

TRANSCRIPT OF PROCEEDINGS

Ref. U20200010

IN THE CENTRAL CRIMINAL COURT

The Old Bailey
London

Before DISTRICT JUDGE VANESSA BARAITSER

GOVERNMENT OF THE UNITED STATES OF AMERICA

-v-

JULIAN ASSANGE

**MR J LEWIS QC, MS C DOBBIN & MR J SMITH appeared on behalf of the
Prosecution**

**MR E FITZGERALD QC, MR M SUMMERS QC & MS F IVESON appeared on
behalf of the Defence**

**JUDGMENT
28th SEPTEMBER 2020
(AS APPROVED)**

JUDGE BARAITSER:

1. This is an application by the Press Association for disclosure of each of the medical reports identified during the submissions last Friday and received by the court during the course of the extradition hearing. The application was made initially in writing and then by way of oral submissions by Miss Pennink before the court. The defence and the Crown Prosecution Service acting on behalf of the US government jointly oppose this application.
2. Last year, the Supreme Court considered how to approach an application by a third party for the disclosure of documents and laid down some important principles. *Dring* was a case in which it was alleged that the respondent company, Cape Intermediate Holdings Limited had been negligent in the production of asbestos insulation boards which had led to its former employees becoming ill. A forum which supported people who suffered from asbestos-related diseases and which was not involved in the case, applied for access to documents which it believed would contain valuable information about the dangers of asbestos and the research which the industry had carried out.
3. Lady Justice Hale gave the judgment of the court. In summary, she confirmed that the principle of open justice applies to all courts exercising judicial power, and that the court has an inherent jurisdiction to determine what the principle of open justice requires in terms of access by the public to documents received by the court. The question is how the jurisdiction should be exercised in a particular case. She confirmed that the purposes behind the open justice principle were two-fold; the first to enable public scrutiny of the way in which courts decide cases, the second to enable the public to understand how the justice system works and why decisions are taken.
4. She acknowledged that the Guardian news and media case had decided that the default position is that the public should be allowed access to documents placed before the court and referred to during the hearing. However, she stated that although the court has the power to allow access, the applicant has no right to be granted it save to the extent that the rules grant such a right and that it was for the person seeking access to explain why granting access would advance the open justice principle.
5. She considered that non-parties should not seek access unless they can show a good reason why this will advance the open justice principle. If they were able to show a good reason then the court must carry out a fact specific balancing exercise. On the one hand it should consider the purpose of open justice and the potential value of the information in advancing that purpose, on the other hand, any risk of harm which its disclosure may cause to amongst other factors the legitimate interests of others including the protection of privacy interests more generally.
6. In this case, the Press Association state that they see no reason why these statements should be withheld from the public. They submit that sensitive evidence in all manner of cases is heard in courts across the country every day and responsible media organisations are quite able to use their own editorial judgment to decide what is appropriate for publication. More specifically, in relation to Professor Kopelman, they state that he repeatedly referred to paragraphs of his report whilst giving evidence which made it impossible to understand the evidence.

7. More specifically still, in relation to Professor Kopelman and Dr Blackwood, the Press Association identify the following incidents which the reports would have assisted them to understand; the recent incident involving paracetamol tablets, the finding of a razor blade last year in Mr Assange's cell, the discussion of the content of his medical records from Belmarsh, and his hospitalisation as they put it in Belmarsh by which I assume they mean his transfer to the medical wing and reasons for this.

8. In relation to Dr Deeley they stated their concern that references were made to 2b and 3a used in the diagnosis of Asperger's Syndrome and they were not told of examples of these traits given to Dr Deeley by Dr Dreyfus. And more generally they submitted that journalists were following proceedings through a live link and have struggled to hear the evidence in court and that the written reports would be an invaluable aid to them.

9. First, dealing with this last point, audibility issues relating to the live link do not have a bearing on the issue of disclosure of documents. Any issues with technology which interferes with open justice is clearly important but must be raised as a separate issue. I was not aware there were difficulties in hearing these proceedings and if there is a problem it really must be brought to my attention so that I can deal with it. There is a dedicated technician here at court and a team that supports the CVP platform but unless the problem is made known to me I cannot address it. Any difficulties experienced in hearing the proceedings must be raised separately and are not a reason to provide the reports.

10. I have already indicated regarding Dr Humphreys, her edited statement was read out in open court on 23 September. The defence have already voluntarily disclosed this edited statement and put it into the public domain. There is no risk of harm in a copy of the edited statement being provided to the press and this will be disclosed.

11. Dealing with the specific concerns raised by the evidence of Professor Kopelman regarding the paracetamol incident, this took place after the preparation of all reports and is not included to my knowledge in any of them. Regarding the razor blade incident, this was referred to extensively in evidence. Professor Kopelman confirmed that Mr Assange said that he had been charged by prison staff under the internal prison rules with possession of a hidden razor. This was not disputed by the government. Later, the defence produced a notice of report or "nicking sheet" confirming that Mr Assange had been charged with possession of this item but that this charge was later dismissed. That in my view is a full picture of this incident and the report adds nothing further.

12. In relation to the medical records, these are detailed entries about Mr Assange's day-to-day medical care made by various medical and nursing practitioners. They contain private interactions between Mr Assange and the medical team treating him and include personal disclosures. Both the defence and the government relied on many of these entries to advance their respective cases and in this way a significant part of the notes were made public. I have no reason to consider that a full set of the notes needs to be disclosed to understand the decisions that I will in due course make.

13. The issue of Mr Assange's hospitalisation is simply a misunderstanding of the evidence given by Professor Kopelman. He clearly stated in open court that from 18 July 2019 for a period of about six months, Mr Assange was placed in an isolated cell or single cell in

healthcare by which he clearly meant the healthcare unit within the prison. Professor Kopelman stated his opinion in open court that whilst on this unit, Mr Assange suffered from a severe depressive episode with somatic symptoms. He stated that after Mr Assange left the unit and was returned to the general wing his diagnosis changed. When he saw Mr Assange in February and March 2020 he found him to be moderately depressed. All of this was stated openly in court.

14. Regarding the circumstances in which Mr Assange was transferred into healthcare, this again was dealt with in detail in open court. In his cross-examination of Dr Blackwood, Mr Fitzgerald took him to the ACCT review of 18 May 2019 and read out the entry in full which discusses the reasons for his transfer. This is already therefore in the public domain.

15. Regarding a reference to feelings of guilt raised by Press Association said to have been made by Professor Kopelman in evidence, I could find no reference to this but in any event this comment alone does not require the document to be disclosed.

16. In relation to Dr Deeley, the traits 2b and 3a are simply the publicly available diagnostic criteria for autism spectrum disorder set out in the ICD10, the tenth edition of the International Classification of Diseases.

17. In relation to the examples provided by Dr Dreyfus to Dr Deeley, Dr Deeley gave examples of this reported behaviour in his evidence. He provided examples of Mr Assange's difficulty in modulating his behaviour according to social contexts and his idiosyncrasies of verbal communication. In my view this was sufficient to give the press and the public an understanding of the behaviour that supported Dr Deeley's diagnosis.

18. I appreciate of course that the press cannot have provided every example of incidents they felt needed further explanation but the sample they did provide gives an indication of how much of the experts' reports were referred to in oral evidence. Nor is this surprising, given the importance to each side, of eliciting or challenging the basis for the findings and opinions of the experts so that they could make good their points.

19. I note that all other documents in this case including all written submissions and all other witness statements have been disclosed to the press without resistance and it is only the medical evidence that both parties seek to withhold. I note too in this instance the defence and the Crown Prosecution Service are united in their opposition to disclosure. As far as the CPS is concerned they have supported the defence in opposing the application with no obvious advantage to their client, the US government.

Taking all of this into account in my view, the Press Association have not established good reason why the disclosure of the reports will advance the purposes of open justice. If I am wrong about this then the countervailing factors, in this case Mr Assange's private life, in my view prevents disclosure. Each report reveals Mr Assange's account of himself and his private suffering to the assessing doctor. Each report also reveals wide-ranging and personal background information about Mr Assange from his infancy to the present time. They contain references to his family, his friendships, and to his children.

20. In this case, even if the Press Association have shown good cause for the disclosure advancing the purposes of open justice, it would in my view be a disproportionate

interference with Mr Assange's privacy to do so. And therefore, save for the statement of Dr Humphreys as previously indicated, this application is refused.

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

This transcript has been approved by the Judge