberg.

102. Mr. Sickler disagrees with the US's claim that the BOP will provide full medical care to Mr. Assange (JS2 §15). He considers Mr. Assange should expect to receive "only the most limited medical services at the ADC". Upon arrival Mr. Assange will automatically be placed in administrative segregation during which a medical screening will take place. Psychiatrists are used "mainly to develop the most cost effective medication regime". He referred to Jeffrey Epstein's suicide although acknowledged that jails, especially federal jails and US marshal contract facilities like the ADC may now have "a more heightened sensitivity to the issue" (JS1 §55). He repeats the account given by Yancey Ellis (JS1 §117) regarding mental health provision at the ADC. He refers to a number of reports and newspaper articles dealing generally with failings in the provision of mental health care in restrictive housing, and medical staffing vacancy rates within the BOP. He states the BOP has responded by lowering the number of inmates designated as needing care in order to try to reduce caseloads. He states, "for an inmate like Mr. Assange with a clear and demonstrated history of mental health issues, this environment is a nightmare" (JS2 §19). He notes the diagnosis of autistic spectrum disorder (ASD) and states that although a "skills programme" designed for those with significant cognitive limitations and psychological difficulties has been created, he does not believe Mr. Assange will have access to this (JS1 §25) as they are only available at prisons FCI Coleman and FCA Danbury which are medium and low security facilities.

103. Regarding post-sentence confinement Mr. Sickler states that the most likely BOP facility placement given the charges and potential sentence length is at one of the two Communication Management Units (CMU's) in Indiana or Illinois. He states that in CMU's verbal communication between inmates is monitored, visitation privileges are severely limited and physical contact with visitors is completely banned. Mr. Sickler also considers

a "*not-so-likely post-sentence BOP facility designation*" (JS1 §66) to be the ADX Florence, Colorado. Mr. Sickler describes this as "*23 hours in a single concrete cell. Phone privileges are often banned*" (JS1 66). He states it houses violent offenders, those with multiple serious prison infractions and those who are dangerous to others. He states that these high security prisons are usually used for those most capable of harming other inmates or staff rather than for white-collar businessmen or computer hackers, but that it is a possible designation should a life sentence be imposed (JS1 §68). The Federal Medical Centres (FMCs) are unlikely designations "*unless Mr. Assange was to decompensate medically (physically or mentally)*" (JS1 §69).

104. He notes Mr. Kromberg's concession that it is possible that Mr. Assange would be subjected to SAMs. He has never represented an inmate subject to SAMs (transcript 28.09.2020 page 25). He relies on a 2017 report by the Centre for Constitutional Rights for a description of these conditions which states that it "*combin[es] the brutality and isolation of maximum security units with additional restrictions that deny individuals almost any connections to the human world*" (JS1 §39). Family members and lawyers can be prosecuted for repeating anything the prisoner has said to them and he believes the consequences of violating SAMs inhibits lawyers and leads to self-censor. He describes conditions at the ADX at JS2 §60 and 61. Those subject to SAMs are housed on the "Special Security Unit" and Mr Sickler strongly believes that if SAMs were implemented, Mr. Assange would be highly likely to spend the rest of his life on this unit (JS2 §61). Data from 2013 showed that on average people spent 45 months at the ADX and those with mental illness spent an average of 17 months longer. A 2014 Amnesty International report described how the formal review process left little opportunity for prisoners to leave the ADX and whilst there are examples of inmates being able to "step down" from solitary conditions Mr Sickler's research and experience suggests there is little hope for prisoner to succeed in this process (JS2 §62). In relation to the Cunningham lawsuit the literature on the case suggest only nominal changes have been made and only benefiting inmates subject to lesser security. An on-site inspection of the ADX conducted in 2017 listed outstanding serious issues with mental health services, which Mr Sickler details at JS2 §65. In a "different case" in February 2020 a court found that healthcare in ADX failed to meet basic standards of care for inmates (JS2 §66). Mr Sickler includes two articles on the harm and distress caused by solitary confinement in a prison context.

105. Even if Mr. Assange is held in conditions of lower security, Mr Sickler highlights the constant and intrusive monitoring which can, and often does, cause distress, leading to significant levels of depression (JS1 §47). In CMUs this level of monitoring and oversight is "extreme" with The Centre for Constitutional Rights (above) calling it "an experiment in social isolation" (JS1 §44).

106. The process of challenging SAMs is exceedingly difficult. He describes the courts "deference" to BOP arguments that SAMs are necessary, and considers there to be limited meaningful judicial review. He provides a quote from a senior US District Judge who found the decision-making to be "offensive to traditional values of fairness and transparency" (JS1 §53). Appealing a placement is a cumbersome and lengthy process which he sets out at JS1 §56. In evidence he stated that he has filed about a thousand or more administrative remedy appeals, of which he has won at most a dozen (transcript 28.09.2020 page 29). Regarding the "step down" programme, this starts when an inmate is two years from the expiration of their sentence and is pointless for those given a life sentence (transcript 28.09.2020 page 29). He referred to and exhibited a number of reports regarding the treatment of prisoners with mental health issues and the effect of solitary confinement on detainees.

107. He stated it is "generally accepted" by practitioners that the American prison system is well known to be overcrowded (JS1 §10) and every prison he has visited in the last fifteen years has had significant issues with overcrowding.

108. In cross examination he confirmed that he works exclusively for federal criminal defence attorneys. He is not an academic or researcher. He does access medical and prison classification records of those he represents. He accepts he should have made it clear in his report that he did not have firsthand experience of the ADSEG unit in the ADC but was "not trying to pull a fast one". He confirmed that ADSEG is no impediment to meeting with a lawyer, that the number of people in ADSEG were "tiny", and that SAMs are not uniform as they differ from person to person. He accepted the frequency of family visits will depend on the prisoner and the sort of risk they posed. Regarding his comment that lawyers representing clients subject to SAMs "self-censure", he cited the cases involving Lynne Stewart but accepted that in Ms. Stewart's case she was convicted of passing messages from her client to members of a jihadist group.

109. Regarding healthcare at the ADC, he confirmed that the jail is not overcrowded, that it is a "very well-run" jail and he is impressed with the personnel there. He accepted Mr. Kromberg's statement of the numbers of staff who provide psychological support but highlighted his experience that prisoners he has represented were not seen quickly enough and when treated were generally treated with medication. He accepted his clients have had access to someone to talk to (transcript 28.09.2020 page 46) and that those who needed ongoing psychiatric care would go to FMC Butner or a hospital. He stated the ADC has a "stellar record" for preventing suicide (transcript 28.09.2020 page 49). He was shown the 2012 European Court's judgment in the case of *Ahmed* relating to ADSEG and confirmed that to his knowledge these conditions had not changed since this decision (transcript 28.09.2020 page 50).

110. Regarding sentence, Mr. Sickler confirmed he was a consultant in the Reality Winner case and that she received 63 months for Espionage Act offences after using her position as a National Security Agency contractor to provide national defence information to news organisations. She had received a recommendation from the judge for designation to the FMC Carswell or similar facility.

111. Regarding Special Housing Units (SHUs) he confirmed that most inmates placed in segregation are housed in SHUs for disciplinary and non-disciplinary reasons, and that most inmates in SHU are "double-celled". He accepted that before someone goes to the ADX they are subjected to a medical evaluation. There is a multistep process which includes a formal hearing, full clinical psychological evaluation which is reviewed by the Bureau's central office and medical review for determining whether an inmate is appropriate for placement at the ADX. His only client at the ADX was taken there 22 years ago so he has no experience of the practice relating to transfer. He has never visited the ADX. Asked about family visits for those at the ADX subject to SAMS he stated he is not a SAMs expert (transcript 28.09.2020 page 58) but relied on the Centre for Constitutional Rights report (entitled The Darkest Corner). Asked the basis for his comment that Mr. Assange could be on H-unit indefinitely he stated "*the evidence that I see anecdotally in other cases and indefinitely could be a few 12 months, a few years, a few decades. Who is to say*?" (transcript 24.09.2020 page 61). He was not aware that detainees subject to SAMs could

move through the three levels on H-unit. He confirmed he did not know the number of inmates taken off SAMs since 2012 or the number moved off H-unit.

112. Regarding healthcare at the ADX, he agreed that the healthcare provision had improved since the Cunningham case (transcript 24.09.2020 page 66) but could not say whether there had been improvement in the provision of mental healthcare. He confirmed there were no staffing issues in relation to mental health services. He confirmed that as a result of the Cunningham litigation the majority of people suffering with mental illness were moved out of the ADX (transcript 24.09.2020 page 68), that under the settlement monitoring of its terms took place for 2 years by independent monitors, and that a local judge visited H-unit outside the inspection period, none of which raised further issues. Ms. Dobbin put the improvements resulting from the settlement (including new policies for the care of the mentally ill in prison, the development and activation of a secure mental health unit at USP, Atlanta, Georgia, a second secure mental health unit at the US Penitentiary Allenwood, a "secure steps towards awareness and growth emotional strength stages" programme at Colorado) (transcript 24.09.2020 page 69). Mr. Sickler confirmed that he did not take issue with the fact there was adequate provision for those with serious mental illness that might require in-patient treatment. He confirmed that ADX was not an overcrowded prison. He accepted that the overall staff ration to prisoners in the BOP is 3.8:1 and that the correctional officer ration to prisoners is 8:1.

113. Mr. Sickler referred to the 2014 report on BOP: Special Housing Unit Review and Assessment. In cross-examination Ms. Dobbin read out a section from the report indicating that the majority of those detained in the ADX wished to remain there, in part as a result of the unique and often close relationship they had with staff. She put the BOP policies as set out by Dr. Leukefeld to Mr. Sickler. Whilst he accepted the policies are in place, he "quibbles with whether they are followed in practice". However, he accepted that the BOP is better funded and better resourced that many State Department of Corrections.

114. In re-examination Mr. Sickler confirmed that in relation to his client on the ADX, he had no wish to remain there and "he is begging" to get out (transcript 28.09.2020 page 85). He thought it possible that those inmates that wished to stay had become institutionalized and believed they were safe there. He confirmed there is a real risk that Mr. Assange would be held in a high security prison as a high-profile inmate at risk from other inmates

Yancey Ellis

115. Mr. Ellis gave evidence and adopted his witness statements dated 17 December 2019 (YE1), and 14 July 2020 (YE2) confirming that they were true to the best of his knowledge and belief. All paragraph references below refer to his statements. He is a US attorney and partner at Carmicael Ellis & Brock. He has practiced law for 15 years: between 2011 and 2015 he worked as a public defender and since 2015 he has been in private practice. As a public defender he represented many detainees of the ADC and was given special access to the jail units. He considers himself very familiar with the jail. He has represented several inmates in ADSEG and he has been to the unit himself. His qualifications are set out in full in §§1 to 5. He has been asked to provide an opinion on conditions of detention at the jail.

116. He considered that it is likely that Mr. Assange will be housed at the ADC: high-profile federal defendants are usually placed there; and it is the closest facility to the US District Court house; and it is the most common place to pre-trial defendants to be held in Alexandria. Chelsea Manning was held at this prison after a finding of contempt. He has no direct knowledge of the procedures the Sheriffs Office use to determine placement on the unit but notes that the Sheriff sometimes places high-profile defendants in protective custody. The presence of Mr. Assange in the prison is likely to raise concerns regarding discipline and order, and ADSEG is one of the few places available to provide this.

117. The prison has three ADSEG units, one on the lower floor divided into two blocks 1X and 1Y, and two on the upper floors. The upper floor units are used to deal with disciplinary issues. On the lower floor block 1X is divided into 4-6 small units (or cells) and block 1Y is adjacent. Mr Ellis believes Mr. Assange will be held in one of these blocks. Mr Ellis has been in block 1X on more than two dozen occasions. The regime allows for two hours outside the cell but often the second hour is at very odd hours to fit with the jail's schedule, including in the middle of the night. There is limited interaction with others as only one detainee is permitted to be outside their cell at any time. There is no outside recreational or exercise area at the jail and Mr Ellis does not recall windows on the unit. There are limited programs which are not typically available to ADSEG detainees. He states that it is practically impossible for inmates to speak to one another through the doors and windows of their cells. In block 1X the cell doors are made of thick steel and the windows are made from thick Plexiglass material with no slots or holes, "you almost have to scream at the top

of your lungs" (transcript 28.09.2020 page 6). There are no deputies stationed there. More than one inmate is not permitted in the common area at the same time. Lawyers can speak to their clients on an attorney phone line, however a deputy needs to be available to allow the inmate access to the phone.

118. Mr Ellis confirmed that placement on the unit will not affect Mr. Assange's ability to meet with his lawyers, they are allowed access at any time during professional visiting hours. However, he will not be permitted access to the internet or computer equipment of any kind.

119. Regarding health provision, whilst to Mr Ellis's knowledge there are nurses and perhaps physician assistants, there are no permanent doctors employed at the prison. Only when a detainee is a serious physical danger to himself or others, and he is transferred involuntarily to a state hospital, is he regularly monitored by a psychiatrist. In the state hospital he is usually administered medication, sometimes forcibly. Where a detainee becomes suicidal the jail usually imposes administrative measures including frequent monitoring, placement in a suicide prevention suit, and removing shoe strings and sheets. These detainees have access to counselors but not increased access to psychiatric services. Detainees with documented mental health issues are accommodated in the mental health unit, separate from ADSEG. They report sporadic access to a psychiatrist for medication and medication adjustments, with some waiting several weeks to see a doctor. Some clients with mental health issues have been placed in ADSEG rather than the mental health unit.

120. Regarding care for Mr. Assange's mental health, he considers treatment options to be limited. He confirms the ADC has a mental health unit and that medication including anti-psychotic or anti-anxiety medication is available with a valid prescription. He believes the prison has "some social workers and professional counsellors on the staff" (transcript 28.09.2020 page 9) but he does not believe they employ a doctor, and the contract providing medical services gives part-time access to a psychiatrist. He states he has had very few clients with mental health issues get better at the prison although some are able to maintain their current functioning level. Several have had to wait days or weeks before speaking to a doctor. If a detainee is considered a danger to themselves then they are likely to be transferred to a different prison, such as FMC Butner, for treatment. If an inmate is

considered to be suicidal they are placed in a green security suit to limit their ability to self-harm and checked on more frequently.

121. In cross-examination he confirmed the prison has a population of around 3000 of which between four and six are held on the X block. He confirmed he had not interviewed the warden or governor of the jail, the medical staff, the psychologist who attends the jail or the correction staff about the conditions and his information comes from what he has observed and what clients have told him. He could not disagree that the jail had been inspected in July 2019 which had included a review of its population, staffing, security, use of force, hygiene, sanitation, availability of medical care, availability of suicide prevention, legal access and visitation. He confirmed that the ADC has a good track record for preventing completed suicide. He maintained that prisoners under ADSEG cannot mix with other inmates and to his knowledge the jail does not run individual programmes. He confirmed he had not read the ADSEG policies. He confirmed that when he described the conditions as solitary confinement he did not include contact with lawyers which include a maximum of 6 hours each day in two three-hour sessions. He accepted that access to the law library would be possible but not when others were present. He confirmed that if a mental health issue is diagnosed the inmate can be moved to the mental health unit at the jail or (for state inmates) a state psychiatric hospital. He confirmed that his clients may have been place on X block because they were deemed security risks, he did not know if this would apply to Mr. Assange. He re-stated that typically, high profile inmates are not put in the general population parts of the jail and he could not see any viable alternatives for Mr. Assange's placement. He did not consider that his high profile would enable him to get better care than an ordinary prisoner.

Maureen Baird

122. Ms Baird adopted her witness statement dated 11 September 2020, confirming that it was true to the best of her knowledge and belief. All paragraph references below refer to this statement. Her background and experience is set out at §§1 to 3. Ms Baird was employed by the Department of Justice between 1989 and 2016. She was the warden of the Federal Correctional Institution, (FCI) Danbury (2009-2014), Senior Executive Service (SES) Warden, Metropolitan Correctional Center (MCC) (2014-2016), and SES Warden, US Penitentiary, (USP) (2016-Retired). At the MCC, she experienced dealing with people

subject to Special Administrative Measures (SAMs) pre-trial and is familiar with this regime.

123. Her experience with those subject to pre-trial SAMs comes from her work as SES Warden at the MCC between 2014 and 2016. At this prison there were 12 to 15 inmates subject to SAMs at any time held on a unit called 10-South. She stated that all prisoners subject to SAMs pre-trial are subject to the same regime in all detention centres. She is not familiar with the state system (the ADC is a state jail) but in the Federal system the only pre-trial SAMs unit is the MCC stating "*SAMs is not a policy so it is not discretionary. It cannot be changed by a warden or anybody in the Bureau of Prisons. SAMs is more of a direct thing so it is very black and white, there is no grey area with SAMs, it is very matter of fact. So, what - if somebody is in pre-trial for terrorism and somebody is in for a different sort of national security, they would all be subjected to the same measures*" (transcript 29.09.2020 page 5). She has received training on SAMs and attended annual meetings with other wardens (including from ADX Florence)

124. Regarding conditions under SAMs she deals with this at §§11 and 12 stating "*Inmates were in solitary confinement, technically, for 24-hours per day. There was absolutely no communication, by any means, with other inmates. The only form of human interaction they encountered was when correctional officers opened the viewing slot during their inspection rounds of the unit, when institution staff walked through the unit during their required weekly rounds, or when meals were delivered through the secure meal slot in the door. One-hour recreation was offered to inmates in this unit each day; however, in my experience, often times an inmate would decline this opportunity because it was much of the same as their current situation. The recreation area, in the unit, consisted of a small barren indoor cell, absent any exercise equipment*" (§11). She stated that recreation would take place "always alone", inmates were allowed one phone call a month to an approved family member for 30 minutes or two 15-minute phone calls per month; all mail is screened and it could take a couple months or longer to receive a piece of mail. The effects and consequences of these administrative measures are tortuous for the recipient (§18). As Warden she conducted, at a minimum, weekly tours of the 10-South housing unit, where SAMs inmates were held.

125. Regarding challenges to the regime she accepts that "in a legal sense" SAMs is open to challenge (§13). Inmates receive notification of the restrictions and the basis for SAMs at the time of initial implementation and again when restrictions are being renewed. However, in her view challenge is a futile process, stating "*The BOP exercises no control/jurisdiction over SAMs imposed by the Attorney General. Wardens are bound to abide by the SAMs imposed on an inmate. An inmate's only possibility of having his SAMs reconsidered, would be for him to exhaust the Administrative Remedy process, so he could file a motion with the Court*" (§13). Having been a case manager and unit manager and also former senior executive of the BOP, no warden would recommend discontinuing SAMs at the possible risk of serious harm to others or the potential for threats to national security. Very very few requested remedies are approved and she has never seen a SAMs being overturned either as part of a request or annual review (§20).

126. Regarding Mr. Assange's conditions post-conviction, Ms. Baird is a former Designator for the BOP (§21). She states that once the decision to impose SAMs is made there are few choices: if an inmate is not gravely ill, requiring placement at an FMC, she does not believe there are other options to placement at the ADX Florence (§21).

127. Regarding his conditions at the ADX Florence she noted Mr. Kromberg's reference to participation in multi-phase programmes designated for SAMs inmates, but stated that any program would be in isolation. The Skills Program referred to by Dr. Leukefled are only offered at a limited number of federal prisons and the restrictions which accompany SAMs would rule out the possibility to engage in such activities and programmes. If Mr. Assange was subject to SAMs he would not go to a communications management unit. She noted the references by Dr. Leukefeld to inmates being content to remain at the ADX and not wishing for transfer to another Federal prison, but points to the Declaration of Admissibility by the Inter-American Commission on Human Rights relating to a complaint from a number of inmates about the conditions and circumstances of detention at the ADX.

128. Regarding the El Hage case, which involved a prisoner who was subject to SAMs, and originally in solitary confinement for 15 months but was then permitted to have a cellmate, she stated that this took place in the year 2000 before the additional restrictions imposed after 11 September 2001. It would be a very, very rare instance and she has never heard of that occurring with a SAMs inmate (transcript 29.09.2020 page 12)

129. In cross examination she confirmed her overall experience of SAMs has been pre-trial. At the MCC those subject to SAMs that she encountered were either held on terrorist or drugs trafficking charges and none were accused of espionage or subject to SAMs for fear they would disclose national security information. She has given evidence in 10 or 12 extradition cases but none have involved national security or espionage cases (transcript 29.09.2020 page 17). She confirmed she was aware that in this case SAMs would require a direction by the Attorney General and certification by the head of a member agency of the US Intelligence Community. In her opinion Mr. Assange would meet the criteria as he is charged with an espionage crime and it is believed that he continues to have involvement with disclosing classified information, which would make him a risk to national security and cause concern for officials (transcript 29.09.2020 page 16).

130. Ms. Baird confirmed those subject to SAMs are allowed access to their lawyer. She described a steel door with a viewing slot which remained closed at all times except when the officer made his rounds every 30 minutes. They would open up the viewing slot to check the person is OK before closing it and moving on (transcript 29.09.2020 page 21). She confirmed that she was not aware of anyone subject to SAMs being found unfit to stand trial, or being transferred to hospital as a result of mental illness. There were no suicides whilst she was Warden at the MCC and Jeffrey Epstein was the first suicide there for 13 or 14 years. She was not aware of conditions on the SAMs unit being found to be unconstitutional. She has never been to the ADC or to the ADX Florence.

131. Regarding sentence, she had based her comment that those in Mr. Assange's position "always receive life" (transcript 29.09.2020 page 25), on a single case of Aldrich Ames from the mid-90s.

132. As a designator she had placed people in the ADX Florence in the 90's. She accepted that those subject to SAMs can be held in other parts of the prison system. She accepted the existence of a three-phase special security unit programme designed for SAMs inmate but stated that there are likely very few inmates that reach phase 3 as it defeats the purpose of the SAMs. She had never experienced an inmate subject to SAMs being able to access group therapy. She could not say how many inmates had SAMs removed and had been able to work their way out of H-unit. She could not comment on whether 26 inmates had been

moved out since 2012. She accepted that the Cunningham litigation had improved conditions in the ADX but the changes did not impact on the conditions of those subject to SAMs (transcript 29.09.2020 page 39). Asked whether Dr Leukefeld was wrong she responded "*I think she does not have very much experience with SAMs inmates and she has worked in the central office and not in the field for several years*" (transcript 29.09.2020 page 39).

133. In relation to suicide prevention, Ms. Baird confirmed that all BOP inmates are screened on arrival by a psychologist, that BOP staff receive annual training on how to identify inmates at greater risk of suicide, that the BOP uses a variety of cognitive behavioural therapies, that if warranted the BOP will place inmates on a suicide watch as a method of suicide prevention, and that the suicide prevention strategy of the BOP is very good but that it doesn't always work. She offered the opinion that overall the psychology services do a good job (transcript 29.09.2020 page 42).

Lindsay A Lewis

134. Ms Lewis adopted her witness statement dated 17 July 2020, confirming that it was true to the best of her knowledge and belief. All paragraph references below refer to this statement. Her qualifications are set out at §§1 to 8. She has been a criminal defence attorney for the past twelve years. She provides a statement in these proceedings because she has represented Mostafa Kamel Mostafa (formerly known as Abu Hamza) for the past eight years, who was extradited to the US from the UK for terrorism-related offences. He was tried and, on 19 May 2014, convicted of the offences. He was sentenced on 9 January 2015. Between his arrival in the US in October 2012 and sentence in early 2015 he was detained at the Metropolitan Correctional Centre in New York City (the MCC). Since 3 January 2013 and for the past eight years, he has also been held under Special Administrative Measures (SAMs). Shortly after his sentence in January 2015 he was temporarily transferred to FMC Springfield for evaluation and assessment and since 8 October 2015 he has been held at ADX Florence. Between late 2012 and early 2015 Ms. Lewis visited him "countless times" when she represented him during criminal proceedings. Since 5 February 2015 she has been his counsel assigned to address his prison and medical issues and to represent him in litigation challenging his conditions of confinement. Mr. Mostafa has only now been able to challenge his detention conditions in court because he has been required to exhaust a series of administrative remedies within the BOP first. A complaint was filed

on 18 May 2020 with the District Court for the District of Colorado challenging the conditions of his confinement at ADX Florence and SAMs.

135. Mr Mostafa has significant health issues and is severely disabled. This includes blindness in the right eye with poor vision in the left and bilateral traumatic amputation of the distal third of both forearms for which prostheses are fitted.

136. Ms. Lewis gave a detailed account of Mr. Mostafa's extradition proceedings. She stated her view that a number of representations made by witnesses for the US government and relied upon by the courts, have proved to be untrue (§35). In particular the BOP's submissions to the sentencing court left open the possibility of a permanent or extended designation to ADX Florence and that this was in "stark contrast" to Warden Wiley's representations to the UK magistrates court that it would be highly unlikely for a person with Mr. Mostafa's medical conditions to be placed at ADX Florence. In fact, Ms Lewis states, Mr. Mostofa has not been detained in a cell that was appropriate to his disabilities or provided with adequate accommodation for his needs, but remains subject to SAMs and has continually been housed in solitary confinement without access to daily nursing care.

137. Ms Lewis is in no doubt that his SAMs have impeded his ability to assist in the preparation of his case. Between October 2012 and January 2013 he was only able to have two legal calls with his lawyer and was prohibited from communicating by email. During his detention at the MCC he was never provided with an appropriate toilet, shower or sink to accommodate his disabilities and many of his other medical and disability needs were not adequately addressed (§56).

138. Ms Lewis provided a general overview of the SAMs regime from open source materials, her client's account and her many conversations over the years with ADX staff and legal department. She has never visited the prison herself.

139. Regarding the El-Hage case, her law partner represented this defendant during the period of his complaint and confirms that following the court's decision he was returned to the SAMs regime and she believes remains subject to this to-date (transcript 29.09.2020 page 59). She notes the *Hashmi* decision was a pre-trial case, and she does not know of a single

case post-conviction where a defendant has been granted modification by the court of their SAMs.

140. In cross-examination she confirmed she has never visited either the ADC or the ADX Florence. She has never represented anyone else subject to SAMs at the ADX. Parts of declaration made by Warden Wiley were put including "*After a full medical evaluation, a determination would be made regarding the most appropriate placement for him, considering the level of medical care and security controls needed. If it is determined that Abu Hamza cannot manage his activities of daily living, it is highly unlikely that he would be placed at the ADX, but rather than a medical centre*". She responded that "*there is no way they could have found that he could have managed his activities of daily living and his current circumstances as well as his pre-trial circumstances clearly established that*" (transcript 29.09.2020 page 66) and believes the US did not comply with their representations. The various interpretations of the Warden's representation in the English court and the European Court were put, aswell as the interpretation of the sentencing judge.

141. Ms. Lewis was taken to comments made by a US judge who had visited the MCC, that the conditions do not come close to amounting to a constitutional violation. Ms. Lewis responded that this is "her [the judge's] opinion" and pointed out that making a finding of constitutional violation would have created an unsolvable problem for the BOP which it would be "foolish" for the judge to do (transcript 29.09.2020 page 72).

MEDICAL EVIDENCE / DR. LEUKFELD'S REPORT

142. **This is set out in the decision and is not repeated here.**

THE PASSWORD HASH AGREEMENT

Patrick Eller

143. Mr. Eller gave evidence and adopted his witness statement dated 10 January 2020, confirming that it was true to the best of his knowledge and belief. All paragraph references below refer to his statement. He is President and CEO of Metadata Forensics, a company

which provides expert forensic evidence in civil and criminal cases. His qualifications are set out in full in §§ 1 to 4. The resources made available to him are set out at §5, and include copies of the initial and superseding indictments against Mr. Assange together with their supporting affidavits, and the transcripts of the court martial proceedings, obtained via the internet, against Ms Manning.

144. Mr Eller's broad conclusions are set out at §11. In short, he did not find strong support for the proposition that the conversations between Mr. Assange and Ms Manning demonstrated that Ms Manning was seeking Mr. Assange's assistance to enable her to extract classified information without her personal anonymity being compromised.

145. Mr Eller reproduced the following extract from the Jabber chat log between "Nobody" (assumed to be Ms Manning) and Nathanial Frank (assumed to be Mr. Assange or an employee of WikiLeaks) on 8 March 2010:

> Nobody: any good at 1m hash cracking?
> Nathanial Frank: yes
> Nathanial Frank: donations, not sure
> Nathanial Frank: something in order of 5M
> Nathanial Frank: but we lost our CC processor, so this is making matters somewhat painful
> Nathanial Frank: we have rainbow tables for 1m
> Nobody: 80c11049faebf441d524fb3c4cd5351c
> Nobody: I think it's 1m + 1mnt
> Nobody: anyway…
> Nobody: need sleep&gt,yawn&gt
> Nobody: not even sure if that's the hash… I had to hexdump a SAM file, since I don't have the system file… Then your Frank: what makes you think it&apos,s 1m?
> Nathanial Frank: it's from a SAM?
> Nobody: yeah
> Nathanial Frank: passed it on to our 1m guy
> Nobody: thx

146. Mr. Eller points out that this chat occurred after Ms Manning had already downloaded a significant number of classified documents using her usual account on her usual SIPRNet computer, including the Guantánamo detainee assessment briefs and the Iraq and Afghanistan war reports After the alleged password cracking attempt the only additional documents downloaded were the diplomatic cables.

147. Mr Eller states that the US government has misunderstood the technical evidence. Hash functions are the mechanism to authenticate users and passwords on a computer. Mr. Ellis provides the following explanation for how they work: "*rather than storing the password itself on the computer, the computer checks the output of the hash function, the password hash, which is saved on the computer. When a user tries to login, the password that they input is hashed using the same hash function as the original password. Then it is compared to the hash value there was generated from the original password and stored on the computer. If these two hash values are the same, then the computer determines that the user must have entered the same password as when they first set it and allows them to login to the account"* (§30). The password hash is not broken up and split between the SAM (the Security Accounts Manager) file and system file, it is stored in full in the SAM file, but is encrypted with a key. Ms Manning retrieved the encrypted hash value from the SAM file but did not have the decryption key or the information required to reconstruct the decryption key for the hash. The government's description of the password as being split between the SAM and system files is therefore inaccurate. The information Ms Manning sent to Wikileaks was insufficient to enable the password to be cracked.

148. Mr Eller also states that he considers that Ms Manning already had legitimate access to all of the databases from which she downloaded data. In his view logging into another local user account would not have provided her with greater access to databases then she already had. He considers that even if she had cracked the password hash it would not have provided her with anonymous access to databases. He identified three ways in which her access could have been controlled and tracked. First, the databases referenced in counts 3, 7, 10 and 13 (the cables) and counts 2, 6, 9 and 12 (detainee assessment briefs) were accessible to anyone with a SIPRNet connection. Internet Protocol (IP) addresses are used by websites to track which users access what data and when, and Ms Manning's two SIPRNet computers were referred to by their IP addresses during the court martial. Logging into a different local user account would not have anonymised her because the IP address

would remain the same. Second, access to some SIPRNet websites and databases would have been via an online account separate from the user account on a computer, with details of these accounts stored on the server for the website and not on the laptop that Ms Manning was using. Third access to "Active Directory" was a domain used to control access to data on SPIRNet. In addition whilst domain user accounts are part of a domain which a user can access and share with other users, local accounts are specific to the individual computer and do not grant access to additional data on the network. The ftpuser account was a local account. This meant that a person logged into it would not be able to access data on the active directory domain. Further, Mr Eller considers that if Ms Manning wanted to log on to an account other than her own, she could do so without cracking passwords because she already had access to the accounts of other soldiers. Mr Eller refers to interviews with soldiers who had worked with Ms Manning regarding the practice for soldiers to permit other analysts to use their laptop without logging in.

149. Mr Eller offers his opinion that the allegation that Ms Manning was trying to access data anonymously is not tenable (§59). In support of this he refers to the documents already downloaded and leaked, using her usual account on her usual SIPRNet computer. He also notes that she did not refer to password cracking in her plea statement to the court martial. In any event, the ftpuser account would not have granted her anonymous access to data. Ms Manning must have been aware that she did not have the required decrypted password hash that could be used to crack the password as basic technical knowledge or research would have made this clear.

150. Mr Eller provides the following conclusions: unauthorised use of computers was commonplace as soldiers often put unauthorised files and programs, including music and movies, onto computers dedicated to sensitive classified work; Ms Manning's colleagues regularly asked her to install programs for them as they viewed her as a technical expert and having the ability to install programmes from an administrator account would have helped her with these requests; she may have wished to explore cracking password hashes as a potential business opportunity as she once proposed to a colleague a hash cracking business in which she would generate rainbow tables to sell them; and unauthorised files were regularly deleted as a process of reimaging so she would have needed to re-install the unauthorised music and video programmes which had been deleted.

REDACTING THE DOCUMENTS

John Goetz

151. Mr. Goetz gave evidence and adopted his witness statements dated 12 February 2020, and 17 July 2020 confirming that they were true to the best of his knowledge and belief. All paragraph references below refer to his statements. He is an American investigative journalist based in Berlin since 1989. His qualifications are set out in full at §1. He was working as a staff journalist at the German publication Der Spiegel in 2010 and he has been asked for his recollections of the journalistic collaboration between WikiLeaks and Der Spiegel in the years 2010 to 2011.

152. Mr. Goetz provided his recollection of his work with Mr. Assange. On 30 June 2010 he was asked to travel to London to represent Der Spiegel in an investigative partnership with WikiLeaks. He attended 3 days of meetings with Mr. Assange (from WikiLeaks) David Leigh, Nick Davies and Rob Evans (from the Guardian) and Eric Schmidt (from The New York Times). The purpose of the meetings was to come up with a plan on how to coordinate journalistic cooperation between the partners. At that time the group were working on the Afghan war logs, a first-hand eyewitness diary of what was happening in Afghanistan during the war. The challenge was to "intelligently, imaginatively and effectively find constructive ways of managing the data leading to its publication in a responsible way" (§9). Mr Goetz had detailed discussions with Mr. Assange about how the documents might be vetted to prevent risk of harm to anyone (§12). He explained the approach of WikiLeaks: "cases were identified where there might be a reasonable chance of harm occurring to the innocent. The records, having been identified, were edited accordingly." (§12). The redaction process involved replacing names with blanks or X's. For the cables, media partners were identified in the relevant country and asked to sign an agreement with WikiLeaks. They were to use local knowledge to take on the responsibility of revising and redacting the documents and to pass this advice to WikiLeaks. Redactions were then carried out by an automated process. The media partners were all on board with the process of redaction and harm minimisation.

153. In relation to the Afghan War Logs communications and material were handled securely including using cryptophones and communication via an encrypted chat system. The State

Department initially participated in the redaction process. The New York Times which is based in Washington had connections with the White House and a meeting was arranged. Eric Schmidt who had attended the meeting emailed Mr. Goetz of 30 July 2010 stating "*on Saturday night, I passed along WH's request that WL redact the dox of informants names and then his response that he'd withhold 15,000 dox and entertain suggestions from ISAF the names to be remove if they provide tech assistance*" (§15). WikiLeaks did exactly what it was requested to do and the 15,000 documents were not published (§22). Later (on 2 August 2010) both Eric Schmidt and David Leigh referred to a request by WikiLeaks for more time to "redact bad stuff" (§19). When they came to be published, as a result of a technical hitch, it was Der Spiegal who published first, before WikiLeaks.

154. He considered WikiLeaks to be a significant innovator in the field of investigative journalism: publishing online documents; initiating large journalistic partnerships; and pioneering the online drop box for submissions to newsrooms. In addition, WikiLeaks played the role of public archivist with its "Public Library of US Diplomacy". Much the data published comes not from leaks but from millions of Freedom of Information Act enquiries by WikiLeaks in many countries. He has no direct knowledge about how unredacted material came to be widely available and he believed Mr. Assange made "strong attempts" to prevent the publication of the unredacted material. He is not aware that any sensitive names got through the harm minimisation process.

155. He had significantly less involvement with the Iraq war logs however he was still part of the email loop. He stated that in these documents WikiLeaks ended up redacting more information than the Department of Defence released in response to a freedom of information request that had been filed. Regarding the diplomatic cables he stated that he did not know of any case of anyone having been harmed by their publication. There were 2 phases to the publication of the cables, up to September 2011 only Der Spiegel and its media partners had access. During this period each media partner would flag documents and pass them on to Wikileaks. He also described the contact the State Department had with Der Spiegel via a conference in which it identified by document number, information they believed to be sensitive and which needed redaction. WikiLeaks carried out their requests.

156. In his second statement Mr. Goetz dealt with his involvement in assisting Khalid el-Masri. Mr. el-Masri had been kidnapped and transferred to the US authorities in the context of an extra judicial "rendition". There was clear evidence of criminal acts by 13 US CIA officials and the accuracy of Mr. el-Masri's account of what happened to him was unanimously accepted by the Grand Chamber of the European Court of Human Rights. The evidence gathered by Mr. Goetz led the German authorities to issue arrest warrants against CIA officials, but these were never issued in the US. Mr. Goetz confirmed that the diplomatic cables helped to establish what had happened by revealing the extent of pressure bought upon the German and Spanish authorities not to act against the perpetrators. It was only when reading the cables that he saw the role the US Government was playing behind the scenes. A number of cables also threw light on the pressures and bullying techniques brought by the US in more than one country to prevent the prosecution of CIA agents involved in Mr. el-Masri's case. This together with other information regarding other renditions and rendition flights provided an otherwise unattainable overview and assisted in the understanding of the full picture. He believes that the importance of the exposure of the actions of the state cannot be overstated.

157. Further, on the basis of his conversations and dealings with Mr. Assange, he considers that Mr. Assange's thoughts and ideas to be consistent with an overall political philosophy, namely to bring to light the hidden criminal actions of states and in particular the exposure of criminal conduct in war. He believes Mr. Assange has acted to bring about change to the policies and practices of the US government.

158. Regarding the "Most Wanted" list, he confirms that items included in this list were sought by many investigative journalists at the time.

159. In cross-examination it was put that some unredacted cables were published by WikiLeaks on 25 August 2011 but he had no knowledge of this; he clarified that some cables were published by the collaborating media partners, another tranche on 25 August 2011 and the full cache of 251,000 unredacted cables on 2 September 2011; he accepted that a number of newspapers deplored this final re-publication of the all of the cables but stated that it took months to discover how this came about; in relation to the 15,000 documents identified by the White House (the Afghan war logs) he did not think they were ever published; he confirmed Mr. Assange was thoughtful, humorous and energetic.

160. In re-examination. Mr. Goetz clarified that between 2010 to 2011 the cables were being published in redacted form and he was not aware that any cables containing sensitive source names were published in this period; the redaction process was not complete by August 2011, it was a big WikiLeaks project with another year to go; some cables were classified others were not; he does not recall the phrase "strictly protect" being used on the August 2011 cables although he agreed that some cables published in 2010/11 were marked in this way; the cables release on 25 August 2011 were, as far as he understands it, unclassified cables; he confirmed that before WikiLeaks published the unredacted cables Cryptome and others had already published; he was taken through the history of the publication of the unredacted cables.

Professor John Sloboda (and Hamit Dardagan)

161. Professor John Sloboda gave evidence and adopted his witness statement dated 17 July 2020, confirming it was true to the best of his knowledge and belief. He also adopted the statement of his colleague Mr Dardagan of the same date. All paragraph references below refer to his statement. Professor Sloboda's qualifications are set out in full in the Curriculum Vitae appended to his statement. Professor Sloboda and Mr. Dardagan are co-founders of Iraq Body Count (IBC), an independent NGO monitoring credibly reported casualties in Iraq which resulted from the 2003 invasion. He explains the importance of this monitoring process: that knowing how one's loved one died is a fundamental human need and more generally that casualty recording can uncover patterns of harm and trends such as the vulnerability of particular sections of the population to armed violence.

162. Professor Sloboda considers that the Iraq war logs contained a vast amount of information about civilian casualties of the Iraq war, not previously known. Before the logs were released the IBC was reliant on sources such as the global media. The logs were a meticulous, daily record of the US military on patrol on the streets in every area of Iraq. A detailed analysis of the 390,000 logs carried out by the IBC in 2010 revealed that the logs contained an estimated 15,000 previously unknown civilian deaths and the details of 23,000 unreported violent incidents in which Iraqi civilians were killed or their bodies were found. In addition, they contain 2000 events concerning the deaths of Iraqi police and other security forces killed after capture. The IBC were able to add 61 previously unspecified incidents to their database, 109 reported victims' names and new demographic details for

298 victims. Further analysis since 2010 has raised the number of incidents, sourced solely from the logs, from 61 to more than 3000. He stated that there has been almost no information from the US government sources regarding the information in the logs, and ten years on, they remain the only source of information for the many thousands of violent civilian deaths in Iraq.

163. Regarding Mr. Assange and WikiLeaks, he stated that complex and innovative steps were taken to publish the Iraq logs in a responsible way. The Afghan logs had already been published and this experience made it clear that ways should be found to provide as many safeguards as possible. None of WikiLeaks's media partners were able to suggest a means by which the 400,000 logs could be redacted, as only tiny samples could be edited by hand, so Mr. Dardagan created software which allowed a substantial proportion of each log to be published in redacted form. Professor Sloboda has a broad layman's understanding of this process: the software automatically removed from every log any word which was not in an English language dictionary. The aim was the very, very stringent redaction of the logs before publication. There were considerable pressures on Mr. Assange and WikiLeaks to "hurry up" because their media partners wanted to publish, but those pressures were consistently and clearly rejected.

164. In cross-examination, he confirmed that he has no significant experience or expertise in the classification or declassification of sensitive material; and no experience of handling a co-operating source (somebody providing information to a foreign government in an oppressive regime); by the time he received the Iraq war logs the Afghan logs had already been released; after his first meeting with Mr. Assange, he was given the full cache of 400,000 documents; he signed a non-disclosure agreement but he does not remember and does not know if a vetting procedure took place; he has not heard of the jigsaw risk before but correctly guessed it was something to do with piecing together from different bits of information something that might lead eventually to the identity of an individual. He confirmed that he first spoke to Mr. Assange in late July 2010, probably a matter of days later he received the full cache of logs, he had access to them on a secure server along with four others from IBC; he was not aware whether any of them had been vetted. He accepted that publishing the Iraq logs in a responsible way would not include naming people who had given information to the US government; he accepted the danger that any individual who had co-operated with the American authorities would be put in if they were named

publicly as a co-operating source. He accepted that the steep learning curve from the publication of the Afghan logs referred to leaks which he had been told included the names of individuals who had co-operated with the Americans; he accepted it was the IBC who had come up with the redacting software and not the traditional media; the vast majority of the document was written in English. He believed professions would have been removed as the software was being constantly updated and modified as issues arose; he did know about buildings or vehicles; after that a sample of logs were looked at by a person, but no-one checked all of them; IBC had the logs for about two months before they were published; by the time of publication that they had had the documents for a number of weeks and had only been able to scratch the surface of what they revealed; IBC was only interested in about 40,000 of the logs. He had not known until now that the published logs contained the names of sources.

Jakob Augstein

165. Mr. Augstein's statement dated 12 February 2020 was read by agreement. All paragraph references below refer to his statement. He has been a journalist since 1992. He is currently the publisher and editor of the German weekly Der Freitag and occupied the same position in August 2011.

166. On 25 August 2011 an article appeared in Der Freitag. The source of the article was not identified but Mr. Augstein were satisfied it was an authentic account. The article concerned a leak at WikiLeaks. The author discovered that an obscure file on the internet containing US State Department documents in the possession of WikiLeaks, had been "exposed in its unedited form to potentially universal access" (page 2). The password required to decrypt the file could be found on the internet and a separate password could be identified by "those who know the subject". It also referred to Mr. Domscheit-Berg of Open Leaks taking an electric mailbox and its contents in the autumn of 2010, which contained data likely to be valuable for any disclosure platform. The article summarised the history of efforts by WikiLeaks to have the data returned to it, including through the intervention of a mediator. Prior to the article being published Mr. Assange telephoned Mr. Augstein. Mr. Augstein stated that the reason for this call was Mr. Assange's fear, in the light of these leaks, for the safety of informants.

Christian Grothoff

167. Professor Grothoff gave evidence and adopted his witness statements dated 21 February 2020 and 17 July 2020 confirming that they were true to the best of his knowledge and belief. All paragraph references below refer to his statements. His background and qualifications are set out at §1. He is professor of Computer Science at the University of Applied Sciences in Bern. His instructions are set out at §2. He was asked to investigate the circumstances surrounding the release in early September of the release of unredacted classified diplomatic cables into the public domain. He was not involved in the events he describes but they are matters that he has been able to ascertain from the public record. He stated that the information he found was obscure but not hidden.

168. Based on information found in David Leigh's published book, he stated that in the summer of 2010 WikiLeaks shared access to the diplomatic cables with Mr. Leigh using an encrypted file posted on a website. The file was protected by a passphrase that served as a key for its decryption which would make it useless to anyone who did not know the encryption key. It is fixed at the time of encryption and does not change. The only way to decrypt the documents would be by using the pass phrase. The passphrase was lengthy and therefore strong, and a computer would not have been able to break it in a reasonable amount of time. Professor Grothoff confirmed that distributing an encrypted file on the internet without intending their content to become public is routine; for example, doctors use encryption to exchange private medical data over the internet. Mr Leigh was given the passphrase and instructions on how to access documents safely without accidental disclosure. The encrypted copy of the encrypted archive of the cables was given to Mr. Leigh under the filename "xyz_z.gpg".

169. On 28 November 2010 the unredacted cables obtained from the WikiLeaks website were published in a number of newspapers. On 29 November 2010, an article in "wired.com" reported a Distributed Denial-of-Service (DDoS) attack on WikiLeaks. This type of attack does not cause a loss of data but data becomes less available for third parties by the attacker automatically sending a large number of requests to the victim, resulting in legitimate users often being unable to reach the service or being frustrated by long delays. On 2 December 2010, as a result of the attack, the website which provided "name resolution" (the first step performed by browsers when accessing a Website), withdrew its service from WikiLeaks as the attack was affecting its other customers.

170. In December 2010 in an attempt to defeat the attack, WikiLeaks encouraged people to put up "mirrors", that is a copy of the WikiLeaks website hosted somewhere else. Professor Grothoff provided a list of mirrors that he found from this period showing that people all over the world had set up copies of the WikiLeaks's website. Some of the mirrors included the unredacted cables but in its encrypted form in the file xyz_z.gpg given to Mr Leigh; without the pass phrase the documents still could not be accessed.

171. On 1 February 2011 Mr Leigh published his book which disclosed the pass phrase. This provided the key to his encrypted file. At this point, WikiLeaks was not in control of the many mirrors of the file, and alerting people to its existence might have propagated its spread. They could not change the passphrase either so their only option was "distract" and "delay".

172. On 25 August 2011 Der Freitag, a German newspaper, published a story saying that there was a sensitive passphrase on the internet that had been leaked and would enable access to a file containing a full set of the unredacted cables. It reported that the file could be found in some WikiLeaks mirrors. Then an article on the website nigelparry.com appeared in which he states that he has located the encrypted file on a mirror at a website called 193.198.207.6. The website did not appear to be one of those encouraged by Wikileaks. Nigel Parry had managed to extract the unredacted cables.

173. On 31 August 2011 Cryptome.org, a website based in the US and well-known for leaking classified information, reported on the passphrase and identified the file it had decrypted Between 2011 to 2014 it was consistently in the top 50,000 websites in the world and the materials are still available on this website. On the same day someone else made a first searchable copy of the cables available at http://cables.mrkva.eu/. On 1 September 2011 a user "droehien" created a Bit Torrent with the decrypted cables at the piratebay website.

174. Professor Grothoff was provided with an internal report from the US government by the defence (and therefore not a document in the public domain) from which he determined that the US government at 7am on 1 September 2011 itself used the passphrase from Mr. Leigh's book to obtain a copy of the unredacted and decrypted cable archive from the 193.198.207.6 mirror. At 23:44 GMT on the same day, Wikileaks made its first public

statement on the information breach in David Leigh's book. It was now impossible to stop the spread of this information on the internet.

175. On 2 September 2011 the information already published by others was republished on the WikiLeaks site.

176. In cross-examination Professor Grothoff confirmed that the defence had provided him with the following documents: a statement from the owner and administrator of the Cryptome website; a document from the US Government from which he determined they had accessed the cables; the Der Freitag article; the Nigel Parry blog; and the Der Spiegal article. He does not recall signing an open letter to President Trump in 2017 from the WikiLeaks defence team, asking him to close the grand jury investigation into WikiLeaks and drop any charges against Julian Assange. He occasionally signs petitions but did not recall this one. He did however confirm his view that this case has the potential of setting a very, very bad precedent on press freedom and that this prosecution seems to have been a bit unfair, however he denied being partial. He expressed his belief that publishing information about war crimes as a journalist with proper redactions should not be a crime. He confirmed he only investigated the cables and cannot comment on the release of the war logs. He confirmed that Mr. Leigh's book stated that he received the pass phrase in summer 2010. The file itself was stored on a WikiLeaks server that would have been accessible to anyone who knew the exact URL. He referred to reports that there had been a split between Mr. Assange and Mr Domscheit-Berg and that Mr Domscheit-Berg had taken some files from WikiLeaks' machines and copied them. The mirrors were of WikiLeaks's documents and the file appeared on some of these mirrors. He was taken to a page from the WikiLeaks website dated 10 December 2010 which stated, "*[i]n order to make it impossible to ever fully remove WikiLeaks from the internet, we need your help*" and he was shown a list of mirrors provided by WikiLeaks to its readers, in case they needed to go elsewhere to access the site. He confirmed that WikiLeaks appeared to encourage users to lend their servers to mirrored versions of the WikiLeaks website. He confirmed that if someone at WikiLeaks had realised that there was a problem with the security of their files this would have been a smart move.

177. The WikiLeaks twitter feed was put to Professor Grothoff. This confirms that between 23 and 30 August 2011, WikiLeaks started to release cables relating to countries across the

world including China, Taiwan, Libya, Israel, Russia, Venezuela, Indonesia, Syria, Somalia, Bahrain, South Africa, Yemen, Cuba, Germany, Iran, Afghanistan" etc. Professor Grothoff confirmed that these were unclassified cables. He later explains that he carried out a search of the 133,887 cables stored within the 250,000 cables, marked "unclassified". Each unclassified cable in this cache related to a country or embassy. He then found the cables later released that were referable to that country, and the numbers matched. From this he was able to conclude that the early release of the 133,887 cables related to unclassified cables.

178. He was shown a WikiLeaks "editorial" confirming that 50 media and human rights organisations from around the world were provided with the over 100,000 classified unredacted cables for analysis. Professor Grothoff however noted that according to Mr. Leigh, Mr. Assange was reluctant to give the full cache of cables to him quoting his comment "*It had been a struggle to prise these documents out of Assange back in London*". It was put to him that Mr. Leigh had also commented "*Assange was keeping the three news organisations dangling despite his original agreement to deliver all the material for publication. He willingly passed on the less important war logs from Afghanistan and Iraq, but talked of how he would use his power to withhold the cables in order to "discipline" the mainstream media*."

179. He confirmed there was no record of the release of the entire cables cache before 31 August 2011. On 31 August 2011 a tweet is posted by Radek Pilar, MRKVAK stating that the complete unredacted cables leaked from WikiLeaks was available. The tweet is timed 5.58pm (although for the witness, in a different time zone it is timed 7.58pm). Nigel Parry set out in his blog the efforts that he made to discover the encrypted file and password and the following sequence of events are put to Professor Grothoff: at 22.27 GMT on the same day WikiLeaks puts out a statement confirming what has happened; Mr. Parry discovers the location of the encrypted file and passphrase and tweets this information; he states that he notifies WikiLeaks about his discovery and within 20 minutes at 22.27 GMT on 31 August 2011 WikiLeaks put out a statement about it, putting Mr. Parry's discovery at around 22.00 GMT; within an hour of Mr. Parry's tweet disclosing the location of this information, the user name "Nim_99" had uploaded the unredacted cables onto the internet (this is the first reference to the full set of unredacted cables being published although it was not possible to identify where this user was uploading to); meanwhile, at 23.44 GMT

on 31 August 2011 WikiLeaks tweeted an editorial which confirmed that 100,000 classified, unredacted, previously unpublished cables have been disclosed, and referred to the location of the file and passphrase (but not repeating it in this post); according to Mr. Parry, within a couple of hours of his blog, and therefore in the early hours of the morning of 1 September 2011, the unredacted cables become available on the Cryptome site; after that a user name "Yoshimo" 11.23am GMT on 1 September 2011 makes them available on the piratebay website; and WikiLeaks made the same information available on its website at 01.19 am on 2 September 2011.

180. In re-examination further passages from Mr. Leigh's book are referred to regarding the handing over of the cables including "*[e]ventually, Assange capitulated*" indicating Mr. Assange's reluctance. He confirmed that placing encrypted files on a temporary website and accessible to a limited number of people to ensure it remains private, as Mr. Assange did in this case, is a regular occurrence. He confirmed that before the publication of Mr. Leigh's book the unredacted cables remained private to the media partnership. He confirmed that some mirrors were created pursuant to instructions provided by WikiLeaks but others used a different software to that suggested by WikiLeaks. He considered that the encrypted file was probably mirrored by accident as one of the thousands of files being downloaded, but he could not say with certainty how it was obtained.

Stefania Maurizi

181. Ms. Maurizi's witness statement dated 16 July 2020 was read by agreement. All paragraph references below refer to this statement. Her qualifications are set out at §2 to 6. She is an investigative journalist working for an Italian newspaper, Il Fatto Quotidiano. In 2008 she was working for L'Espresso and La Repubblica, an Italian news magazine and newspaper respectively. She is also a mathematician with a particular interest in cryptography.

182. She first started looking at WikiLeaks in 2008 as it had introduced encryption to protect its sources and very few media outlets were doing this. She first worked in partnership with WikiLeaks in July 2009 on an Italian story involving the garbage collection crisis. She met Mr. Assange on 27 September 2010 in Berlin to discuss the publication of the Afghan war logs in L'Espresso. He expressed his view that the war in Iraq might have been avoided had the so-called Collateral Murder video been published earlier. She believed Mr. Assange's motivation for his work was to change the direction of history and expose the

lies which caused wars to be waged. She had various opportunities over a significant period to discuss his objectives exposing lies. In January 2011 she travelled to the UK to regarding further agreements around the publication of the diplomatic cables. The project involved WikiLeaks entering into partnerships with responsible trusted journalists with local knowledge and expertise. She was given access to 4189 cables and went through these with Mr. Assange as systematically as possible. She was given an encrypted USB stick and on her return to Italy the password which enabled her to open the file. The strict procedures insisted on by WikiLeaks involved protections beyond those she and her colleagues were accustomed to using. This included keeping the files encrypted in an airgap computer which was never left unattended. She agreed with John Goetz that these measures involved the most careful handling of materials that she had experienced. She notes David Leigh's remarks "that it is entirely wrong to say the Guardian's 2011 WikiLeaks book led to the publication of unredacted U.S. government files" and wonders whether he understood the procedure at all. She and a colleague worked on appropriate redactions of the cables to ensure the safety of any names. She regards the information published by WikiLeaks to be of "unparalleled importance"(§27).

183. She provided examples of cases in which it has been very difficult for investigators and journalists to obtain information about very serious. violations of human rights. She refers to her book "Dossier WikiLeaks. Segreti Italiani" in which she exposed the secret and relentless pressures exerted by US diplomacy on the Italian governments for years. These pressures were exposed only thanks to the diplomatic cables published by WikiLeaks. She provided the text from cables dated 24 May 2006, August 2006, April 2007 and February 2010 which provided the evidence that the US was putting pressure on Italian politicians to prevent the extradition of US nationals who had been convicted in Italian courts of their responsibility for the rendition of a Muslim cleric Abu Omar, kidnapped by the CIA from the streets of Milan in 2003.

184. She stated that she was at Ellingham Hall between 26 and 28 August 2011 shortly after Der Freitag had published the story regarding the accessibility of the unredacted cache of documents, and saw that Mr. Assange was acutely troubled by the situation faced by WikiLeaks. While she was there, Mr. Assange was making urgent attempts to inform the State Department that the information that was circulating, was out of WikiLeaks's control.

Christopher Butler

185. Mr Butler's witness statement dated 16 July 2020 was admitted by agreement. He is the Office Manager at the Internet Archive in San Francisco. He confirms that the website archive.org is a US-based institution and holds historical versions of WikiLeaks publications and "user-posted" items which were indicated as copies of WikiLeaks publications. He confirms that the Internet Archive have no record of ever receiving a request from the US government to have data taken down.

John Young

186. Mr Young's witness statement dated 16 July 2020 was read by agreement. All paragraph references below refer to this statement. Mr Young is the founder of the website Cryptome.org and has remained the website owner and administrator. He published unredacted diplomatic cables on 1 September 2011 on the Cryptome.org website. He obtained the encrypted file from the following URL: http://193.198.207/wiki/file/xyz/z.gpg. It remains available at present. He has not been asked by a US law enforcement authority to remove the unredacted diplomatic cables nor has he been notified that the publication of the cables is illegal.

THE IMPORTANCE OF THE 'MANNING' DOCUMENTS

Clive A Stafford Smith

187. Mr Stafford Smith adopted his witness statement dated 14 July 2020, confirming that it was true to the best of his knowledge and belief. All paragraph references below refer to this statement. His qualifications are set out in §§2 and 3. Mr. Stafford Smith helped to found the charity Reprieve which is based in London. He is an American lawyer licensed to practice in the state of Louisiana and a number of federal courts in the US.

188. As part of its work Reprieve represents prisoners in Guantánamo Bay. Although 740 of the 780 detainees have now been released from Guantánamo, Reprieve continues to represent 17 of its prisoners. Mr. Stafford Smith gives an account of the innumerable obstacles to representing Guantánamo detainees including having to engage in lengthy litigation to be permitted access; the strict rules imposed on this access; the enormous cost of visiting clients; and the even greater costs of arranging for experts to visit. He described his sources

of information as the prisoners themselves, documentary proof of their accounts obtained from his own extensive travels, and the detainee assessment briefs leaked by WikiLeaks, which he found on the New York Times Guantánamo docket on their website. Although the assessment briefs were important to the world understanding the allegations against his clients, he nevertheless describes them as "the best face that the US government could put on the crimes it had committed against the Guantánamo prisoners". He also considered that little or none of the material threatened national security and at one point considered whether the Government had leaked the information itself, as the worst case that could be presented against his clients. The WikiLeaks materials were a starting place for important discussions, for example they enabled others to analyse and piece together information.

189. He referred to some of the crimes committed by the US government against his clients, including torture, kidnapping, renditions, holding people without the rule of law and murder. In relation to the role WikiLeaks disclosures have placed in evidencing these crimes he refers in §§61 to 74 to his client Binyam Mohamed who was the subject of rendition. The WikiLeaks leaks had helped to identify where people who had been rendered were taken and made it clear without actually stating it, by whom.

190. In §§84 to 93 he deals with the issue of drone killings carried out in Pakistan by the US. The WikiLeaks cables and the Joint Prioritised Effects List (the JPEL) had contributed to court findings that US drone strikes were criminal offences and that criminal proceedings should be initiated against senior US officials involved in these strikes. In the case of *Noor Khan v Federation of Pakistan (through Governor Khyber Pakhtunkhwa and 5 others)*, WikiLeaks cables were used to reveal the Pakistani government's support for drone strikes (§89). He quotes a Pakistani author and journalist, Saba Imtiaz, as describing the leaked cables as "extraordinary", showing how closely the US was involved in Pakistani politics (§90). He provides an example from 2013 in the case of *Foundation for Fundamental Rights (FFR) v Federation of Pakistan (and 4 others) (2013 PLD Peshawar*) during which the cables were a key part of the "evidence development process" and submissions to the court. As a result of the judge's ruling in this case, drone strikes in Pakistan stopped. In evidence he stated that the Wikileaks cables brought about a sea-change in attitudes to the use of drones which were now condemned as war crimes. In evidence he stated that without these disclosures it would have been very, very difficult to have achieved this. Between §§94 to 96 he provides examples of the content of three cables indicating political blocking

and interference by the US in rendition investigations in Spain and Germany (§95) and Poland (§96).

191. Between §§78 to 83 he refers to the "US Assassination Programme" in which the government was engaged in the assassination of its own citizens, including journalists. Bilal Abdul Kareem, an American journalist is currently seeking to challenge the government's apparent decision to assassinate him. He states the JPEL leak and the list of targets in the Afghanistan and Pakistan areas from the Wikileaks disclosures became of key importance to the work of Reprieve to evidence war crimes and human rights violations by the US and its allies. He also considers them to be one of the sources for exposing the unreliability of the evidence used to justify the detention of those held at Guantánamo Bay.

192. In relation to the International Criminal Court (the ICC) at §59 he confirms that it is currently investigating war crimes in Afghanistan, including by US agents. The referral to the ICC of his client Ahmed Rabbani, who is still a Guantánamo Bay prisoner, was based in part on the documentation of torture and abuse revealed in the Wikileaks documents. In response to cases such as Mr. Rabbani's, President Trump has recently announced an Executive Order that threatens sanctions against anyone who helps the ICC investigate American crimes, something he describes as legally outrageous.

193. In cross-examination he confirmed his opinion that publication of the Wikileaks materials was in the public interest. He does know whether in the UK a public interest defence is available but it is not the law in America. He was not surprised that the cables he had referred to (to illustrate the government's stance towards drone strikes) were not documents which formed the subject of this prosecution. He stated that an awful lot of the Wikileaks materials were published in newspapers such as the New York Times and Washington Post; these newspapers clearly felt that publishing them was in the public interest. When it was put to him that the publishing charges were limited to the distribution of information which contained the names of sources he replied "I think you are very wrong on the way that American cases are prosecuted…in every American prosecution such as this you are going to have an expert called at the beginning, who is going to be an expert in terrorism normally, who is going to go through the entire history of Al-Qaeda and everything else for several days, so it is just not the case that it is all going to be relevant in a case like this…it will include pretty much everything".

194. Challenged about his comments (§36) that there was little or nothing in the Guantánamo materials that truly threatened national security, he accepted that he is not responsible for classifying information or determining their impact. He also accepted that he has never been involved in a federal trial where a challenge to national security was in issue. However he has seen hundreds and hundreds of pages of documents classified as secret, and in his experience, since 9/11, the government's response has been to over-classify material. He confirmed that the detainee assessment briefs contained the name of some informants.

Andy Worthington

195. Mr. Worthington's witness statements dated 12 February 2020 and 30 September 2020 were read by agreement. All paragraph references below refer to his statement. He is an investigative journalist, writer and historian with particular expertise on Guantánamo Bay.

196. Mr. Worthington states that the evidence revealed in the Guantánamo detainee assessment briefs were of "extraordinary potential importance" (§5) and included the "detainee files" of almost all the 779 prisoners held at Guantánamo compiled by the Joint Task Force responsible for running the prison. Mr. Worthington provides details of the content of these files which included: recommendations about whether prisoners should be released or detained; previously undisclosed information regarding health assessments; and information on the first 201 prisoners released between 2002 and 2004 which had never been made public before. He states that the majority of the documents revealed accounts of "incompetence, with innocent men detained by mistake, or because the US was offering substantial bounties to its allies for Al Qaeda or Taliban suspects" (§6). The files included the opinions of the Criminal Investigation Task Force created by the Department of Defence to conduct interrogations, and behavioural science team reports consisting of psychiatrists who had "a major say in the exploitation of prisoners interrogations" (§7). The files also contain detailed estimations of the intelligence used to justify prisoners' detention, offering an "extraordinary insight" into the methodology of US intelligence and showing that the testimony of witnesses was central to the justification for detention. Mr. Worthington states that in the majority of cases the witnesses were fellow prisoners who themselves have been subject to torture or other forms of coercion or had provided false statements to secure better treatment. Mr. Worthington provided examples of the treatment of some of these witnesses at §8. In summary he described the files as "a collection of

documents confirming the US Government's scaremongering rhetoric about Guantánamo….the anatomy of a crime of colossal proportions perpetrated by the US Government on the majority of the 779 prisoners held at Guantánamo" (§9).

197. Mr. Worthington was contacted by Mr. Assange at the very end of March 2011 and asked to take on the role of assisting media partners, including the New York Times and the Guardian, in their understanding of the content and implications of the detainee assessment briefs. He took part in the exercise, in part, because he was satisfied the arrangements for publication were professionally carried out and of newsworthy, legal and historical importance (§11). He noted that two media partners had published the data before it appeared on the WikiLeaks site and earlier than had been agreed.

Ian Cobain

198. Mr Cobain's witness statement, dated 17 July 2020, was read by agreement. All paragraph references below refer to his statement. Mr. Cobain is an investigative journalist, currently working for "Middle East Eye". His qualifications and background are set out at §§2 to 7. The issues he has been instructed to deal with are set out at §§9 and 10. In broad terms he is asked to comment on the significance of the WikiLeaks disclosures from 2010 and 2011.

199. Mr Cobain acknowledges that anyone who has knowledge of state crimes and who comes forward to corroborate allegations about those crimes, may face prosecution (§11). He gives an account of the difficulties faced by those investigating human rights abuses and the slow and painstaking work based on fragments of information or patterns required to enable journalists to establish that international human rights violations have taken place. A whistleblower or leaker would have greatly assisted in reporting these abuses. He describes how states shut down investigators when evidence about their involvement in human rights abuses and other crimes are uncovered. Journalists and news organisations revealing information embarrassing to states may face "attacks" such as attempted prosecutions (§32). He gave an example of a raid on the home of two Belfast journalists in 2018 following their assistance to a documentary filmmaker about collusion between police officers and gunmen in an incident in which six civilians had been killed in 1994.

200. Mr Cobain described the failure of the UK Parliament's Intelligence and Security Committee to properly investigate allegations of UK complicity in torture and involvement

in the US rendition programme. In light of such failures, media scrutiny is more important than ever and leaks and whistleblowers remain a vital means by which state crimes can be exposed (§44).

Patrick Cockburn

201. Mr Cockburn's witness statement, dated 15 July 2020, was read by agreement. All paragraph references below refer to his statement. His qualifications and background are set out at §§1 and 2. He is a Middle East correspondent for the Independent newspaper and formerly worked for the Financial Times. He has reported extensively from Iraq and Afghanistan since 2001. Broadly he has been asked to comment on the impact of the WikiLeaks disclosures from 2010 and 2011.

202. He states the WikiLeaks revelations confirmed much of what he and others had suspected. He also provides a detailed description of the so-called "Collateral Murder" video showing the killing of 11 people by a US helicopter in Baghdad in July 2007. Officials had denied wrongdoing and the Pentagon had refused to disclose the camera footage under a Freedom of Information Act request and but for the decision by Ms. Manning to release the contents of this and thousands of other reports and cables to WikiLeaks, the suspicions of journalists and local police in Baghdad would never have been established (§6). He goes on to describe a number of less well-known incidents of shootings by US soldiers at civilians.

203. A Review Task Force headed by Brigadier General Robert Carr was set up by the Pentagon to study the impact of the revelations. Brigadier General Carr told the court that the Taliban claimed to have killed a US informant identified in the WikiLeaks cables but in cross-examination had admitted that the name of the person killed was not part of the WikiLeaks disclosures.

204. In his view, WikiLeaks did what all journalists should do, make important information available to the public so that evidence-based judgements can be made about the actions of their governments and in particular those actions that reveal the gravest of state crimes (§14).

Khaled el-Masri

205. Mr el-Masri's witness statement dated 16 July 2020, was read by agreement. All paragraph references below refer to his statement. Mr. el-Masri was kidnapped in 2003 at the Macedonian border, detained without reason, held incommunicado and severely ill-treated. He was then handcuffed, blindfolded and at Skopje Airport, handed to a CIA rendition team. WikiLeaks disclosures were produced and relied upon during his application to the Grand Chamber of the European Court of Human Rights for redress. He produced a copy of the judgement from December 2012 which found that the Government of Macedonia was responsible for his treatment which amounted to torture in breach of article 3 ECHR. Mr. el-Masri provided a graphic and detailed account of his treatment. Several months before his release it was discovered that his detention was the result of "mistaken identity", a fact the CIA had been aware of for some months. When he was eventually released, he was warned that it was a condition of his release that he never spoke about what had happened to him and that there would be consequences if he did.

206. At the time of these events Mr. Khaled el-Masri and his family had lived in Germany for almost 20 years. The secrecy of the states involved led to a long struggle to expose even the most basic facts about his case. It was only with the assistance of independent journalists working with WikiLeaks and later human rights investigators and lawyers that he was able to gather evidence to support his account. Eventually the CIA rendition team were identified in the US and the Munich state prosecutor issued international arrest warrants for them. Cables published by WikiLeaks showed that ultimately the German government bowed to pressure from the US government to withdraw these requests. These cables also showed the US interfering to block judicial investigations in Germany and in Spain from where the rendition flight had travelled. The CIA have never been held to account for what happened; although the CIA's Inspector General referred the case to the Department of Justice, in May 2007 the Office of the US Attorney for the Eastern District of Virginia declined to pursue the case.

207. He concludes by stating that without the dedicated and brave exposure of state secrets, what happened to him would never have been acknowledged and understood.

THE ECUADORIAN EMBASSY

Aitor Martininez Jimenez

208. Mr. Jimenez is a lawyer at the firm "ILOCAD SL-Baltasar Garzon Abogados" which coordinates the defence of Mr. Assange.

209. In 29 July 2019 the firm filed a criminal complaint against David Morales, the owner of UC Global alleging the following breaches of the Spanish Criminal Code: client-lawyer communications contrary to the (articles 19 and 197.4); "misappropriation" (article 253); bribery (articles 242 and 427); and money-laundering (article 301). It also filed similar criminal complaints against UC Global.

210. On 7 August 2019 the Central Investigative Court 5 National Court admitted the complaint and opened a Criminal Case 3291/2019 in relation to both Mr Morales and UC Global for all allegations apart from the allegation of "misappropriation". On 17 September 2019 the Central Investigative Court ordered a police operation. Mr Morales was arrested, the accounts of UC Global were frozen and searches were carried out at his home and the company's headquarters The court granted anonymity as "protected witnesses" to three former workers and arranged through a European Investigation order for a statement to be taken from Mr. Assange.

211. Mr Jimenez exhibits the statements of two of the protected witnesses, witness 1 and witness 2 taken before a public notary. The original Spanish language version of each statement is provided together with an English translation. In neither the Spanish language versions nor the English language translations, are the statements signed or dated.

Anonymous Witness 1

212. Witness 1 asks to be granted the status of protected witness out of concern that both himself and his family would be put at risk by virtue of the information and documentation he provides.

213. UC Global is a company carrying out security consultancy and training. The owner, administrator and director is David Morales. In 2008, Witness 1 started working with the company on an informal basis On 1 September 2015, he became a 50% owner. In March 2019, he sold his shares to Mr Morales after witnessing conduct he considered unacceptable.

214. In October 2015, UC Global was contracted to provide security services for the government of Ecuador, which included security services for the daughters of President Rafael Correa. Soon afterwards a second contract was signed to provide security to the embassy of Ecuador in London. Witness 1 was not aware of all the details of the contract (page 1) however he states that in order to win the embassy security contract, Mr Morales made payments for commissions to the Servicio National de Intelifencia de Ecuador (SENAIN), who was in charge of awarding security contracts to private security firms.

215. Witness 1 states that the embassy security work required UC Global to keep the Ecuadorian National Intelligence Agency appraised of every single occurrence inside the diplomatic mission. In order to monitor possible illegitimate access to the embassy they installed a closed-circuit camera system that did not record sound. They also deployed physical UC Global security personnel inside the embassy to monitor any suspicious entry from outside the embassy.

216. Mr Morales informed Witness 1 that the company wrote reports to SENAIN on a monthly basis but also that these reports would be sent to "the dark side" (page 2). Witness 1 states this was as a result of a parallel agreement Mr Morales had signed with the US authorities. From 2017 Mr Morales began making regular trips to US, principally to New York but also to Chicago and Washington. He told Witness 1 that this was to "talk with our American friends". His trips are recorded via his wife's histogram account. Witness 1 recalled Mr Morales requesting a secure phone with secure applications including an encrypted computer, for communications with "the American friends" (page 2). He told Witness 1 that his "American friends" were the US intelligence but refused to say specifically who he was meeting, stating it was a matter he was managing separately from the company.

217. Witness 1 began to notice Mr Morales wealth increase considerably. Witness 1 confronted Mr Morales about providing information to "the other side". In response, Mr Morales stated "I am a mercenary through and through".

218. In June or July 2017 Mr Morales began to develop a sophisticated information collection system inside the embassy. He also asked employees to "change the internal and external cameras of the embassy". Mr Morales instructed a team to travel regularly to London to

collect the camera recordings. At times he showed "a real obsession" for monitoring and recording the lawyers meeting with the "guest" because "our American friends" were requesting it (page 2).

219. Witness 1 sold his shares to Mr Morales and put an end to their contractual relationship.

220. He suspects that some payments to Mr Morales by US intelligence may have been to an account in his wife's name via a dental clinic with an account in the Caixa bank, which she owned. He also suspects Morales may have accounts in Gibraltar as he had made comments about travelling to the British colony to hide cash.

Anonymous Witness 2

221. Witness 2 joined UK Global in February 2015 as an IT expert.

222. He recalls Mr Morales confirming at a meeting with staff that they were moving into "the Premier league". He made regular trips to the US stating repeatedly that he had "gone to the dark side". During the "initial" months of 2016 Witness 2 visited the Ecuadorian embassy. A UC Global employee showed him an iPad left with security by a visitor as a condition of entry to the embassy. He is 99% sure it belonged to Guy Goodwin Gill. He was told on return to Spain that the contents of the iPad had been copied.

223. At the end of 2016 Mr Morales became more obsessed with obtaining as much information as possible. On 24 January 2017 Mr Morales sent the following message over telegram "well, I want you to be alert because I am informed that we are being vetted, so everything that is confidential should be encrypted […] That's what I'm being told. Everything relates to the UK issue. I am not worried about it, just be alert […]. The people vetting are our friends in the USA". In June and July 2017, he was asked to form a task force of workers to capture and process information collected at the embassy. The unit travelled to London every month to collect information gathered by UC Global employees at the embassy. Mr Morales instructed them that the cameras were to be changed every three years and to carry out research for security cameras with sophisticated audio recording capabilities. In around June 2017 Mr Morales also instructed Witness 2 that the camera should allow streaming capabilities so that "our friends in the US" would be able to gain access to the interior of the embassy in real time. Witness 2 refused to install the system on the basis that it was

illegal. At the end of 2017 UC Global closely monitored the Consul of Ecuador, Fidel Narvaez, after learning that Mr. Assange would receive a diplomatic passport from the Ecuadorian authorities. At the end of November 2017 Mr Morales told employees that the Americans were very happy with the information supplied and they would need more. Mr Morales spoke about the possibility of entering the law firm headed by Mr Garzon, ILOCAD to obtain information concerning Mr. Assange for the Americans. Two weeks later the national media reported that men in balaclavas had entered ILOCAD.

224. In early December 2017 Mr Morales instructed Witness 2 to install new equipment. He was instructed not to share information about the recording system and to deny the cameras were recording audio. He has photographs of the new camera system and copies of recordings made by the cameras. In December 2017 Mr Morales asked Witness 2 to take pictures of various decorative objects in the meeting room in the embassy which he subsequently discovered were to be used to conceal microphones. He challenged these measures and as far as he is aware they were not carried out. He has retained a number of photographs of decorative objects. In December 2017 when he installed the new cameras Mr Morales asked him to steal the nappy of a baby who was regularly visiting Mr. Assange. Mr Morales expressly stated that "the Americans" wished to establish the child's paternity. Witness 2 approach the mother and informed her of this plan. In December 2017 Mr Morales said the Americans were desperate. They had suggested more extreme measures to end Mr. Assange's stay in the embassy, including leaving the door of the embassy open or poisoning him.

225. In around January 2018 Mr Morales asked Witness 2 to install a microphone in the embassy, by placing it in the meeting room. Witness 2 installed it in a fire extinguisher, by gluing it to a magnet and concealing at the base of the PVC holder. He was asked to install a second microphone in the toilet which he did. He is still in possession of the microphone installed in the meeting room and has several recordings captured by it. In January 2018, when Witness 2 returned to Spain, Mr Morales openly commented that "our American friends" had asked him to install microphones throughout the embassy in order to record meetings that Mr. Assange had with his visitors, requested by the US, and especially the coordinator of his legal defence Baltasar Garzon. Security guards were also asked to search for evidence of travels to Argentina and Russia in Mr Garzon's passport pages, which were photographed. Mr Morales instructed that Mr. Garzon should be followed. Witness 2 recalls

seeing photographs from this operation. At another point in January 2018 Mr Morales told Witness 2 to place stickers on the top left corner of all the external windows of the embassy, which he did. On his return Mr. Morales explained that "our American friends" had laser microphones outside the embassy which were directional and pointed at the windows. Notwithstanding the white noise machine Mr. Assange used, these microphones were able to extract conversations. Mr Morales asked security personnel inside the embassy to obtain Mr. Assange's fingerprints. As far as he is aware these were obtained from an imprint on a glass and handed to Mr Morales. He is also aware that security personnel stole documentation from Mr. Assange. Security personnel were instructed to target Mr. Assange's lawyers, photographing their documentation. In some cases their every move was tracked. Witness 2 has several emails confirming this including photographs of equipment required to be handed to security personnel on entry to the embassy. He recalls seeing reports of security personnel opening a suitcase of Andy Muller and photographing the electronic equipment. Mr Muller was one of the targets that Mr Morales had instructed to be prioritised, on behalf of US intelligence. Witness 2 has several photographs of the belongings of Mr Muller. Witness 2 recalls Mr Morales saying at the office that the Americans were very nervous about a Californian politician who was going to the Ecuadorian embassy to meet Mr. Assange. Mr Morales stated that the Americans had asked him to personally control and monitor absolutely everything to do with that visit. Witness 2 recalls explicit orders from Mr Morales to security personnel to record everything.

226. Witness 2 stated that documentation obtained was transmitted to the US through various channels. Some documents were copied onto servers which the US had remote access to. Video and audio recordings from cameras installed in the embassy were saved onto hard drives and extracted every fifteen days and personally transported by Mr Morales on his regular trips to the US. Witness 2, on Mr Morales's request, installed an FTP server to enable remote access and external transfer, accessible via a username and password. He is able to confirm the server was accessed remotely from the US, IP addresses recorded during this remote access are still in his possession. The FTP server stored the daily security reports provided by security employees at the embassy. Recordings from security cameras were managed in person. Witness 2 was instructed by Mr Morales to travel to the Ecuadorian embassy every fifteen days to change the hard drives of the camera servers. On a couple of occasions the Ecuadorian authorities requested a recording which required Mr Morales to travel to the US to retrieve the original.

227. UC Global in Jerez received monthly visits from Gabriela Paliz, the person responsible for security at the Ecuadorian embassy. It was said that Mr Morales paid €20,000 per month to ensure there were no negative reports about UC Global that might put the contract for its services at risk. At the end of 2018 the company received a request for material in its possession relating to Mr. Assange. At that point Mr Morales removed all the material about the security contract relating to the Ecuadorian embassy as well as all material relating to the "guest" (referring to Mr. Assange). There was speculation that the material was stored in his two homes in Jerez, or at the home of his father-in-law.

228. Between mid-2017 and mid-2018 Mr Morales acquired a new home and high-end vehicles. The speculation amongst employees was that he was paid €200,000 per month by the US. Witness 2 recalls Sheldon Adelson putting UC Global personally in charge of his own security and his children when they visited Europe.

Cassandra Fairbanks

229. Ms. Fairbanks witness statement dated 6 July 2020, was read by agreement. It has been summarised in the decision and is not repeated here.

Guy Goodwin-Gill

230. Mr. Goodwin-Gill's witness statement dated 17 January 2020, was read by agreement. He confirms that he attended a meeting on 16 June 2016 at the Ecuadorian embassy in London to discuss the international legal aspects of asylum granted to Mr. Assange. Before entering the ground floor meeting room he left his passport, phone and tablet "at the door" together with unlocked luggage. He was shocked to learn in late 2019, that his name featured in papers lodged in connection with legal proceedings in Spain concerning the disclosure of confidential information that he had shared during the visit, and that his "electronic equipment" may have been copied.

VANESSA B ARAITSER

DISTRICT JUDGE (MAGISTRATES' COURTS)