STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 27.2;
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)

STATEMENT OF: ERIC L. LEWIS

Age of witness: Over 18

Occupation: Attorney

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This statement (consisting of 14 pages) **is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.**

1. I am a partner in the US Law firm Lewis Baach Kaufmann Middlemiss PLLC in Washington DC. I received my Bachelor's degree from Princeton University in 1979, a Master's degree in Philosophy from Cambridge University in 1980, where I studied as a Fulbright Scholar, and a Juris Doctorate degree from Yale Law School in 1983.

2. I have been an attorney in private practice for 35 years. During that time, I developed a significant practice in international disputes, including insolvency, media, fraud, and criminal matters and have served as counsel in numerous criminal matters with multijurisdictional and extraterritorial components, including charged offenses alleged to implicate acts of international terrorism, conspiracy to commit acts of international terrorism, and other offenses alleged to implicate the national security of the United States. These have included legal representation and counsel provided to:

    i. A Libyan national seized by the US military in Libya and rendered to the United States on charges of international terrorism in connection with the death of the U.S. Ambassador and three other U.S. nationals;
    ii. Serving as expert with respect to an individual accused of corrupt and illegal acts relating to the FIFA scandal, including on issues relating to a US extradition request;
    iii. The Liquidators of Bank of Commerce and Credit International with respect to criminal, civil and administrative exposures in the United States.
    iv. Several individuals detained by the US military in Guantanamo Bay, Cuba, upon accusations that they are enemy combatants;

v. Defending a prominent investigative journalist in a defamation action involving allegations of a foreign leader working for the CIA that resulted in a defendant's verdict at trial;

vi. Shareholders of an Andorran financial institution where the institution was accused of money-laundering and shut down by the US Department of Treasury;

vii. Advising sovereign governments and major commercial entities with respect to asset recovery that were the proceeds of theft or corruption;

viii. Representing victims of securities and related frauds against major financial institutions; fiduciaries and financial advisors; and

ix. Families of victims of drone attacks in Yemen, arguing for the application of international humanitarian law to US drone missile strikes.

3. I am an elected member of the Council on Foreign Relations, the American Law Institute and as well as the US chairman of the human rights organization Reprieve, an international organization which focuses on the rights of individuals subject to capital punishment, indefinite detention or extra-judicial killing. I was an Observer with Special Consultative Status at the 61st meeting of the United Nations High Commission on Human Rights. I have served as an Adjunct Professor of Law at Georgetown University Law Center and have lectured on indefinite detention under the Law of War at Hertford College, University of Oxford. I am a Member of the Board of Advisers of the Bonavero Institute for Human Rights at Mansfield College, University of Oxford. I am an Associate Tenant of Goldsmith Chambers, Temple, London. I am a Director of Independent Digital Media Limited, publisher of The Independent.

4. I have read Part 19 of the Criminal Procedure Rules relating to Expert Evidence and believe that my advice is compliant with the rules.

5. I have been provided with two indictments and the documents filed in support of each in the case of United States of America .v. Julian Paul Assange. The first indictment dated March 6th 2018 charges one count of conspiracy to commit computer intrusion. The second indictment, referred to as the superseding indictment dated May 23rd 2019, incorporates the sole charge under the earlier indictment as Count 18 and adds a further 17 counts under the Espionage Act 1917.

6. I have been asked for my opinion in respect of a number of questions that relate to the conditions likely to pertain to Mr Assange, charged with these offences, when facing trial in the USA.

7. The warrants in the case have been issued by the United States District Court for the Eastern District of Virginia. The answers to the questions that follow, which have been posed to me, are of a preliminary

nature; I am instructed that other factual issues currently the subject of investigation might impact upon each of the areas outlined here in summary form. In those circumstances I would wish to reserve the right to supplement or amend the responses set forth below to these initial questions.

Question No. 1: Where is Mr Assange likely to be held pretrial?

8. Mr Assange is very likely to be incarcerated pretrial in the William G. Truesdale Detention Center, in Alexandria, Virginia, which is one of the several regional jails operating in this district that are under the control of the state and local authorities. It is almost certain that he will not be granted bail. This facility, also known as the Alexandria Detention Center or the Alexandria City Jail, houses approximately 400 inmates, including those awaiting federal trial. This facility has previously housed high-profile defendants such as Zacarias Moussaoui, Robert Hanssen (serving 15 consecutive life sentences for espionage), Paul Manafort (the campaign manager for Donald Trump), and Maria Butina, a Russian gun rights advocate changed with working as a covert agent for the Russian Federation.

9. This facility also held my client, Ahmed Abu Khatallah, who was accused of homicide in the death of the U.S. Ambassador to Libya and three others, and initially charged with capital offenses. The Department of Justice subsequently dropped the capital charges and Mr Abu Khatallah was acquitted of all homicide counts. In the course of representing Mr Abu Khatallah, I visited him at the Alexandria Detention Center on multiple occasions, and am in consequence very familiar with the conditions, policies and procedures at the facility. The facility is in very close proximity to the Albert V. Bryan United States Courthouse, where trial would be held if Mr Assange is extradited.

10. There is some possibility that Mr Assange could be held at the Northern Neck Regional Jail in Warsaw, Virginia. Warsaw is approximately 90 miles from the Washington, D.C. area and approximately 2 hours 45 minutes each way by automobile. I consider it much more likely that Mr Assange would be held at the Alexandria County Jail although a number of prominent inmates awaiting trial in Alexandria have been held at Northern Neck Regional Jail. It is in rural Virginia and presents difficulties for lawyers to visit to prepare for trial because of the nearly six-hour round trip each day to get there from the Washington, D.C. area.

11. Both Alexandria City Jail and Northern Neck Regional Jail are state facilities which have arrangements with the US government to house prisoners awaiting trial in federal court.

Question No. 2: Under what regime would Mr. Assange be held on remand?

12. I consider it likely that Mr Assange will be placed in a form of administrative detention, the most probable being Administrative Segregation. This form of restrictive housing is stated by the Bureau of Prisons not to be a disciplinary measure, but is purportedly used by corrections personnel to isolate inmates for their own protection or the safe operation of the facility. A page in wide circulation reported to be extracted from the 2017 Alexandria Detention Center Inmate Handbook[1] [Exhibit 1] indicates that an individual may be segregated for the following reasons, which are not any further defined:

    i. Being a safety risk to other inmates, guards, or himself;
    ii. Concerns about how well an individual handles being in jail;
    iii. An extensive criminal history or a "serious charge".

13. In view of the charges against Mr Assange; the possibility of more than 170 years in prison; the fact that he is a foreigner and therefore viewed as a flight risk; as well as the wide publicity given to accusations made against him including by senior figures in the administration, in conjunction with the usual practice with respect to defendants charged with national security-related offences, it is in my view almost certain that Mr. Assange would be subject to administrative segregation.

14. Both the designation and retention of the prisons within the regime lack any procedural rights. The Alexandria protocol for administrative segregation permits housing of an inmate in his cell for up to 22 hours per day. The two-hour breaks are intended for phone calls or tending to "hygiene needs," which implies that attending to those needs in solitary is not possible.

15. The Alexandria Detention Center regularly houses federal detainees awaiting trial before this court in administrative segregation which is, in practice, tantamount to solitary confinement. According to counsel for Marina Butina, an alleged spy for Russia awaiting trial in Alexandria, under administrative segregation "Life is marked by deprivation. These inmates are locked up and enclosed in a steel door cage the size of a parking space, deprived of any meaningful human contact or sensory stimulation for 22

[1] Inmate Handbook for the William G Truesdale Adult Detention Center issued by the Alexandria Sheriff's Office, July 2017, p.9 [Exhibit 1]

hours a day, every day, with no release date in sight."

16. Despite warnings from the Justice Department, that "this practice should be used rarely, applied fairly, and subject to reasonable constraints," it is used liberally in Alexandria with respect to federal detainees awaiting trial as a "default solution[2]" [Exhibit 2].

17. There is known to be an overuse of administration segregation at the Alexandria Detention Center, which Mr Assange is almost certain to experience firsthand if extradited.

18. Administrative segregation has many similar features to Special Administrative Measures ("SAMs"), which are authorized by federal statute where it is "reasonably necessary to protect persons against the risk of death or serious bodily injury." 28 C.F.R. § 501.3. Although essentially the same regime, there are certain differences that make SAMs more restrictive. The impact upon Mr Assange would be likely to be similar; either regime is generally recognised as a form of solitary confinement.

19. In respect of Mr. Assange, the charges brought against him are of considerable seriousness and are alleged to implicate national security. The prison authorities have a significant degree of discretion in imposing restrictions. There is therefore a material risk that SAMs or a close variant of them could be imposed upon Mr Assange in pretrial detention. In any event it is virtually certain he will not be integrated into the general prison population.

20. As noted above, I spent many hours with my client Mr Khatallah, who was subject to SAMs over a period of years. The experience was profoundly difficult and damaging. His exercise period was normally in the middle of the night, as he needed to be escorted when no other prisoners were out in common areas. He, as well as other prisoners subject to this regime, often reject the exercise period, because it disturbs sleep and walking around a small, empty exercise area is similar sensory deprivation to the experience of isolation in a cell. (His experience was mirrored by other prisoners held under SAMs in solitary confinement in cramped concrete cells for twenty-two to twenty-three hours per day. The brief time they are out of their cells, they are generally exercising in a small room or cage alone. There is generally little natural light and no outdoor recreation or access to fresh air. SAMs prisoners are forbidden from communicating with other prisoners. They may speak to approved family members, but generally they are limited to one fifteen minute call per month. Their calls are monitored as are their meetings with lawyers. Non-legal visits are sharply curtailed.

21. SAMs prisoners are denied access to information about current events as all materials are censored and

[2] U.S. Department of Justice, Report and Recommendations Concerning the Use of Restrictive Housing, January 2016: https://www.justice.gov/archives/dag/file/815551/download

information is redacted that is deemed "detrimental to national security, good order or discipline of the institution." SAMs significantly interfere with the ability of a defendant and his legal team to prepare an effective defense. Not only do SAMs have severe psychological effects, but the gag orders that accompany SAMs essentially allow the government to control the narrative surrounding the case.

22. The distinction between detention under SAMs and administrative detention may be of little significance in that both provide for a restrictive regime of effective solitary confinement.

23. Such confinement, in addition to the prospect of the lengthy sentence (see below), can contribute to the coercive effect compelling a prisoner to plead guilty if they are imposed before trial. According to the former U.N. Special Rapporteur on Torture, "the practice of solitary confinement during pretrial detention creates a de facto situation of psychological pressure which can influence detainees to make confessions or statements against others and undermines the integrity of the investigation[3]". [Exhibit 3] This coercive effect is deliberate: SAMS are "meant to bludgeon people into cooperating with the government, accepting a plea, or breaking their spirit." *Id.*

Question No. 3: What restrictions will be applied to him and/or his counsel on access to classified information essential for his defense?

24. Mr Assange's defense will be severely limited in access to material essential for effectively contesting the case against him and preparing for his defence. In respect of classified information, the US government's position is that even his lawyers cannot view such information on public servers unless the information is declassified pursuant to applicable procedures for declassification. The ordering of any declassification frequently does not happen until a time close to trial and it is likely that counsel could not show the documents at the core of the case to the defendant for many months if at all. I explain the process below.

25. In the case of a criminal prosecution, there is a statutory framework under the Classified Information Procedures Act (CIPA) that purports to balance a criminal defendant's rights to classified information for use in his defense with national security. CIPA governs the use of classified information in certain criminal cases. Classified information, by its definition, is information which may not be disclosed for reasons of national security. 18 U.S.C. § App. 3 § 1. CIPA was originally drafted with espionage cases in mind, where, as here, the very subject of the litigation was claimed as a state secret. Intelligence agencies feared that the prosecution of Cold War spies would expose intelligence assets to foreign

[3] Allison Frankel, et al., *The Darkest Corner: Special Administrative Measures and Extreme Isolation in the Federal Bureau of Prisons*, at 2, Center for Constitutional Rights & Yale Law School (September 2017), at 14

powers. Id. at 18-19. Through CIPA, Congress purported to enact a way to balance the government's interests in secrecy against the due process interests of a person who is the target of government action. Having dealt with classified information management in a variety of cases, including Abu Khatallah and Guantanamo cases, it is my view that it is a pre-internet law that is extremely difficult to manage in a digital age, especially in a case like this one where vast numbers of classified documents are implicated. That the US Government uses classification extremely aggressively and for a variety of reasons that would not withstand scrutiny as implicating national security is the subject of substantial ongoing criticism[4] [Exhibit 4] House of Representatives Committee hearing "Examining the costs of over-classification on transparency and security").

26. Due process rights afford defendants or their counsel access to classified information, handled in accordance with CIPA's safeguards, that is "helpful to the defense of [the] accused." *United States v. Yunis*, 867 F.2d 617, 623 (D.C. Cir. 1989). The defendant may request whatever he would like in discovery that relates to his defense. However, if those requests encompass classified information, and the government moves for a protective order, which it is likely to do, then only if the information sought is "relevant *and* helpful" may the court order disclosure. Ordinarily, discovery requested must be produced if it is only relevant.

27. Defense counsel has to argue to the court why the information sought would be helpful before even knowing precisely what it is. The Government often opposes such requests, making its own arguments as to why the information requested is not helpful. Courts have recognized that "the defendant and his counsel in CIPA cases are hampered by the fact that the information they seek is not available to them until such a showing is made." *United States v. Yunis*, 867 F.2d 617, 624 (D.C. Cir. 1989). The showing of helpfulness and relevance is nevertheless required. In *Yunis*, the court denied access to classified transcripts of conversations between the defendant himself and the informant; the position was therefore that transcripts of the defendant's very own statements were off limits to him. Accordingly defense counsel faces the problematic position that the Government's intervention on the issue of what is helpful to the defense is permitted as is the Court's ruling on that issue in advance of trial.

28. The court has extensive discretion in the process. In a case involving a defendant alleged to have gone to Pakistan to join an extremist group, the court held an ex parte conference with the defense team to ascertain whether information alleged to contain state secrets would be useful to its defense strategy and then approved for disclosure summaries of certain classified documents that the government sought to withhold. *United States v. Shehadeh*, 857 F. Supp. 2d 290, 294 (E.D.N.Y. 2012). In other cases, such as

[4] See 'Examining the Costs of Overclassification on Transparency and Security', Hearing before the Committee on Oversight and Government Reform, House of Representatives, 7th December 2016

the prosecution for the embassy bombings in Somalia, the government avoided disclosure of state secrets by stipulating to the facts sought to be established. *In re Terrorist Bombings of U.S. Embassies in E. Africa*, 552 F.3d 93, 125 (2d Cir. 2008).

29. I and other defence lawyers have found that the process is extremely slow and cumbersome as the prosecution has to check with all its "stakeholders" in the intelligence community about declassification. It requires significant disclosures by defense counsel about the scope and thrust of the defence in advance of trial. All of these procedures make defense far more difficult as well as time-consuming and significantly lengthen the period of remand. Mr Abu Khatallah spent more than three years in remand. The claims made in the indictment in Mr Assange's case demonstrate that the volume of documents is exceptional. Unless the government or the Court agrees to wholesale declassification of the documents underpinning the prosecution as well as other documents required by the Defendant to support his defense, the process will inevitably take an unprecedented period of time in addition to making defense preparation extremely difficult, if not, in some regards, impossible.

30. This case presents the unusual issue of CIPA review when the leaked information is still available online for the entire world to see. When the entire database of documents is available publicly, it would be very strange indeed for counsel to refrain from viewing it and instead accepting a summary, which would be less helpful to Mr Assange's defense than if defense counsel simply went online. But such information cannot be accessed by counsel or Mr Assange until the classification issues are addressed.

31. CIPA presents significant due process concerns. Assuming Mr Assange's defense counsel will be granted a security clearance, the Government conditions maintenance of security clearance upon compliance with its procedures regarding access to classified information. In the Government's view, expressed in a number of instances, individuals with clearances are forbidden from downloading, saving, printing, disseminating, maintaining, transporting, or printing materials made publicly available by WikiLeaks. Failure to comply with directives exposes security-cleared counsel to the risk of prosecution or sanctions - the Government made this position clear in litigation over the legality of detention of individuals held at Guantanamo Bay, where the government issued guidance specific to reviewing documents published by Wikileaks, and prohibited cleared counsel from viewing them as a condition of keeping clearance. Should the government take the same view in this case, it will be asking Mr Assange's lawyers to violate their own ethical requirements to provide him the best defense possible in order to comply with the US government's position on public information remaining classified.

32. In addition to having to identify in discovery what defense counsel believes would be "helpful," if the defense intends to introduce or refer to any classified information during pretrial hearings or trial, it has

to notify the court and the Government at least 30 days ahead of time. This requirement forces the defense to disclose its litigation strategy to its opponent, allowing the Government to better anticipate and prepare its offense and rebuttal. The Government is required to disclose whatever rebuttal evidence it expects to use against the classified information, but there is no automatic continuing duty to disclose if its strategy changes.

33. CIPA permits the government to move for the exclusion of whatever classified information the defense intends to use at trial. The Government then can request a closed proceeding (from which the defendant is excluded) in which it may challenge the "use, relevance, or admissibility" of any evidence that the defense has already received and shown to be relevant and helpful. The Court can decide to order summaries of the evidence be shared in court instead. There is often extensive negotiation and litigation as to whether the summary is accurate and complete in its presentation of the content of the document in the summary. In prosecutions which rely on classified information, the Government's interest in protecting that information is paramount. If the Government insists that the classified information may not be disclosed, even in summary form, CIPA permits dismissal of the indictment, unless the "interests of justice would not be served by dismissal of the indictment or information." It is very rare and I view it as unlikely that the Government would be required to dismiss the indictment given the nature of this case and that a Court is likely to exercise its discretion to permit the indictment to be tried "in the interests of justice." In any event, the Government has charged an 18 count indictment and even if the government declined to provide any information with respect to certain government secrets, it is highly unlikely that the entire indictment would be dismissed.

34. The fact that Mr Assange's defense will rely on classified information means that his counsel will be limited in what it may use in view of 1) the restrictions imposed on individuals with security clearances; 2) the "relevant and helpful" standard; and 3) challenges to the introduction of that evidence—disclosed to the government ahead of time—before it can be used to the defendant's benefit. As noted above, in my experience, this frustrating and lengthy process disadvantages the defendant to a very significant degree.

35. In considering the likely process involving documents undoubtedly critical to any defence Mr Assange would elect to bring, I view it as exceedingly unlikely that they will be made available to him or his counsel to the degree necessary to defend himself.

Question No. 4: What is Mr Assange's potential criminal sentence?

36. Mr Assange is charged with 17 counts of violations of the Espionage Act, codified at 18 U.S.C. § 793. Each violation of the Espionage Act is punishable by imposition of a fine, a sentence of up to ten years in prison, or both. Mr Assange therefore faces up to 170 years in prison if he is found guilty on all of the espionage charges. He is also charged with a conspiracy to commit computer intrusion, which carries a potential sentence of another 5 years in prison, making his total possible sentence 175 years.

37. The United States eliminated the possibility of parole for federal prisoners with the passage of the Sentencing Reform Act of 1984. Prisoners may, however, receive reductions in sentences for good conduct. A prisoner who has "displayed exemplary compliance with institutional disciplinary regulations" over the course of one year may receive up to a 54-day reduction in his sentence for each year of his sentence. 18 U.S.C. § 3624. This amounts to a maximum 15% reduction.

38. This is not a meaningful prospect for someone sentenced to 175 years in prison. If Mr Assange received the full sentence, and received a credit for good behavior for each year his sentence would still be far more than 100 years in federal prison. The Court has discretion in sentencing as to whether sentences should run concurrently or consecutively. This discretion is informed by a number of factors, including consideration of sentencing guidelines, facts relating to other crimes or bad acts introduced at sentencing (even if not in the indictment or discussed at trial, or even if the defendant is acquitted on those crimes), and the Court's view of the nature and gravity of the offence and the character of the offender. The Court also considers to a significant extent the prisoner's remorse; toward that end, 97% of all criminal cases end in plea bargains and a defendant who goes to trial rather than plea bargain is generally viewed as not accepting responsibility and not remorseful, which is a factor in considering sentence.

39. In commenting on the issue of sentence, it is necessary to refer to the concurrent factor involving "plea bargains". The possibility of being convicted of offences which 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. The severe sentences applicable in the US justice system, coupled with the discretion vested in federal prosecutors to craft charges that lead to such sentences, have led to a situation in which

few federal defendants are actually able to exercise their right to trial.

40. The US Supreme Court has openly admitted that the US criminal justice system is a "system of pleas, not trials."5 [Exhibit 5] The rate of convictions by guilty plea rather than following a full trial is in excess of 97% at the federal level,6[Exhibit 6] a percentage which has remained stable for the past two decades,7 [Exhibit 7] after a period of growth in the 1980s and 1990s.8 [Exhibit 8] From 1986 to 2006, the ratio of pleas to trials in the US nearly doubled.9 [Exhibit 9] Given the immense scale of US criminal prosecutions (where 70 million people are estimated to have a criminal conviction), the US administers more trial waivers than any other country. It also concludes a larger percentage of its criminal cases through guilty pleas than any other country.

41. In general, plea bargaining in the US is remarkably unregulated compared with the trial waiver systems found in other countries. It can be used in any type of criminal case, including those frequently exempted in other systems, such as death penalty cases[10] [Exhibit 10] and prosecutions against juveniles. Negotiation takes place directly between prosecutors, who have a great deal of discretion to alter charges, and impact sentences, and often overworked, under-resourced defenders, out of court. There are no legal limits on what can be negotiated between individual prosecutors and defendants: facts and charges may be altered, cooperation agreements may be struck, recommended sentences can be agreed between the parties, and terms and conditions of agreements and negotiations may differ widely between cases.

42. Features unique to the US criminal justice system, including sentences longer than are found elsewhere in the world (for example, sentences that run longer than a hundred years, life without parole, the death penalty, and a harsh system of "mandatory minimum" sentences that mean judges often have little discretion to account for individual mitigating factors) and the unparalleled power of individual prosecutors over charging decisions combine to make plea bargaining particularly coercive in that context. Human Rights Watch published a report detailing coerced guilty pleas in the context of federal drug crimes in 2013 which succinctly described the situation thus: "many federal prosecutors strong-arm

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[5] Lafler v Cooper, 566 U.S. 156 (2012) available at: https://www.supremecourt.gov/opinions/11pdf/10-209.pdf.
[6] United States Sentencing Commission's 2016 Sourcebook of Federal Sentencing Statistics. Available at: http://www.ussc.gov/research/sourcebook-2016
[7] Devers, L., "Plea and Charge Bargaining: Research Summary", U.S. Department of Justice (Jan. 24 2011). Available at:https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf.
[8] Rakoff, J. S., "Why Innocent People Plead Guilty", The New York Review of Books (Nov. 20 2014). Available at:http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/.
[9] Oppel, R. Jr., "Sentencing Shift Gives New Leverage to Prosecutors", The New York Times (Sept. 25 2011). Available at: http://www.nytimes.com/2011/09/26/us/tough-sentences-help-prosecutors-push-for-plea-bargains.html.
[10] Brady v. US, 397 U.S. 742 (1970) established that deep sentencing discounts, including departure from the threat of the death penalty, did not invalidate or render involuntary a plea bargain. Available at:https://supreme.justia.com/cases/federal/us/397/742/case.html

defendants by offering them shorter prison terms if they plead guilty, and threatening them if they go to trial with sentences that, in the words of former Judge John Gleeson of the Eastern District of New York, can be "so excessively severe, they take your breath away."[11] [Exhibit 11]

43. The combination of the power of individual prosecutors to reduce or inflate charges and the cudgel of severe sentences available at trial mean that defendants who choose not to waive their right to trial face much higher sentences than those who accept guilty plea agreements. In 2012, the average sentence of federal drug offenders convicted after trial was three times higher (16 years) than those received after a guilty plea (5 years and 4 months).[12] [Exhibit 12]

44. Persons charged with espionage are sentenced harshly. The charges against Mr Assange are unprecedented and highly publicized; there has been extensive commentary intended to signal to journalists and others the risks of publishing leaked information. The number of charges added against him, after an initial indictment based on only a single charge of conspiracy to commit computer intrusion is indicative of the zeal for this prosecution. Legal scholars and other observers have expressed the view that if successful the Government will press for Mr Assange to be punished to the fullest extent of the law.

45. The allegation in this case is that the information provided by Chelsea Manning, and published by Mr Assange, comprises a leak of material of unprecedented magnitude. Others prosecuted for espionage, even if they have pleaded guilty and their alleged conduct was limited have nevertheless received extremely harsh sentences. Julian Assange is one of the best known and often vilified figures in the United States; while other prosecutions have been brought with political overtones, the extent of the attacks upon Mr Assange by senior officials and politicians has been exceptional. Secretary of State Mike Pompeo, for example, while he was director of the CIA characterized Wikileaks as a "hostile non-state intelligence agency", a characterization making Mr Assange the head of such an agency.

46. To similar effect, Former Republican vice-presidential candidate Sarah Palin demanded that Mr Assange be "hunted down like the Al-Qaeda leadership".

47. Whilst the political context and motivation of this prosecution are not addressed in this opinion, and bear upon his ability to obtain a fair trial (a consideration I am informed which will be affected by materials currently subject to further investigation) there is a powerful context to suggest that Mr Assange is likely

[11] Statement of Reasons, United States v. Kupa, 2013 U.S. Dist. LEXIS 146922, 9-10 (E.D.N.Y 2013), cited in "An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty," Human Rights Watch 2013, available at https://www.hrw.org/report/2013/12/05/offer-you-cant-refuse/how-us-federal-prosecutors-force-drug-defendants-plead

[12] "An Offer You Can't Refuse," ibid.

to be portrayed by the prosecutors in a way that would certainly affect the court's view of his character. The Government typically, in cases involving espionage or national security, takes a very aggressive approach to sentencing. I do not set out here a list of sentences for espionage beyond that of Mr. Assange's alleged co-conspirator, Chelsea Manning who pleaded guilty to 10 charges. She was convicted at trial of a total of 17 charges, and sentenced to 35 years in prison. She served 7 years in prison; President Obama commuted her sentence but she is now again in prison for declining to testify before a grand jury.

48. If extradited to the United States and convicted, it is my view that Mr Assange, who I am informed is 48 years of age, is highly likely to be sentenced to imprisonment that will constitute the rest of his likely natural lifespan.

Question No. 5: Where would Mr Assange serve his sentence if convicted?

49. The U.S. Bureau of Prisons ("BOP") has the sole authority to designate a facility where a prisoner will serve his sentence. At sentence a prisoner may request, and a court may recommend, that the prisoner be held at a particular facility but such recommendation is not binding on the BOP. In addition, a prisoner can, from time to time, be transferred from one facility to another for various reasons including security concerns.

50. Among the factors considered by BOP as to where a prisoner should be designated are the following factors:

    i. the level of security and staff supervision the inmate requires,
    ii. level of security and staff supervision the institution provides,
    iii. the medical classification care level of the inmate and the care level of the institution,
    iv. the inmate's program needs (e.g., substance abuse treatment, educational/vocational training, individual and/or group counseling, medical/mental health treatment), and
    v. various administrative factors (e.g., institution bed space capacity; the inmate's release residence; judicial recommendations; separation needs; and security measures needed to ensure protection of victims, witnesses, and the general public).

51. BOP has five classifications for its prisons, minimum security, low security, medium security, high security and administrative security.

52. However, the system of designation and subsequent retention to highly restrictive regimes is arbitrary

and fails to afford the prisoner due process to challenge an unjustified designation[13] [Exhibit 13].

53. For instance the Center for Constitutional Rights filed a lawsuit challenging the Federal Bureau of Prisons use of the CMUs on April 1, 2010, Aref v. Holder (now Aref v.Barr). According to CCR, "the plaintiffs in Aref are low- or medium-security prisoners who were designated to the [Communications Management Units, or CMU's] despite their clean or near-spotless disciplinary histories. Not a single one has been disciplined for any communications-related infraction within the last decade, nor for any significant disciplinary offense"[14]. [Exhibit 14] The D.C. Circuit Court ruled in favor of the plaintiffs on August 19, 2016, reversing much of the lower court's ruling and remanding it back to the district court.

54. In 2006 and 2008, the Federal Bureau of Prisons created two CMUs, located in Terre Haute, Indiana and Marion, Illinois. At these CMUs, prisoners cannot have any contact with the outside world. Their access to news sources and television is very limited, or sometimes completely banned. They are not allowed to have any physical contact with friends and family, and their access to phone calls and educational opportunities is very limited. These prisoners are often low and medium security, and have not been charged with violent crimes. So their extreme isolation both from other prisoners and from the outside world cannot be explained by their behaviour.

55. Prisoners have been moved to the CMU in Indiana without the prisoner or his family receiving any notice and even then communication with the prisoner's family has been barred for several days. At the CMU, inmates are denied access to many reading materials, prevented from reading or watching the news, and are almost completely isolated from all the other prisoners even where they pose no threat to the prison population.

56. The highest security prison in the U.S. is the Administrative Maximum Facility ("ADX") located in Florence, Colorado. The conditions at ADX are the most severe, often including housing conditions that include virtually no human contact with other prisoners or correctional staff for certain inmates. Prisoners are housed in single cells for 23 hours per day. The New York Times has done extensive reporting on ADX[15]. [Exhibit 15]

57. Mr. Assange, if he were convicted and sentenced to a lengthy prison term and with the government alleging that he has grievously endangered national security, is at high risk of being housed high level security or an administrative maximum facility for a significant portion of his sentence because he would be deemed a high risk defendant given the severity of sentence, the espionage-related charges and the

[13] https://ccrjustice.org/sites/default/files/assets/files/CCR_CMU_2014Documents-20140709.pdf
[14] https://ccrjustice.org/home/what-we-do/our-cases/aref-et-al-v-barr-et-al
[15] Mark Binelli, *Inside America's Toughest Federal Prison*, N.Y. Times, Mar. 26, 2015.

great hostility and animus that surrounds the publication of these documents. That would then subject him to significant restrictions beyond the average criminal defendant in U.S. federal prisons yet he would not be afforded a meaningful process of challenging his regime and its severe restrictions.

Signed: .....(witness)

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