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Claim No QB-2018-006323
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
Royal Courts of Justice,
Strand,
London, WC2A 2LL.
Friday, 17th July, 2020
Before:
MR. JUSTICE NICOL

- - - - - -

BETWEEN:
JOHN CHRISTOPHER DEPP II
Claimant
-and-

(1) NEWS GROUP NEWSPAPERS LIMITED
(2) DAN WOOTTON
Defendants

- - - - - -

(Computer-aided transcript of the Stenograph Notes of
Marten Walsh Cherer Limited, 2nd Floor, Quality House,
6-9 Quality Court, Chancery Lane, London, WC2A 1HP.
Telephone No: 020 7067 2900. Dx: 410 LDE
Email: info@martenwalshcherer.com. www.martenwalshcherer.com)

MR. DAVID SHERBORNE, MS. ELEANOR LAWS QC and MS. KATE WILSON
(instructed by Schillings) appeared for the Claimant.

MS. SASHA WASS QC, MR. ADAM WOLANSKI QC and MS. CLARA HAMER
(instructed by Simons Muirhead & Burton) appeared for
the Defendants.

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P R O C E E D I N G S
(DAY 9)
(TRANSCRIPT PREPARED WITHOUT ACCESS TO COURT BUNDLES)
- - - - - -

[Page 1347]

1   DISCUSSION
2 MR. JUSTICE NICOL: Yes.
3 MS. WASS: My Lord, before the witness is called today, may
4   I mention one matter of concern to the defence. Last night,
5   shortly before 10 to 10, the defence received a bundle of
6   disclosure electronically, which had to be opened with a
7   password, comprising 103 documents, including 13 videos. We
8   have not had adequate time to properly review that tranche of
9   disclosure. There have been other matters that have been
10   occupying the defence team overnight.
11   What is of concern is that some of those documents were
12   screenshots. Now, my Lord will remember yesterday a
13   screenshot that was put to Mr. Bett of Mr. Depp's bruised
14   cheekbone, which was dated 23rd March 2015, and it is possible
15   from the screenshot to see not just the date of the
16   photograph, but the date that the screenshot was created, and
17   amongst the material ----
18 MR. JUSTICE NICOL: Just a minute. This was the photograph that
19   was produced yesterday.
20 MS. WASS: Yes. Can I just hand up to my Lord an example of what
21   I am talking about. (Same handed). My Lord, the content of
22   the photograph is perhaps irrelevant for this complaint that
23   I am making, but my Lord will see that the date of the
24   picture, or the picture was created on 8th March, at
25   12.38 p.m., and on the top left-hand corner of the screenshot

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1   DISCUSSION
2   is the date Friday, 3rd July, 1.44 p.m. That is the date that
3   the screenshot was created.
4   Now, what this demonstrates is that material that was
5   disclosed to us for the first time last night has been in the
6   possession of Schillings solicitors for some weeks now, and
7   indeed, before the case started.
8 MR. JUSTICE NICOL: Just a minute. (Pause) Is that the 3rd July
9   date?
10 MS. WASS: Yes, of this year. It does appear, from what little
11   examination we have had time to devote to this disclosure
12   tranche, is that certainly some of the other material was in
13   the disclosure folder on 12th July (that was last Sunday) and
14   some on 14th July. So we are in a position now, supposedly
15   the day when the claimant is going to close his case, when the
16   defendants have been provided, at the 11th hour, or nearly the
17   10th hour to be accurate, with material which may or may not
18   have a material bearing on the case and may or may not have
19   been deployed in cross-examination of other witnesses.
20 MR. JUSTICE NICOL: Just a minute. (Pause) It may have been
21   deployed if it had been available earlier.
22 MS. WASS: Yes, and I say "may" because we have not had time to do
23   a proper consideration of this material.
24   My initial application this morning is that the claimant
25   should not be allowed to rely on any of this material until

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1   DISCUSSION
2   there are further matters brought before the court, and that
3   cannot be done until after the weekend because there simply is
4   not time to consider this material.
5   My Lord is well aware that this is by no means the first
6   time there have been disclosure failures on behalf of the
7   claimant. I can count three complaints made by the defence in
8   the past which have been upheld by my Lord, but rather than
9   complain without any purpose, what we are asking my Lord this
10   morning is that none of that material is put in the trial
11   bundles for the time being. It may be that if there is an
12   application to deploy any of it by the claimant, the
13   application by the defence would be that they should not be
14   allowed to use material disclosed at this ----
15 MR. JUSTICE NICOL: That is looking ahead, is it not?
16 MS. WASS: It is looking ahead, which is why I thought it best to
17   deal with it in stages.
18 MR. JUSTICE NICOL: Mr. Sherborne.
19 MR. SHERBORNE: I am going to try and keep this short because we
20   have evidence to get on with as your Lordship, I am sure, will
21   appreciate. There are a number of points to make. I am not
22   going to weary the court with the number of occasions on which
23   disclosure was given by the defendants during the course of
24   Mr. Depp's cross-examination, to which we did not take
25   objection, but we could have done. I am not going to present

                                        [1] (Pages 0 to 1349)

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TEL: (020) 7067 2900   E-MAIL: info@martenwalshcherer.com   DX: 410 LDE

[Page 1350]

DISCUSSION

1
2 your Lordship with the whole series of what I might call
3 double standards examples.
4   Secondly, there are all sorts of inferences that
5 Ms. Wass was asking you to draw, which I do not think are
6 sustainable, about when these documents would necessarily be
7 in the hands of my instructing solicitors just because you see
8 a date. In any event, we are only talking about ten days, or
9 two weeks, depending on when Ms. Wass is talking about, but
10 these are all premature points to make. I am not going to
11 deal with what is said to be an application to stop us using
12 it, not least because there is no jurisdiction. It is the
13 wrong way round.
14   The more important point for your Lordship's benefit is
15 this. As I understand it, these are not documents we are
16 intending to use today and therefore there is nothing for
17 your Lordship to concern himself about. Had this been raised
18 with me by Ms. Wass outside of court, I could have given that
19 assurance, we could have not wasted five minutes on an
20 application for which, as I say, there is no jurisdiction.
21 I will return to this if I need to, if Ms. Wass is going to
22 complain about the use of any of these documents, but
23 your Lordship will know the history of how we have dealt with
24 matters. As I say, we have not objected to disclosure, even
25 provided whilst Mr. Depp was in the witness box.

[Page 1351]

DISCUSSION

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2 MR. JUSTICE NICOL: Thank you.
3 MR. SHERBORNE: Can we then deal with the evidence. Just so that
4   your Lordship knows the road map of this morning, Mr. Romero
5   ----
6 MR. JUSTICE NICOL: Just a minute.
7 MR. SHERBORNE: I am sorry, my Lord. (Pause)
8 MR. JUSTICE NICOL: Yes. Mr. Romero.
9 MR. SHERBORNE: Mr. Romero is available today. He apologises for
10   yesterday. As I suspected, I think he fell asleep before he
11   was available, as I understand it, which is not surprising,
12   given the time. He is going to be available at the same time,
13   which is 3 a.m. in Los Angeles today, which is 11 a.m. our
14   time. I hope that fits in with the two other witnesses who
15   are scheduled to give their evidence this morning. The first
16   is Mr. Baruch and then, following him, Mr. McGivern. That was
17   the order that we have said. So, it may be that Mr. Romero
18   goes between Mr. Baruch and Mr. McGivern, but we will
19   obviously have to see how the evidence progresses this
20   morning.
21 MR. JUSTICE NICOL: Yes.
22 MR. SHERBORNE: Ms. Wass has asked me about this afternoon.
23   I think we have, as I understand it, communicated what is
24   happening this afternoon, but just for your Lordship's
25   benefit, we have Ms. Divenere, who has been subpoenaed by the

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DISCUSSION

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2 defendants to attend. As your Lordship will recall, we were
3 relying on her hearsay notice in relation to her declaration
4 in the American proceedings, but Ms. Wass, on behalf of the
5 defendants, has subpoenaed her to cross-examine her. She is
6 compelled to attend in Los Angeles at 3 p.m. so we cannot move
7 that.
8 MR. JUSTICE NICOL: 3 p.m. our time.
9 MR. SHERBORNE: My Lord, yes. We have then Miss Kendall, who will
10   give her evidence after Ms. Divenere. Then there are some
11   hearsay notices I am going to address your Lordship about and
12   that is it for this afternoon. So, in theory, we start at 3
13   p.m. then.
14 MR. JUSTICE NICOL: Good. Thank you. Can we deal with anything
15   before we get to Ms. Divenere at 3 p.m.?
16 MR. SHERBORNE: We have an application to make in relation to
17   hearsay notices. Mr. Harrell, if you remember, was ill, and
18   he is too ill to give evidence, so we were going to ask
19   your Lordship to make an order that his statement can be
20   relied on by way of a hearsay notice. There is some useful
21   business, if I can put it that way, we can do before 3 p.m. I
22   am not sure how long it will take so I am entirely in
23   your Lordship's hands as to whether you would rather start
24   that at, say, 2.30, which gives everyone an extended short
25   adjournment, or whether you would prefer to deal with it at

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DISCUSSION

1
2 2.00 p.m. and then we can reconvene at 3.00 p.m.
3 MR. JUSTICE NICOL: Yes. All right. Thank you.
4 MR. SHERBORNE: My Lord, with that introduction, I was hoping we
5   could call Mr. Baruch. I think he is ready. The link is
6   available.
7 MR. JUSTICE NICOL: Is it helpful if I rise just while the link is
8   checked?
9 MR. SHERBORNE: It may help, my Lord, yes. I would rather you
10   were not troubled by the setting up process. That may take
11   only a couple of minutes.
12 MR. JUSTICE NICOL: All right. I will step outside.
13   (A short break)
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[2] (Pages 1350 to 1353)

[Page 1354]

1   BARUCH
2   MR. ISAAC BARUCH, CALLED
3   (Via video link)
4   MR. JUSTICE NICOL: Yes.
5   MR. SHERBORNE: My Lord, can we call our next witness, Mr. Isaac
6   Baruch.
7   MR. JUSTICE NICOL: Mr. Baruch, can you hear me all right?
8   THE WITNESS: Yes, I can.
9   MR. JUSTICE NICOL: It is helpful if you can keep your voice nice
10   and loud and if it is possible to move the microphone slightly
11   closer to you, we found that that sometimes helps with other
12   witnesses.
13   THE WITNESS: Okay. I am going to move the mic right now and
14   while I am speaking, if you can tell me if it is any better?
15   MR. JUSTICE NICOL: That is much better, thank you very much
16   indeed.
17   THE WITNESS: Is that better?
18   MR. JUSTICE NICOL: That is helpful. Now, Mr. Baruch, the first
19   stage of any witness giving evidence is that they have to
20   either swear to tell the truth or affirm. That means a solemn
21   promise to tell the truth. Which would you prefer to do?
22   THE WITNESS: If you swear, you are doing it on the bible; if you
23   are affirming, I am just going to say yeah; right?
24   MR. JUSTICE NICOL: Then which would you prefer? Would you prefer
25   to affirm or would you prefer to swear on the bible?

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1   BARUCH
2   THE WITNESS: Affirm. Affirm.
3   MR. JUSTICE NICOL: You will affirm. Okay. Just listen to the
4   usher as she reads out the terms of the affirmation, please.
5   MR. ISAAC BARUCH, AFFIRMED
6   EXAMINED BY MR. SHERBORNE
7   MR. JUSTICE NICOL: Thank you very much, Mr. Baruch. Now,
8   Mr. Sherborne is going to start by asking you some questions.
9   THE WITNESS: Okey-doke.
10   MR. SHERBORNE: Is it "Buruck" or "Buroosh", just so I get it
11   right?
12   A. I pronounce it "Burooch", Isaac Baruch is my name. That is
13   how I pronounce it.
14   Q. I am very grateful. We shall call you Mr. Baruch as well?
15   A. Okay.
16   Q. I am counsel for Mr. Depp and I am just going to begin by
17   asking you to confirm your witness statement, but before I do,
18   can I just say one thing about giving evidence by way of video
19   link that we have learned through the experience of the last
20   few days?
21   A. Yes. Go ahead.
22   Q. And that is that as you have just demonstrated, there is quite
23   a significant time delay between my finishing a question and
24   you hearing the end of it?
25   A. Okay.

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1   BARUCH - SHERBORNE
2   Q. Therefore, we will do our best on this side to ensure that we
3   do not talk over you so we let you finish an answer before you
4   get asked another question.
5   A. Okay, then I will do the same.
6   Q. I was just going to ask that. You beat me to it, Mr. Baruch.
7   A. Good.
8   Q. Can I begin, then, by asking you if you turn to your left, you
9   should find a file numbered 2?
10   A. Got it.
11   Q. And if you turn to divider 48 ----
12   A. Got it.
13   Q. ---- you should have a document there entitled "First witness
14   statement of Isaac Baruch"?
15   A. Yes.
16   Q. And then if you turn on, Mr. Baruch, to page D138, if you keep
17   turning until you find D138, it is actually in the left-hand
18   corner?
19   A. And there is my signature.
20   Q. Thank you. You have answered the question again, Mr. Baruch,
21   thank you. This is the last question from me. Can I ask you,
22   are the contents of your witness statement true?
23   A. Absolutely.
24   MR. SHERBORNE: If you wait there, Mr. Baruch, Ms. Wass, on behalf
25   of the defendants, will have some questions for you. Thank

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1   BARUCH - SHERBORNE
2   you very much.
3   MR. JUSTICE NICOL: Yes, Ms. Wass.
4   THE WITNESS: Thank you very much.
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[3] (Pages 1354 to 1357)

[Page 1358]

1   BARUCH
2   CROSS-EXAMINED BY MS. WASS
3   MS. WASS: Mr. Baruch, can you hear me all right?
4   A. Yes, I can.
5   Q. Good.
6   A. Yes, I can.
7   Q. Thank you. You have been a friend of Mr. Depp's for nearly 40
8   years; is that correct?
9   A. Yes, that is correct.
10 Q. You have known each other since you were both young?
11 A. Teenagers.
12 Q. Mr. Depp has been very generous to you, has he not?
13 A. Without a doubt, yes.
14 Q. He has allowed you, or certainly in the time regarding your
15   witness statement, which was around 2016, he had allowed you
16   to stay in one of his penthouse apartments in the Eastern
17   Columbia Building in Los Angeles, PH2; is that right?
18 A. Yes, he invited me. Yes.
19 Q. He invited you and you were living there at his invitation,
20   rent-free?
21 A. Yes.
22 Q. And over the years, Mr. Depp has given you money to assist
23   you?
24 A. Yes.
25 Q. I think at one stage, you borrowed $100,000 off him?

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1   BARUCH - WASS
2   A. Not at one time. Over a period of years, from 2013 to 2017.
3   Q. All right. So, over a period of years, you have borrowed
4      $100,000 off him. Was he also giving you money as opposed to
5   loaning you money?
6   A. No, it was the same money.
7   Q. So, the 20,000 a year, was that a loan or a gift?
8   A. It was part of the patronship. Sometimes, it was 20,000 a
9   year, sometimes it was 25,000 a year. I would ask for the
10   dough when I needed it. Sometimes it was every four months,
11   you know, but maybe I might have asked that year five times to
12   cover expenses.
13 Q. All right. You referred to the payment as patronship?
14 A. Yes.
15 Q. This was not a loan, was it; there was no understanding that
16   you had to pay that money back?
17 A. Oh, I got to wait so you can hear me. The patronship at
18   first, it changed in that I amended so that way then I pay it
19   back, because I do not want him to eat all that money. That
20   does not seem right to me, so I wanted him, I wanted to pay it
21   back. So that is why I made it become a loan because I do not
22   want him to eat the whole amount of money while I am creating
23   the art during the patronship. That does not seem right to
24   me.
25 Q. Have you paid any of the money back, of the $100,000 back that

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1   BARUCH - WASS
2   he has passed over to you?
3   A. No, not yet.
4   Q. All right. I understand. I think Mr. Depp also would pay for
5   your groceries from time to time?
6   A. When, do you mean like above and beyond?
7   Q. Yes; he would pay for ----
8   A. Any money during that patronship?
9   Q. Has he ever paid for your groceries, Mr. Baruch?
10 A. No.
11 Q. Whilst you were living in the penthouse PH2 flat, I think you
12   got to know the other people who lived in the other
13   penthouses; is that correct?
14 A. Absolutely.
15 Q. You obviously knew Mr. Depp, who lived in Penthouse 3. He was
16   in a relationship with Amber Heard. You got to know her; yes?
17 A. Oh, that is a question?
18 Q. It is. I am afraid I would like an answer just so that we
19   have a record of you either agreeing or disagreeing with me.
20 A. Oh, yeah, of course, yeah. Absolutely, I got to know Amber,
21   of course.
22 Q. And you got to know Ms. Heard's sister, Whitney, who at one
23   stage lived in PH4?
24 A. That is correct.
25 Q. And you got to know somebody called Rocky Pennington, Raquel

[Page 1361]

1   BARUCH - WASS
2   Pennington, and her fiancé, Josh Drew, who lived in
3   Penthouse 1?
4   A. That is correct.
5   Q. At the time when you were all living there in the penthouse
6   apartments, you got on very well with the people I have just
7   named, did you not?
8   A. 100%.
9   Q. And you ----
10 A. Yes.
11 Q. You found them to be very nice people?
12 A. I loved them all.
13 Q. Thank you. You were aware that the relationship between
14   Mr. Depp and Ms. Heard was a volatile one; do you agree?
15 A. I found out later on.
16 Q. And you found out from Mr. Depp, did you not? Mr. Depp would
17   give you his side of the story from time to time?
18 A. Yes.
19 Q. But it is right that you never had any firsthand evidence as
20   to whether what he said about the arguments was true or not;
21   you simply relied on his version?
22 A. Well, I heard her also grieve when they would, you know, they
23   would split, you know, if there was an argument, afterwards,
24   after the fact; is that what you are asking me?
25 Q. I think we lost a bit of your answer. Did you say in effect

[4] (Pages 1358 to 1361)

[Page 1362]

1   BARUCH - WASS
2   you were aware that Ms. Heard would get upset when Mr. Depp
3   left the apartment after arguments?
4   A. Well, if he left and I saw her at some point, a couple of
5   times, that I have seen her after, where she has, she told me,
6   you know, how she felt.
7   Q. Mr. Depp would leave the apartment, would he not, to go and
8   stay at his home in Hollywood from time to time?
9   A. You mean after an argument?
10 Q. Yes, I do.
11 A. Yes, that is where he went, if they got into a blow-out, that
12   is where he would go. That was where he could, that was a
13   place that he could go.
14 Q. Yes. In fact, I think Mr. Depp invited you to live at his
15   Hollywood residence in Sweetzer Avenue, after you left the
16   Eastern Columbia Building; is that correct?
17 A. I live in a room in one of the houses that he owns on that
18   street.
19 Q. All right. Thank you for making that clear. But it is a
20   property he owns and, again, you live rent-free?
21 A. Yes.
22 Q. Now, on the occasions when Mr. Depp would leave the Eastern
23   Columbia Building to go to his property at Sweetzer Avenue,
24   and you told us that Ms. Heard was upset, she would never tell
25   you details of the argument; is that right?

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1   BARUCH - WASS
2   A. No. Just that she is upset, she is trying to get in touch
3   with John, and she cannot.
4   Q. And she was very worried about him, was she not, when he
5   disappeared after?
6   A. Not ----
7   Q. Sorry?
8   A. No, she was not. She was worried about herself not being able
9   to get in touch with him.
10 Q. But in any event, Ms. Heard never said anything nasty about
11   Mr. Depp to you, did she?
12 A. No.
13 Q. You of course being a very longstanding friend of Mr. Depp's?
14   Agree?
15 A. Yes.
16 Q. You do agree?
17 A. Yeah, yeah.
18 Q. Do you remember a conversation by text that you had with
19   Whitney Hernandez, Ms. Heard's sister, I am going to give you
20   the gist of the conversation and tell me if it rings a bell.
21   This was just after Whitney Heard left, she stopped living in
22   PH4 and Whitney told you that Mr. Depp and Ms. Heard, her
23   sister Ms. Heard, were fighting, and your response was "It's
24   not my business, I don't want to get involved, I hope she
25   understands". First of all, do you remember that?

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1   BARUCH - WASS
2   A. You know something? I remember a text one time, but it did
3   not say that.
4   Q. I am asking you whether you remember that text.
5   A. The one that you are just saying right now?
6   Q. Yes.
7   A. I remember getting a text from Whitney, and that I believe the
8   text was, she texted me to, if I would call her sister and she
9   said that she is no psychic, but that it is probably going to
10   be about Johnny. And I believe, I think, if I recall
11   correctly, I texted her back that, "Listen, I don't think it's
12   my place to call your sister and talk about Johnny, and I'm
13   sure that she can understand and respect that decision that
14   I'm making".
15 Q. Yes. Mr. Baruch, I think ----
16 A. I believe that is what was said in the text.
17 Q. All right. I am not going to disagree with you. The meanings
18   I suggest of what I have put and what you have said are
19   broadly similar. Now, can I ask you about the events of
20   21st May 2016. Do you know the date I am talking about?
21 A. Yes.
22 Q. Now, this is really what your statement concentrated on, the
23   first part of your statement; do you agree?
24 A. Can you repeat that?
25 Q. I am going to phrase it better, okay, because that was not

[Page 1365]

1   BARUCH - WASS
2   well-phrased. You mentioned 21st May in your statement at
3   paragraph 5. Have you got the statement in front of you
4   still?
5   A. Yes, I do.
6   Q. If you go to paragraph 5, please, can you see that?
7   A. Yes.
8   Q. It says: "On May 21st 2016 I was out in the neighbourhood.
9   I arrived at the Eastern at about 9.30 p.m." Do you mean you
10   were out and about and you came home to PH2 at about half past
11   nine in the evening?
12 A. Yes. I was out, I was out in the neighbourhood and I was on
13   my way home, and I met a friend downstairs in front of the
14   building.
15 Q. Right.
16 A. At around 9.30 to go up.
17 Q. So sorry, I talked across you. You both went up to the
18   penthouse 2 apartment on the top floor; is that correct?
19 A. Yes, that is where we ended up. We were going to my
20   apartment.
21 Q. I understand. What you said in your statement was this:
22   "Immediately exiting the elevator, and at the beginning of the
23   hallway that leads to the five penthouses on this floor that
24   Mr. Depp owned, we noticed that there was broken glass on the
25   floor from a broken sconce that hung on the wall." That is

[5] (Pages 1362 to 1365)

[Page 1366]

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 1                    BARUCH - WASS
 2      correct, is it not?
 3      A. Yes. Yes.
 4      Q. "We then proceeded round the corner of the hallway and stopped
 5         in front of penthouse 1."  That is where Rocky Pennington and
 6         Josh Drew were living at the time; do you agree?
 7      A. Yes.
 8      Q. "Because there was a large puddle of spilt wine along with
 9         splashed wine running down the wall directly in front of the
10         door."
11      A. Yes.
12      Q. And that was true, was it not?
13      A. Absolutely.
14      Q. You said: "I said to my friend something like, 'It looks like
15         somebody got hammered, probably these guys had a party'", and
16         you were referring to Ms. Heard's friends, Ms. Pennington and
17         Mr. Drew; yes?
18      A. Yes.
19      Q. Of course, you did not see how that wine was splashed along
20         the wall in front of the door, but that was an assumption you
21         made; correct?
22      A. Yes -- no, the puddle of wine was already there, I do not know
23         ----
24      Q. You did not see how it got there?
25      A. No. No.
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[Page 1367]

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 1                    BARUCH - WASS
 2      Q. Now, then your statement carries on: "At that very moment the
 3         door to penthouse 1 opened and Mr. Drew stepped out far enough
 4         through the doorway to address me, but also to block my view
 5         of the apartment inside"; correct?
 6      A. He just poked his head out.
 7      Q. Okay.
 8      A. He opened the door just enough to get his head out.
 9      Q. "I asked Mr. Drew what had happened with the spilt wine, and
10         he very seriously replied with words to the effect of, 'We
11         kind of had a rough day'".  That is correct, is it not?
12      A. Yes.
13      Q. Your statement goes on: "He looked and sounded stressed, and a
14         bit worried.  So I asked if he was okay and if he needed help,
15         to which he replied, 'No, it's okay, thanks', or words to that
16         effect.  I said it was okay, said goodbye, and my friend and
17         I went into my apartment."  That is all correct, is it?
18      A. Yes. Yes.
19      Q. Can we carry on with your statement.  "On May 22nd 2016,
20         I left my apartment a bit after noon, and went through a
21         hallway towards the elevator."  Do you know the time, or are
22         you just saying some time after 12 o'clock midday?
23      A. It was a little bit after, I want to say it is a little bit
24         after 12 is my recollection.
25      Q. All right.  "I made my way through the hallway towards the
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[Page 1368]

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 1                    BARUCH - WASS
 2      elevator.  I met with a congregation of people in front of
 3      penthouse 1"; that is Josh Drew and Rocky Pennington's
 4      apartment, agreed?
 5      MR. JUSTICE NICOL:  I think we have established that.
 6      MS. WASS:  I think we have agreed that is Mr. Drew and
 7         Ms. Pennington's apartment.  "Standing in the hallway and
 8         within the open door of penthouse 1 stood Ms. Heard, a private
 9         security person, two locksmiths who were working on the open
10         door and Mr. Drew.  I saw Ms. Pennington within the apartment
11         walking about.  I greeted everyone and asked what was going
12         on.  Ms. Heard, whose demeanour I would describe at that
13         moment as being very animated and in control, informed me that
14         Mr. Depp had come by the night before and got violent, and she
15         was now changing the locks on all the doors to penthouse 1, 3
16         and 5, and not to worry about the locks on my apartment."
17         That is your recollection, is it, Mr. Baruch?
18      A. Yes, that is correct.
19      Q. "At this point she also introduced me to the private security
20         guy and told me that he would be hanging around.  I was
21         surprised and taken back, as what she just told me and said
22         something like, 'Wait, what happened?'  Mr. Drew then stepped
23         towards me, while giving me a head wave to follow him,
24         signalling that he would explain it to me in private, and we
25         walked back to my apartment and entered."  That is correct, is
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[Page 1369]

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 1                    BARUCH - WASS
 2      it?
 3      A. That is correct.
 4      Q. "Once inside, Mr. Drew proceeded to tell me that Mr. Depp came
 5         by last night.  He said that Mr. Depp was drunk and got angry,
 6         told Ms. Pennington and Mr. Drew that he wanted to have them
 7         move out, and that he pushed Ms. Pennington, hit Ms. Heard,
 8         and threw a phone at her."  That is what you were told by
 9         Mr. Drew, was it not?
10      A. Yes.
11      Q. "I listened in amazement and in a kind of disbelief trying to
12         visualise what he was telling me.  I said words to the effect
13         of, 'Wow, this sounds crazy and completely nuts.'"  Then
14         I think you tried to puzzle things out in your head on the
15         evidence that you had been given, and thought about it, but it
16         was your speculation; is that right, the rest of that
17         paragraph?
18      A. Well, that is my thoughts, yes.  I do not know if it is
19         speculation.  Would you call that speculation?
20      Q. You describe them as ----
21      A. That is more my opinion.
22      Q. Your opinion, all right.  Your opinions on this situation.  Go
23         to paragraph 9, please, back to the narrative:  "We" -- that
24         is you and Mr. Drew -- "then left my apartment and walked back
25         to penthouse 1, where I asked Ms. Heard about Mr. Depp's
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[Page 1370]

BARUCH - WASS

1
2   actions the night before. She told me that he hit her in the
3   face and threw a phone at her. I then asked her where he had
4   hit her. She stretched her neck and pushed out the right side
5   of her head for me to look at her right eye"; yes?
6 A. Yes. That is correct. Just like this.
7   (Witness demonstrates)
8 Q. Pointing the right cheek to you; yes?
9 A. Yes.
10 Q. Now, this was around about midday, you have told us. Did you
11   know that Ms. Heard was going to a party that day?
12 A. No.
13 Q. Do you remember how she was dressed that day?
14 A. To the best of my recollection, I remember like a hanging out
15   sundress, hippie dress that she had on, something that I have
16   seen her many times before wearing, just like a regular hippie
17   schmutter dress.
18 Q. I think we understand what you mean by that. So, she was
19   wearing a dress and are you able to -- you can picture that,
20   can you?
21 A. To the best of my recollection, yes.
22 Q. What you said in your statement is that you were both standing
23   in the open doorway of penthouse 1 and with the lights from
24   the hallway and the sunlight which filled the room it was easy
25   for me to see and get an excellent view of Ms. Heard's face."

[Page 1371]

BARUCH - WASS

1
2   Do you agree that was the case?
3 A. Yes. There was enough light you could operate.
4 Q. I understand.
5 A. Yes.
6 Q. You can remember that as clearly as you can this hippie dress
7   that you have described to us?
8 A. The hippie dress, not as good of a recollection. The light,
9   absolutely.
10 Q. Right.
11 A. Absolutely.
12 Q. You said: "I was literally around 12 inches from her,
13   inspecting her face and I did not see a single mark or
14   evidence of any marks, bruising, swelling of any kind on her
15   face."
16 A. Correct. This close. This close. Can you see that?
17 Q. I can. You say this: "She also definitely didn't seem to be
18   wearing any makeup at this time of day that could cover any
19   marks or swellings."
20 A. That is correct.
21 Q. How certain are you about that?
22 A. 100%.
23 Q. Now, you had known Ms. Heard for some time by May 2016, had
24   you not?
25 A. Since March 2016, I mean 2013.

[Page 1372]

BARUCH - WASS

1
2 Q. 2013. They moved in in March 2013, so you had known her three
3   years and two months; yes?
4 A. Is that how long that is?
5 Q. 13 ----
6 A. From March 2013, from March 2013 is when I first met her, in
7   March 2013.
8 Q. I understand. Have you ever known her to go out to a party
9   without makeup on?
10 A. I would not know that.
11 Q. Why not?
12 MR. JUSTICE NICOL: Sorry, did you say you did or did not ----
13 THE WITNESS: I have never seen her ----
14 MR. JUSTICE NICOL: Sorry, Mr. Baruch, can you just repeat the
15   answer about whether she was wearing -- you were sure she was
16   wearing makeup?
17 MR. SHERBORNE: That was not the question, my Lord.
18 MR. JUSTICE NICOL: Perhaps I can ask Ms. Wass to put the question
19   again.
20 MS. WASS: Yes. Mr. Baruch, I asked you, having known Ms. Heard
21   for three years and a bit, whether you had ever known her go
22   to a party or to an outside event without being made up;
23   I think you said you could not say that.
24 THE WITNESS: Yes, I would not know that. I do not know how many
25   parties she went to. I do not know, you know, if every time

[Page 1373]

BARUCH - WASS

1
2   she went to a party. So, I could not tell you.
3 Q. I am asking you whether, during the time you have known her,
4   you ever saw her going to a party not wearing makeup?
5 A. You want me to speculate?
6 Q. I am asking you whether ----
7 MR. JUSTICE NICOL: Mr. Baruch, we are not asking you to
8   speculate. The question is, have you ever seen Ms. Heard go
9   to a party without makeup? Obviously, the premise of that
10   question is that it relies on you telling us of occasions when
11   you have known that she has been going to a party. But when
12   you have known that she has been going to a party, have you
13   ever seen her without makeup?
14 A. Any time that I saw her go to an event, that she was decked
15   out in, she had makeup on.
16 MS. WASS: Had you ever known her leave the apartment block and go
17   to a public place without wearing makeup?
18 A. (Pause) I do not know. Yes. Yes.
19 Q. You see, I suggest that whenever Ms. Heard went out, she would
20   wear makeup, possibly lighter makeup than if she was going to
21   a red carpet event, but wearing makeup nonetheless. Now, is
22   this a subject that you are an expert on, do you have any
23   expertise about her makeup?
24 MR. JUSTICE NICOL: Well, Ms. Wass, I am not sure that is a
25   question that requires expertise.

[7] (Pages 1370 to 1373)

[Page 1374]

BARUCH - WASS

1

2 MS. WASS: Mr. Baruch, I am going to ask you to look at a

3   photograph, please. Can you go to the files on your left, to

4   file number 6.

5 A. Got it.

6 Q. I am going to ask to you look at it on the screen, I will

7   disappear and you will see it on the screen you can see the

8   court through, but you will not be able to speak or hear me

9   while the photograph is on the screen. Do you understand?

10 A. Yes.

11 Q. So I am going to ask, please, that the photograph that is in

12   file 6 behind divider E, photograph F894.155, is shown on the

13   screen.

14 MR. JUSTICE NICOL: Yes. (Pause)

15 MS. WASS: I think that is enough.

16 MR. JUSTICE NICOL: You are back with us now, Mr. Baruch. Were

17   are able to see the photograph?

18 THE WITNESS: Yes.

19 MR. JUSTICE NICOL: Thank you.

20 MS. WASS: That is how Ms. Heard looked on 21st May.

21 MR. JUSTICE NICOL: I think we are talking about 22nd May, are we

22   not?

23 MS. WASS: Yes. Did you see anything similar to that ----

24 MR. JUSTICE NICOL: Just a minute, please. I think we are talking

25   about 22nd May.

[Page 1375]

BARUCH - WASS

1

2 MS. WASS: We are, but the metadata of the photograph is 21st May.

3 MR. JUSTICE NICOL: I beg your pardon.

4 MS. WASS: That is quite all right. It is on the following page,

5   the non-glossy photograph at the back, it should be F894.156

6   and the date of the photograph, the date it was created was

7   the 21st. There will be further evidence of the times in due

8   course.

9   So, Mr. Baruch, this photograph of Ms. Heard was taken,

10   not on the 22nd when you said you saw her without a mark, but

11   the day before. All right? Did you see ----

12 A. I ----

13 Q. Did you see anything like that when you saw her on the 22nd?

14 A. Absolutely not.

15 Q. Absolutely not.

16 MR. JUSTICE NICOL: Just a minute. Yes.

17 MS. WASS: Can I ask you to get file 7, which is to your left.

18   You can put file 6 away.

19 A. I got 7.

20 Q. Can you go behind tab 30, please. Can you see that appears to

21   be a text chain; yes?

22 A. Yes.

23 Q. It appears to be dated 22nd May 2016, which was a Sunday?

24 A. Starting at the top, that is what it says.

25 Q. That is what it says. Can you go to the bottom, please. It

[Page 1376]

BARUCH - WASS

1

2   is a text chain between Amanda de Cadanet and AH, which is

3   Amber Heard; all right?

4 A. Okay.

5 Q. A message from Amanda de Cadanet to Ms. Heard says this:

6   "Sleeping sounds like the best thing right now. Put some

7   arnica on your face. Make sure you have photos of the

8   injuries, please, and text them to me or Rocky so there is a

9   record. Sweetheart, I have been where you are and it's

10   excruciatingly painful, but pain is the cornerstone of growth

11   and you have an incredible opportunity right now to change

12   your life." The message goes on. Do you know what arnica is,

13   Mr. Baruch?

14 A. No.

15 Q. Are you aware that it is a homeopathic ----

16 MR. JUSTICE NICOL: He says he does not know what arnica is.

17 MS. WASS: Would you agree that from that text, Amanda ----

18 MR. JUSTICE NICOL: Ms. Wass, I am not sure that it is going to be

19   helpful for me to hear what Mr. Baruch thinks of this text.

20   This was not a text to him.

21 MS. WASS: No. Mr. Baruch, can you think of any reason why ----

22 MR. JUSTICE NICOL: Well now, Ms. Wass, I am going to stop you.

23   Because I do not think it is going to be helpful for me to

24   hear whether Mr. Baruch can think of a reason why that text

25   would have been sent.

[Page 1377]

BARUCH - WASS

1

2 MS. WASS: All right. I will address my Lord at the appropriate

3   time.

4 MR. JUSTICE NICOL: Right.

5 MS. WASS: Now, on 3rd June, so I am fast-forwarding a little bit.

6 THE WITNESS: Wait a second. Should I get rid of this book?

7 Q. You do not have to get rid of the book, but you can if you

8   would like to.

9 A. Hang on. (Pause) Okay.

10 Q. On 3rd June, you were in your flat and Ms. Heard knocked at

11   your door and I think she told you that she was not doing so

12   good. Do you remember that occasion?

13 A. I remember saying, "How you doing?" And she says "I'm not

14   doing so hot, I'm not doing so well".

15 Q. She invited you to come for dinner?

16 A. Oh. And she said, then she said to me, "I made some food, do

17   you want to come, I made something to eat, do you want to come

18   eat with me?"

19 Q. Right. And I think you refused, saying you felt that you and

20   she should not talk any more, because of the publicity

21   surrounding the domestic violence restraining order that had

22   been made by a court against Mr. Depp. And you suggested ----

23 A. No, that is not what I said.

24 Q. You suggested that it was best that you did not talk again.

25 A. What you said before, that is not what I said. I said to her,

[Page 1378]

BARUCH - WASS

1
2 "Listen, Amber, me and you we're not going to talk any more,
3 because everything that I've been seeing I'm confused, I'm
4 angry and I'm frustrated at everything I've been seeing. So
5 the best thing for me and you, Amber, is that we're not going
6 to talk any more." That is what I said.
7 Q. That is helpful. Thank you. Then, on 28th October 2016,
8 Mr. Depp sent you a text saying that he was going to sell the
9 penthouse apartments, but that he would accommodate you in one
10 of his Sweetzer Avenue houses; is that right?
11 A. Can you show me the text?
12 Q. I could, but it is not to hand at the moment. Do you agree
13 that Mr. Depp sold the apartments in October 2016?
14 A. I have no clue what date.
15 Q. All right. Did a time come when Mr. Depp sold the apartments?
16 A. Oh, yes. At some point, yes. At some point he sold them.
17 Q. When he sold them he offered you accommodation in Sweetzer
18 Avenue?
19 A. Oh, he had not sold the place yet.
20 Q. When he sold the place, he offered you accommodation in
21 Sweetzer Avenue?
22 A. No. Before they got sold, he asked me, or he told me, "Hey,
23 come over to the house where I'm living now, and there's a
24 room in this house, go live in there. Because we got, I got
25 to get you out of there, so that way the real estate people

[Page 1379]

BARUCH - WASS

1
2 and get the apartment nice and, you know, cos they're showing
3 the apartment where I'm living there." So, it was going to be
4 better if I am not there, with all my stuff, art stuff and the
5 paintings and all that, to sell the apartment. So, he said,
6 "Come and live here, down the block at the house", and so that
7 way it makes it easier for the real estate people to sell the
8 place.
9 Q. Mr. Baruch, you asked for sight of the text. Could you go to
10 volume 10 of the files to your left.
11 A. By the way, am I talking too loud?
12 MR. JUSTICE NICOL: We can hear you fine, Mr. Baruch. Volume 10?
13 MS. WASS: If you look at the pages at the bottom, they have an O
14 and then a number after them. Can you see that? Take the
15 first tab, turn it over, please. Can you see on the bottom
16 right-hand corner there is a letter O with a number after it?
17 A. I am on the page, I am on page 017.
18 Q. Can you go to page 0517, please.
19 A. Got you.
20 Q. There is a column on the left-hand side with numbers in order,
21 and go to text number 61.
22 A. Got it.
23 Q. That is a text from Mr. Depp to you, dated 28th October 2016.
24 Can you see the date?
25 A. Say that again?

[Page 1380]

BARUCH - WASS

1
2 Q. Can you see the date of 28th October 2016?
3 A. Yes. Yes, October 28th 2016.
4 Q. Exactly.
5 A. Correct.
6 Q. The body of the text says this: "I've got no cake. I should
7 have called business manage earlier but I was swamped. I can
8 probably get you some dough tonight, just not very much.
9 Sorry dude." What was that about?
10 A. That I needed dough.
11 Q. Money?
12 A. Yes.
13 Q. "But we should talk about moving you out of the building, and
14 for the moment bring you to Sweetzer. There's a spot over
15 here where you'll be comfy and able to paint. I hate it, but
16 I've got to lose those fucking penthouses." Do you see that?
17 A. Yes.
18 Q. Then he says this: "That cunt ruined such a fucking cool life
19 we led for a while. I can't even look at the building any
20 more. Fucked up, I really loved that spot." And that was
21 from Mr. Depp, and he was referring to Ms. Heard, was he not?
22 A. Say that again, what is a reference to Ms. Heard?
23 Q. "That cunt" is a reference to Ms. Heard?
24 A. (Witness laughs) yes.
25 Q. Forgetting the language for a moment, the position is that it

[Page 1381]

BARUCH - WASS

1
2 was a cool life that you all lived there for a while. Do you
3 agree?
4 A. Absolutely; for everybody.
5 Q. There was you, there was Mr. Drew, there was Ms. Pennington,
6 Whitney was there for a while, and everybody lived like family
7 almost?
8 A. That is exactly what it was like, friends, family, in this
9 amazing top floor of this building, five beautiful apartments,
10 and everybody enjoying what Johnny was funding, yes.
11 Q. You were aware of people coming and going because you were
12 also close to each other, were you not?
13 A. I do not understand that. I do not understand the question.
14 What do you mean? What do you mean being close, if I know who
15 is coming and going? What is the connection?
16 Q. Because of the way you all interacted, all of you in the
17 different penthouses, it would be pretty apparent if one
18 particular person had a visitor, for example; do you agree?
19 A. Oh yes, yeah, yeah, yeah. If Rocky has people over and out
20 and about and you walk in the hallway or whatever, you meet
21 people that might be visiting.
22 Q. Yes.
23 A. And that kind of thing, yes, sure.
24 MR. JUSTICE NICOL: Ms. Wass, we are a little tight on time.
25 MS. WASS: I have one more question.

[9] (Pages 1378 to 1381)

[Page 1382]

1   BARUCH - WASS
2   MR. JUSTICE NICOL: All right.
3   MS. WASS: And you were asked on a previous occasion when you
4   remember first seeing Mr. Elon Muss at the building; do you
5   remember that.
6   A. Oh, yes, yes, yes.
7   Q. The question -- and, my Lord, it is in the deposition, but
8   I am not going to turn it up unless there is a challenge to
9   it. For my Lord's reference, it is F13.9, and I will give
10   my Lord the tab reference in a moment. What you were asked is
11   this, if you remember, otherwise do not speculate. If you
12   remember, did you first see Mr. Musk at the building before
13   May 21st or after May 21st? Do you remember being asked a
14   question like that?
15   A. No, after ----
16   Q. Let me read the question and answer and what you said?
17   A. Who asked me that question? Start your question again because
18   I did not hear anything.
19   Q. You were asked on a previous occasion whether you had first
20   seen Mr. Musk before or after May 21st. Do you remember being
21   asked that?
22   A. I think I might have been asked that at a deposition that
23   I gave. That is what it is called, a deposition; right?
24   Q. That is right?
25   A. A deposition.

[Page 1383]

1   BARUCH - WASS
2   Q. And your answer ----
3   A. I think I remember being asked that, if I am not mistaken, in
4   October. I think it was October, in 2019, I gave a deposition
5   in Long Beach California.
6   Q. In fact, it was November ----
7   A. Maybe I was wrong and maybe it is ----
8   Q. In fact, it was November 20th, but what is more important,
9   perhaps ----
10   A. Oh, November. November. Yes, November.
11   Q. What is more important is your answer because you said after,
12   so after the 21st May 2016 was when you first saw Mr. Musk; do
13   you agree?
14   A. Yes. Excuse me, yes. I saw him twice around the building
15   and it was after May 21st. I saw him one time, I saw him the
16   first time coming out of the elevator and I was going in the
17   elevator, and the second time, I saw him was in the morning
18   time, when I woke up, and I am looking out my window, out
19   through my bedroom window, and he is walking from next door
20   where Johnny and Amber's apartment was. He is walking from
21   the balcony to the connecting walkway in the back there, going
22   to, I do not know where. Maybe he is going to the gym, you
23   know, maybe he is going to walk around the roof because, you
24   know, it is a nice view.
25   Q. But this was ----

[Page 1384]

1   BARUCH - WASS
2   MR. JUSTICE NICOL: Ms. Wass, please wrap up your questions.
3   MS. WASS: This was after May 21st, 2016, was it not?
4   A. Yes. The times that I saw him, those two times is after May
5   21st.
6   Q. 2016?
7   A. 2016, correct. Correct.
8   MS. WASS: Thank you very much, Mr. Baruch, for answering my
9   questions.
10   THE WITNESS: You are welcome. Thank you.
11   MR. JUSTICE NICOL: Yes, Mr. Sherborne.
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[Page 1385]

1   BARUCH
2   RE-EXAMINED BY MR. SHERBORNE
3   MR. SHERBORNE: Mr. Baruch, I am just going to ask you a few
4   questions myself, if that is okay?
5   A. Absolutely. Absolutely.
6   Q. I am going to move these boxes so hopefully you can hear me
7   better if I put the microphone there. Does that work?
8   A. Yes, it sounds great.
9   Q. Thank you, Mr. Baruch. The first question you were asked by
10   Ms. Wass was, "Is it right that Mr. Depp has been very
11   generous to you?" and you said, "Yes, he has." Do you
12   remember?
13   A. Yes.
14   Q. Can I ask you this. Is Mr. Depp only generous to you?
15   A. (Witness laughs) no. (Witness laughs) He is an ubermensch
16   and he is generous to everybody.
17   Q. Well, there are those in this courtroom who understand what
18   you mean by a mensch and there may be others who do not. Can
19   you just translate for our purposes what you mean by a mensch?
20   A. He is a true, honest man, who is an openly good guy. He does
21   the right thing. He knows how to do the right thing and you
22   know, someone you want to, you know, you want to care about
23   because he does the right thing.
24   Q. You were asked about being allowed to stay in one of the
25   penthouses in the Eastern Columbia Building rent-free by

[10] (Pages 1382 to 1385)

[Page 1386]

BARUCH - SHERBORNE

2 Mr. Depp?

3 A. Wait, wait, wait. I did not hear the beginning of what you

4   said.

5 Q. I will start again, I am sorry. You were asked by Ms. Wass

6   about the fact that you were allowed to stay rent-free in one

7   of the penthouses in the Eastern Columbia Building?

8 A. Yes. That was part of the (unclear), the patronship.

9 Q. Are you the only person that Mr. Depp allowed to stay

10   rent-free in the Eastern Columbia Building in one of his

11   penthouses?

12 A. (Witness laughs) No.

13 Q. Can you just explain to the court who else, to your knowledge,

14   was staying rent-free in the penthouses in the Eastern

15   Columbia Building?

16 A. Everybody who stayed there, Rocky, Josh, Whitney, if the

17   parents, you know, that is -- you know. That is all there

18   was.

19 Q. Thank you, Mr. Baruch.

20 A. The other people -- other people would be visitors, you know.

21   He would have some of his, you know, other friends. He would

22   have friends that would come and stay in one of the

23   apartments, you know, maybe two weeks, a week, you know, like

24   that, but everyone who lived there officially -- myself,

25   Rocky, and Josh, and Whitney, for a period of time -- were all

[Page 1387]

BARUCH - SHERBORNE

2 living there and Johnny is funding everything. Johnny is

3 paying for everything.

4 Q. Just this question. Do you know how many flats, how many

5   units there are in the Eastern Columbia Building?

6 A. The entire building?

7 Q. Yes.

8 A. No, I have no clue.

9 Q. I can ask that question of another witness, Mr. Baruch. Can

10   we just move on then. You were asked questions about May

11   22nd.

12 A. Yes.

13 Q. Let me ask you this. You explained to Ms. Wass, when she

14   asked you whether you had ever seen Ms. Heard leave the

15   building without makeup, you thought for a little while and

16   you said, yes, you had seen her. Do you remember that?

17 A. Yes.

18 Q. On that day, on 22nd May, did you see Ms. Heard leave the

19   building as soon as you spoke to her?

20 A. Oh, no. She was, this was -- no, I left. I left the scene.

21 Q. Do you know whether Ms. Heard, if she put on makeup, put on

22   makeup in the car or anywhere else that day?

23 A. No, I would have no clue.

24 Q. You were then shown a photograph, if you remember, of what

25   were said to be injuries that were on Ms. Heard's face. Do

[Page 1388]

BARUCH - SHERBORNE

2 you remember?

3 A. Yes, the image that was on the screen, sure.

4 Q. You say in your witness statement, just summarising, that you

5   saw her up close on May 22nd, you saw her up close again on

6   May 23rd, you saw her up close also on May 24th, and you saw

7   her up close again on either the 25th, you think, or even

8   maybe the 26th, but you are not entirely sure; is that

9   correct?

10 A. Sunday, Monday, Tuesday, Wednesday. Sunday, the first

11   interaction. Monday, her knocking on my door for me to take

12   the key, to see if I would take the key to let Hilda in to

13   clean the apartment. That is Monday. Tuesday, twice, her

14   coming home with the girls, with a group of women, and then

15   the second time that same day, in the lobby of the Eastern.

16   Then on Wednesday, at one time, her and Whitney in the garage

17   lobby, and all those times, no, I did not see a single bruise,

18   redness, a mark, or the red-tinted cellphone imprint that, you

19   know, that was advertised in the People -- nothing, not

20   anything.

21 Q. Mr. Baruch, you were asked by Ms. Wass about your encounter

22   with Ms. Heard on 3rd June; do you remember?

23 A. 3rd June, yes. Yes.

24 Q. You explained how you said to Ms. Heard that, with everything

25   you had been seeing, you were confused and you did not want to

[Page 1389]

BARUCH - SHERBORNE

2 speak to her. What did you mean by "with everything you had

3 been seeing"?

4 A. All these, all the phoney baloney pictures that I am seeing,

5   People magazine, and then from, you know, the Friday, I think

6   it was from a Friday, or whatever was the court thing, with

7   the Amish dress act, that whole thing, images of this and all

8   the narrative, and meanwhile I saw her on Sunday with not a

9   mark; Monday, no nothing; Tuesday; but it was the Sunday.

10   That was the day I unexpectedly walked in and was in the right

11   place and at the wrong time for them because she was not

12   wearing a speck of makeup and there was nothing on her face.

13   She offered me, you know, asked for me to have to ask, "Where?

14   Where am I looking? Where is it?", you know, and she goes to

15   show me and I still do not see it, and I am looking. I am a

16   foot away from her. I am a foot away from her and there is

17   nothing and I go, "What? I do not see anything."

18 MR. SHERBORNE: Thank you, Mr. Baruch. You were shown a text that

19   was sent to you by Mr. Depp. I think it is fair to say that

20   he was upset with Ms. Heard; he was angry with her. Do you

21   know why he was angry with her?

22 A. She filed for a fraudulent domestic violence claim to push her

23   hand and extort and blackmail him in the divorce.

24 Q. Thank you, Mr. Baruch. Can I ask you one further question.

25   You were asked by Ms. Wass about you seeing Mr. Musk and you

[Page 1390]

BARUCH - SHERBORNE

1 explained to us that you saw him on two occasions after 21st

2 May. You describe one seeing him in daytime and so on. I am

3 not going to ask you about those, but can I ask you this. If

4 Mr. Musk or if anyone had come up to Penthouse 3 late at

5 night, around midnight, say, would you necessarily have seen

6 them?

7 A. Me?

8 Q. Yes.

9 A. No. No. How would I? If I am in my apartment, how am I

10   going to know who is anywhere?

11 MR. SHERBORNE: Thank you, Mr. Baruch. I do not have any further

12   questions.

13 MR. JUSTICE NICOL: Mr. Baruch, can I, on behalf of the court,

14   thank you for coming to give your evidence, and for doing so

15   at what may have been an uncomfortable time in the morning.

16   Thank you very much. We are now going to terminate the link.

17   Your evidence has now been concluded.

18 THE WITNESS: You are welcome. Thank you. You are welcome.

19 MR. JUSTICE NICOL: Thank you, Mr. Baruch.

20   (The witness withdrew)

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[Page 1391]

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2 MR. SHERBORNE: My Lord, I know that Mr. Romero and Mr. McGivern

3   are in the building. I think it would still make sense for

4   your Lordship ----

5 MR. JUSTICE NICOL: In the LA building?

6 MR. SHERBORNE: Yes, not in this building, I am sorry. So,

7   I think it would make sense if your Lordship rose. I assume

8   this is still the position. I was going to take Mr. Romero

9   first although they are both there at an ungodly hour.

10 MR. JUSTICE NICOL: You can make a decision about that. I will

11   rise.

12 MR. SHERBORNE: I am grateful, my Lord. Thank you.

13   (A short break)

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[Page 1392]

ROMERO

1   ROMERO

2   MR. ALEJANDRO ROMERO, CALLED

3   (via video link)

4 MR. SHERBORNE: My Lord, can I just say this. We are going to

5   take Mr. Romero now.

6 MR. JUSTICE NICOL: Yes.

7 MR. SHERBORNE: Then Mr. McGivern. I do not want to put Ms. Wass

8   under unfair pressure, but it is important that both of these

9   witnesses are dealt with by the short adjournment. Can I then

10   start with Mr. Alejandro Romero, please?

11 MR. JUSTICE NICOL: Yes. Mr. Romero, can you hear me?

12 THE WITNESS: Yes, I can hear you.

13 MR. JUSTICE NICOL: First of all, thank you for coming to give

14   evidence at this trial. I understand that it is terribly

15   early in the morning in Los Angeles, where you are. Thank you

16   for making yourself available at this time.

17 THE WITNESS: Thank you. My pleasure.

18 MR. JUSTICE NICOL: The first thing is that you are going to

19   either swear or affirm to tell the truth. It is a matter for

20   you as to which you do. Would you like to swear on a holy

21   book or would you like to affirm?

22 THE WITNESS: Affirm.

23 MR. JUSTICE NICOL: Then the usher here will take you through the

24   terms of the affirmation.

25

[Page 1393]

1   ROMERO

2   MR. ALEJANDRO ROMERO, AFFIRMED

3   EXAMINED BY MR. SHERBORNE

4 MR. SHERBORNE: Good morning, Mr. Romero.

5 A. Good morning.

6 Q. Can you hear us all right?

7 A. Yes.

8 Q. At some stage, it might be helpful if you can, without

9   knocking the microphone, just to bring it a little closer to

10   you; is that possible?

11 A. Can you hear me now?

12 Q. Yes, that is much better, thank you. Mr. Romero, I am going

13   to take you to your witness statement in a moment, but I just

14   say this. Everyone in this court has heard me say this

15   several times so I apologise, but you will have only heard

16   this for the first time. So, because of the time delay, it is

17   quite important that we wait for you to finish an answer

18   before any of us ask you another question.

19 A. Okay.

20 Q. And vice versa, if you could wait for the end of the question

21   as you just did and then provide your answer.

22 A. Okay. I understand.

23 Q. Thank you very much. Can I begin then, Mr. Romero, by just

24   taking you to your witness statement. You should have a

25   bundle of files to your right-hand side. Can you find file 2?

[12] (Pages 1390 to 1393)

[Page 1394]

1   ROMERO - SHERBORNE
2   A. I just did.
3   Q. Thank you. Can I then ask you to go to tab 47?
4   A. I got it.
5   Q. And do you find behind there a document entitled "First
6   witness statement of Alejandro Romero"?
7   A. Correct. That is correct.
8   Q. Can I then ask you to turn a few pages on to D127 in the
9   bottom right-hand corner?
10   A. I have got that page.
11   Q. And do you see a signature there?
12   A. Correct.
13   Q. Can you just confirm, is that your signature, Mr. Romero?
14   A. Yes, that is my signature.
15   Q. This is the final question from me for the moment. Can I ask
16   you, are the contents of your witness statement true?
17   A. Yes, it is true.
18   MR. SHERBORNE: If you just wait there, Mr. Romero, Ms. Wass, on
19   behalf of the defendants, will have some questions for you.
20   Thank you very much.
21   MR. JUSTICE NICOL: Yes, Ms. Wass.
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[Page 1395]

1   ROMERO
2   CROSS-EXAMINED BY MS. WASS
3   MS. WASS: Mr. Romero, can I ask you to look at paragraph 6 of
4   your statement that you have just been asked to identify?
5   A. Paragraph 6, I got it.
6   Q. I will read it if I may: "I know Miss Amber Heard to be a
7   resident of Penthouse 3 of the Eastern." That is correct, is
8   it?
9   A. That is correct.
10   Q. "I saw Ms. Heard at the Eastern for the first time about July
11   2015"; is that correct?
12   A. That is correct. That is what it says here.
13   Q. You are sure you have not got the dates muddled up?
14   A. From my memory, I think it was that day, the same year.
15   Q. I did not hear that. It is probably my fault. Do you think
16   you could say that again for me?
17   A. I remember it was that year.
18   Q. You remember it was that year?
19   A. That is correct.
20   Q. 2015, when you first saw Ms. Heard at the Eastern?
21   A. That is correct.
22   Q. Then you went on to say: "But I understand she was not
23   resident until about March 2016"; is that your genuine
24   recollection?
25   A. I remember the year, but I do not remember exactly if it was

[Page 1396]

1   ROMERO - WASS
2   that time.
3   Q. So, you remember she was resident, she was not resident until
4   2016; is that right?
5   A. Okay, she probably would not be a resident, but she was there
6   most of the time.
7   Q. Okay. So, in 2016, she was probably not a resident, but she
8   was there a lot; is that right?
9   A. You are talking about the 2016, I am talking about 2015.
10   Q. Okay. Let us take it in stages. In 2015, is that the first
11   time you saw Ms. Heard around the Eastern Columbia Building?
12   A. That is correct.
13   Q. That is your genuine recollection; is that right?
14   A. That is correct.
15   Q. All right. Then you said that you understood she was not a
16   resident at the Eastern until March 2016; is that your genuine
17   recollection?
18   A. I believe it was March when actually she moved in.
19   Q. She moved in in March, but you said in your statement March
20   2016.
21   A. Correct.
22   Q. Are you comfortable with that recollection?
23   A. That is correct.
24   Q. All right. You said you had seen her both in person and on a
25   security footage. You had never spoken to her about her

[Page 1397]

1   ROMERO - WASS
2   personal life; you agree with that obviously?
3   A. That is correct.
4   Q. You said this, in paragraph 7, if I can ask you to look at
5   that: "My interaction with Ms. Heard was limited to brief
6   interactions about logistical matters with the apartments; for
7   example, giving access to guests of Ms. Heard." Do you agree?
8   A. That is correct.
9   Q. Then you say this: "From March 2015 onwards, Ms. Heard was
10   visited regularly late at night at around 11 to midnight by
11   Mr. Elon Musk".
12   A. Correct.
13   Q. Then, you said: "For his initial visits I would receive a
14   call from Ms. Heard who would tell me to give Mr. Musk access
15   to the garage, for the building, and then sent him up to the
16   penthouse"; yes?
17   A. That is correct.
18   Q. "After he made a few visits, Ms. Heard provided Mr. Musk with
19   his own garage remote and the fob to Mr. Depp's penthouse.
20   I believe he visited a few times a week. He would always
21   visit when Mr. Depp was not at home"; yes?
22   A. That is correct. That is right.
23   Q. Mr. Romero, what you say about Ms. Heard and Mr. Musk is not
24   disputed. What I do suggest is you have the dates all muddled
25   up in your witness statement.

[Page 1398]

ROMERO - WASS

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2 A. The date that I remember, I cannot remember exactly the year,

3   because it has been for a couple of years already. The only

4   thing I remember for sure that was when Mr. Depp injured his

5   hand, filming that movie, Pirates of the Caribbean, and that

6   is how I remember, exactly the year, I believe for me, I think

7   it was 2015.

8 Q. So, you say when Mr. Depp injured his hand, which we know is

9   2015, in March, it was in that same month that Mr. Musk

10   started coming to the Eastern building; is that right?

11 A. That is correct.

12 Q. You see, what you said in paragraph 6 is that Ms. Heard was

13   not resident until the following year, you said March 2016 is

14   when she was resident. Do you see that in the paragraph 6.

15   We looked at it together.

16 A. Yes, we did.

17 Q. Now, are you saying that Ms. Heard, not being a resident,

18   would invite Mr. Musk to Mr. Depp's flat?

19 A. She was a resident. She was a resident, I get the thing,

20   I get, like you said, the years messed up. But that is how

21   I do remember, like I said, when Johnny Depp injured his hand,

22   that was the first time I saw Mr. Musk going to the building.

23 Q. Well, I am going to make these suggestions, that Ms. Heard

24   actually became a resident in March 2013, not ----

25 MR. JUSTICE NICOL: Just a minute.

[Page 1399]

ROMERO - WASS

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2 MS. WASS: ---- not 2016. Do you understand what I am suggesting

3   to you?

4 THE WITNESS: That is correct.

5 MR. JUSTICE NICOL: Mr. Romero, the way in which evidence is given

6   is that questions are put to you, sometimes they are questions

7   based on the case of the person asking the questions, but what

8   I need to understand is your answer, and you may agree or you

9   may disagree with the question, but I need to be able to hear

10   what your answer is. Do you understand?

11 THE WITNESS: Correct.

12 MR. JUSTICE NICOL: All right. So, what you are being asked now

13   is whether you agree or disagree that Ms. Heard became a

14   resident in this building in March 2013, not 2016. Do you

15   agree or disagree?

16 THE WITNESS: I disagree.

17 MR. JUSTICE NICOL: Thank you.

18 MS. WASS: You stand by your account, do you, that she was not

19   resident until March 2016? So, can you explain how that fits

20   in with your recollection that she was entertaining Mr. Musk a

21   year before she was resident in the building?

22 THE WITNESS: I do not know how to explain that, but she was

23   there. Her name was not in the system, we do not consider

24   persons their names are not on the system a resident.

25 Q. You see, what you say in your paragraph 7 is that you were

[Page 1400]

ROMERO - WASS

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2   dealing with Ms. Heard when she asked for access to be given

3   to Mr. Musk.

4 A. Correct.

5 Q. So, her name was familiar to you, whether it was formally on

6   the system, her name was familiar to you, you say, from March

7   2015; yes?

8 A. Yes.

9 Q. But yet you say in paragraph 6 she was not a resident until

10   March 2016.

11 A. I guess that she was added to the system. It probably just

12   was added later on that year.

13 Q. You said you had only seen her for the first time in July

14   2015, four months after she was inviting Mr. Musk to the

15   building, according to your chronology.

16 A. That is correct.

17 Q. You do not accept that you may be muddled about any of these

18   dates?

19 A. Sorry, I did not understand.

20 Q. Do you accept that you might be muddled about these dates?

21 A. I probably have got the dates messed up, but that is, like

22   I say, that is how I remember those dates, when Mr. Depp

23   injured his hand, that is how I remember it. Because I got a

24   147 units, I cannot remember everything.

25 MS. WASS: All right. Thank you very much, Mr. Romero. That is

[Page 1401]

ROMERO - WASS

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2   all I ask you.

3 MR. JUSTICE NICOL: Any re-examination?

4 MR. SHERBORNE: Yes.

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[Page 1402]

1   ROMERO
2   RE-EXAMINED BY MR. SHERBORNE
3 Q. Mr. Romero, you explained to Ms. Wass that in your strong
4   memory you have tied Mr. Musk's visits to the Eastern Columbia
5   Building, you describe in your statement where he regularly
6   visited late at night, around 11 to midnight, you tie that
7   time period to when Mr. Depp hurt his finger; correct?
8 A. That is correct.
9 Q. We know that he hurt his finger in March of 2015, and that
10   obviously he was away at the time, round about then?
11 A. That is correct.
12 Q. Can I ask you this: why do you have such a clear memory of
13   Mr. Depp hurting his finger?
14 A. I got a friend who is a musician and he is a big fan of
15   Mr. Depp, and he was concerned of him not able to play the
16   guitar, that is how I remember, and then the same day, I saw
17   Mr. Musk at the building.
18 Q. So, your friend, who is a massive fan of Mr. Depp, was
19   concerned about the fact that Mr. Depp would not be able to
20   play guitar, and you remember that was the day that Mr. Musk
21   came to the building. Did I get that right?
22 A. That is correct. That is correct.
23 MR. SHERBORNE: Thank you very much, Mr. Romero. No further
24   questions.
25 MR. JUSTICE NICOL: Mr. Romero, again, let me thank you for giving

[Page 1403]

1   ROMERO
2   your evidence and giving your evidence at an uncomfortable
3   hour. We will now terminate the link. All right.
4 THE WITNESS: Thank you. Thank you very much. Appreciate it.
5   (The witness withdrew)
6
7 MR. JUSTICE NICOL: Mr. Sherborne, before the next witness comes,
8   I will rise and you can establish the link with them.
9 MR. SHERBORNE: My Lord, yes, I am very grateful.
10   (A short break)
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[Page 1404]

1   McGIVERN
2 MR. JUSTICE NICOL: Yes. Now, you are calling.
3 MR. SHERBORNE: Travis McGivern.
4 MR. JUSTICE NICOL: Mr. McGivern, do sit down. Can I first say
5   thank you for coming to give your evidence, and thank you for
6   doing so at what may be an uncomfortable time in the morning
7   for you in Los Angeles. I should have started by asking, can
8   you hear me all right?
9 THE WITNESS: Yes, I can.
10 MR. JUSTICE NICOL: Good. All right. Now, the first stage of any
11   witness giving evidence is that they must be either sworn or
12   affirmed to tell the truth. Which would you prefer to do?
13 THE WITNESS: Affirm, please.
14 MR. JUSTICE NICOL: Then please listen to the usher in London as
15   she reads out the terms of the affirmation and asks you to
16   repeat them.
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[Page 1405]

1   MCGIVERN
2   MR. TRAVIS MCGIVERN, AFFIRMED
3   EXAMINED BY MR. SHERBORNE
4   (via video link)
5 MR. JUSTICE NICOL: Mr. Sherborne.
6 MR. SHERBORNE: Mr. McGivern, I am Mr. Sherborne and I represent
7   Mr. Depp.
8 THE WITNESS: Good morning.
9 Q. Good morning. Thank you very much. It truly is morning for
10   you. I am going to begin by giving you what I will call our
11   regular lecture about giving evidence via video link, please
12   do not take it amiss, I say this to every single witness who
13   is giving evidence in this way.
14 A. Understood.
15 Q. There is, as you may have noticed, quite a significant time
16   delay between me finishing my sentence and you hearing it and
17   responding.
18 A. It is not bad.
19 Q. Okay, then maybe I am over emphasising it. So, for our part,
20   we will try to wait until you have finished speaking before
21   you are asked another question, and in return, if you could
22   try and do the same, that will help, because his Lordship is
23   taking a note of what you say and it is helpful to him that he
24   gets to hear your answers.
25 A. Understood.

[Page 1406]

MCGIVERN - SHERBORNE

1
2 Q. As opposed to the question, so if you can also speak
3   relatively slowly, not unreasonably slowly, that would be
4   helpful.
5 A. I will.
6 Q. Thank you. Can I begin then, Mr. McGivern, by taking you to
7   your witness statement in this case. You should find to your
8   left a file which has got a number 2 on it. Do you see that?
9 A. Yes, I do.
10 Q. Can you turn to tab 52, please. You should have behind there
11   the "Witness statement of Travis McGivern"?
12 A. That is correct.
13 Q. Can I just then take you to page D166 at the bottom, so if you
14   just turn over a few pages.
15 A. Okay.
16 Q. Do you see a signature there?
17 A. Yes, I do.
18 Q. Can you confirm for us, Mr. McGivern, that is your signature?
19 A. Yes, I can.
20 Q. Then, a final question from me, can you confirm that the facts
21   in this witness statement are true?
22 A. Yes, they are.
23 MR. SHERBORNE: If you wait there, Mr. McGivern, Ms. Wass on
24   behalf of the defendants, will have some questions for you.
25 MR. JUSTICE NICOL: Yes, Ms. Wass.

[Page 1407]

MCGIVERN

CROSS-EXAMINED BY MS. WASS

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3 Q. Mr. McGivern, you have been a security guard for Mr. Depp for
4   how long, please?
5 A. A little over seven years.
6 Q. Seven years. You have made a witness statement which you have
7   been asked to look at dated 25th February, dealing with an
8   incident on 23rd March 2015. Do you agree?
9 A. Yes, that is correct.
10 Q. You were obviously on duty on that occasion at the Eastern
11   Columbia Building; yes?
12 A. Yes.
13 Q. Were you waiting in what has been referred to as a cubbyhole
14   or a guard shack, which is part of penthouse 5?
15 A. At the time of the incident?
16 Q. No, at the time when -- my fault for not making this clear.
17   When you were called by Mr. Depp, were you waiting in the
18   guard shack?
19 A. I was not.
20 Q. Where did he call you from?
21 A. I believe he texted me.
22 Q. Yes. Where were you?
23 A. I had stepped downstairs to get some air.
24 Q. Sorry?
25 A. I had stepped downstairs.

[Page 1408]

MCGIVERN - WASS

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2 Q. You had gone downstairs in the building to get some air; yes?
3 A. Yes, ma'am.
4 Q. He asked you to bring, not only for to you come, but to bring
5   Nurse Debbie Lloyd?
6 A. That is correct.
7 Q. And you and Ms. Lloyd entered the flat together; is that
8   correct?
9 A. The flat, meaning penthouse 5?
10 Q. Yes, the apartment, penthouse 5, together?
11 A. No, we did not.
12 Q. What you say in your statement -- have you got paragraph 5 in
13   front of you?
14 A. Yes, I do.
15 Q. Five lines from the bottom, there is a sentence that begins:
16   "When Ms. Lloyd and I entered his residence, Ms. Heard and
17   Mr. Depp were having a verbal argument. Ms. Heard's sister
18   was also present." Does that refresh your memory as to
19   whether you and Ms. Lloyd entered the apartment together?
20 A. Yes, I see what it says here. We did not enter together right
21   away. I went and got the nurse from a hotel where she was
22   staying.
23 MR. JUSTICE NICOL: Just a minute. (Pause)
24 THE WITNESS: Was that for me?
25 MR. JUSTICE NICOL: Yes, please, can you wait a moment. You got

[Page 1409]

MCGIVERN - WASS

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2   the nurse from a hotel, is that what you are saying?
3 THE WITNESS: Yes.
4 Q. Where she was staying. Yes.
5 A. That is correct.
6 MS. WASS: Before getting the nurse, had you gone, did you go
7   straight from whatever you were doing, getting fresh air, to
8   get the nurse? Is that the first thing you did after Mr. Depp
9   asked you to come to him and bring Nurse Lloyd with you?
10 THE WITNESS: Yes, ma'am.
11 Q. So, the order in which things happened was, you get a text
12   from Mr. Depp, saying "Come to penthouse 5, bring Nurse
13   Lloyd", I am paraphrasing the text, but that is the meaning;
14   is that right?
15 A. Yes.
16 Q. You go straight to get Nurse Lloyd from a hotel; is that
17   right?
18 A. Yes.
19 Q. Then, when you get back to the Eastern Columbia Building from
20   the hotel, you and Nurse Lloyd go to the penthouse together?
21 A. No. Nurse Lloyd -- we ran into Ms. Heard downstairs,
22   Ms. Lloyd stayed with Ms. Heard, I went upstairs and met with
23   Mr. Depp, as he requested.
24 MR. JUSTICE NICOL: Just slow down, please. (Pause) Thank you.
25 MS. WASS: I think we are at cross-purposes, Mr. McGivern.

[Page 1410]

MCGIVERN - WASS

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2 I suggested that you and Nurse Lloyd entered the apartment,

3 forget whether it was downstairs or upstairs, you entered the

4 apartment at the same time; do you agree or disagree with

5 that?

6 THE WITNESS: Upstairs, I do not understand the question.

7 Q. Okay.

8 A. Are you talking about the building or ----

9 Q. Can I help. You have told us that you were downstairs on the

10 ground level, getting some air; is that correct?

11 A. Yes.

12 Q. You get a text from Mr. Depp, asking you to come and to bring

13 Nurse Lloyd; correct?

14 A. Yes, ma'am.

15 Q. You go to the hotel, you collect Nurse Lloyd; correct?

16 A. Correct.

17 Q. You and Nurse Lloyd go back to the Eastern Columbia Building;

18 correct?

19 A. Yes.

20 Q. Once you have got rid of the car, you get into a lift

21 together; correct?

22 A. That is not correct. First of all, there was no car.

23 I walked to the hotel.

24 Q. My fault.

25 A. And walked back to the Eastern building. When we returned to

[Page 1411]

MCGIVERN - WASS

1

2 the Eastern building, Nurse Lloyd stayed downstairs with

3 Ms. Heard, who was at the front desk. I got in the elevator,

4 went up to the penthouse levels by myself, to meet with

5 Mr. Depp.

6 Q. I understand your evidence now. You are saying that when you

7 arrived at the building with Nurse Lloyd, you are saying

8 Ms. Heard, and we are talking about Amber Heard, are we?

9 A. Yes, ma'am.

10 Q. Amber Heard was at the ground floor level?

11 A. That is correct.

12 Q. Are you sure about that?

13 A. Yes, ma'am.

14 Q. You see, I suggest that you and Nurse Lloyd arrived together

15 at the apartment by which time there was a full-blown argument

16 between Mr. Depp, on the one hand, and Ms. Heard and her

17 sister, Whitney, on the other hand?

18 MR. JUSTICE NICOL: Do you agree or disagree with that, what has

19 been put to you, Mr. McGivern?

20 A. I disagree.

21 MS. WASS: Right. You see, what you say in your statement,

22 Mr. McGivern, is this, and I am still on paragraph 5. Let us

23 just go back a bit so we can get the whole meaning. You said:

24 "At some time between 4.00 and 6.00 a.m., Mr. Depp contacted

25 me and asked me to come to Penthouse 5, which is the penthouse

[Page 1412]

MCGIVERN - WASS

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2 he owns in the building adjacent to his principal home in

3 Penthouse 3." Do you agree that is in your statement?

4 A. Yes.

5 Q. "He also asked me to bring a nurse, who works for Mr. Depp,

6 called Debbie Lloyd." Do you agree with that?

7 A. Yes.

8 Q. "I do not recall him specifically" -- there must be a word

9 missing -- "saying why he wanted Nurse Lloyd to come"; yes?

10 A. I do not recall him specifying why he wanted Nurse Lloyd to

11 come.

12 Q. That is what you say in your statement. In the very next

13 sentence, you say, "When Ms. Lloyd and I entered his

14 residence, Ms. Heard and Mr. Depp were having a verbal

15 argument. Ms. Heard's sister was also present"; is that true?

16 A. That is what is in the statement, but that is not true, no.

17 Q. That is not true?

18 MR. JUSTICE NICOL: Just a minute, please. (Pause) Yes.

19 MS. WASS: The account you are giving today is very different, is

20 it not?

21 A. It is different, yes.

22 Q. Your account is that Ms. Heard was at the ground floor level

23 with the concierge of the apartment; yes?

24 A. That is correct.

25 Q. And then, she went up -- what are you saying, with Ms. Lloyd?

[Page 1413]

MCGIVERN - WASS

1

2 A. Yes.

3 Q. And meanwhile, you and Mr. Depp were together?

4 A. That is correct.

5 Q. And according to this new account, had an argument been going

6 on between Mr. Depp and Ms. Heard at the time you entered the

7 building? Were they having an argument?

8 A. When ----

9 MR. JUSTICE NICOL: Just a minute. Just a moment, please, I want

10 to clarify. Ms. Wass, you said, "when you entered the

11 building".

12 MS. WASS: Yes, my fault.

13 MR. JUSTICE NICOL: Did you mean entered the flat?

14 MS. WASS: I did.

15 MR. JUSTICE NICOL: Entered the apartment.

16 MS. WASS: I did. Thank you. (To the witness) When you entered

17 the apartment, according to your new account, Ms. Heard and

18 Mr. Depp could not have been having a verbal argument because

19 Ms. Heard was not even there, was she?

20 A. I think my, this witness statement was, when Ms. Lloyd and

21 Ms. Heard came back upstairs to the penthouse level, I was

22 with Mr. Depp, we were attempting to leave, they engaged in a

23 discussion or argument, we all entered Penthouse 5 together,

24 Nurse Lloyd, Mr. Depp, Ms. Heard and myself, and that is where

25 the argument escalated.

[17] (Pages 1410 to 1413)

[Page 1414]

1   MCGIVERN - WASS
2   Q. Your new account that you are giving today indicates that you
3   saw the beginning of the argument at Penthouse 5; is that
4   right?
5   A. I saw the beginning of the argument that I witnessed.
6   Q. Right, rather than seeing an argument in full flow? Is that
7   what you are saying? It is not the case that you came in
8   halfway through the argument or three-quarters of the way
9   through the argument; is that right?
10   A. I do not know how long the argument was going before ----
11   Q. Now that you are saying you were there at the beginning, can
12   you tell us what the argument was about?
13   A. Not specifically, no.
14   Q. Did you know anything about the cause of the argument?
15   A. I did not.
16   Q. Did a time come when Ms. Heard and her sister, Whitney, were
17   on the mezzanine level of the staircase that goes from the
18   ground floor of the apartment to the upper storey of the
19   apartment? Do you remember seeing that?
20   A. Yes, ma'am.
21   Q. Do you remember Mr. Depp being very angry?
22   A. Yes.
23   Q. And do you remember Mr. Depp being very angry because
24   Ms. Heard had accused him of having an affair with someone
25   called Rochelle?

[Page 1415]

1   MCGIVERN - WASS
2   MR. JUSTICE NICOL: Just a minute. (Pause) Do you recall that,
3   Mr. McGivern?
4   A. I do not. I do not remember the specifics of what they were
5   fighting about.
6   MS. WASS: But there was a scuffle -- do you know what I mean by
7   "a scuffle" -- at the mezzanine level of the stairs; do you
8   agree?
9   A. A scuffle? What do you mean by "scuffle"?
10   Q. Pushing and pulling and using physical contact with each
11   other?
12   A. Not with each other, no. That was one-sided.
13   Q. So you are saying this was a one-sided fight and Ms. Heard was
14   the only one at fault; is that right?
15   A. Ms. Heard was the only one that was physically aggressive.
16   Q. You do not remember Mr. Depp -- because Mr. Depp had some sort
17   of cast on his hand at this stage, did he not?
18   A. Yes, he did.
19   Q. You do not remember him hitting Ms. Heard with that hand that
20   was wrapped up in a cast?
21   A. Absolutely not.
22   Q. And you do not remember yourself and Ms. Lloyd, the nurse,
23   having to separate the two of them?
24   A. I do remember stepping in between the two of them, yes, if
25   that is what you mean by "separate".

[Page 1416]

1   MCGIVERN - WASS
2   Q. It is what I mean by "separate". Did you see Mr. Depp shove
3   Ms. Heard's sister, Whitney, out of the way as Whitney tried
4   to get between the two of them?
5   MR. JUSTICE NICOL: Just a minute. (Pause) Did you see that?
6   A. No. At no time did Mr. Depp lay a finger on anybody.
7   MS. WASS: And it was straight after he tried to shove
8   Miss Whitney Heard out of the way that Miss Amber Heard did
9   hit Mr. Depp in defence of her sister?
10   A. As I said before, Mr. Depp did not touch Ms. Heard or her
11   sister at any point.
12   Q. What do you say to the suggestion that these two,
13   Miss Amber Heard and Mr. Depp, would have hurt each other had
14   you and Nurse Lloyd not intervened -- hurt each other?
15   MR. JUSTICE NICOL: Just a minute. (Pause) This is Amber Heard and
16   ----
17   MS. WASS: Mr. Depp.
18   MR. JUSTICE NICOL: Do you agree or disagree with that,
19   Mr. McGivern?
20   A. It is hard for me. You are asking me to speculate on what
21   would have happened if -- (Pause)
22   MS. WASS: Could you go to file 6, please, which is beside you on
23   your left?
24   A. I am sorry, to file 6?
25   Q. File 6. It has got a 6 on the spine. If you open that file,

[Page 1417]

1   MCGIVERN - WASS
2   behind divider 119, there is a bundle of documents which are
3   in landscape form. Do you see that?
4   A. Yes, ma'am.
5   Q. Can you go to little 64 at the bottom. It is the middle of
6   the page as it is on its side. Can you see pagination in the
7   middle of each page?
8   A. I am sorry, did you say 64.
9   Q. 64, 6-4.
10   MR. JUSTICE NICOL: The full number, Mr. McGivern, is F697.64.
11   A. Okay.
12   MS. WASS: There are two texts at the bottom from Nurse Lloyd
13   which I want to ask you about to see whether they refresh your
14   memory. Do you understand? Have you got ----
15   A. I do.
16   Q. Yes.
17   A. Sorry, just to confirm, I am on page F697.4.
18   MR. JUSTICE NICOL: No, point 6-4, point 64. (Pause)
19   THE WITNESS: Do you have a page number maybe? I do not know
20   where I am looking.
21   MS. WASS: If you hold the document in landscape, so it is going
22   across, there is a little number at the bottom of the page in
23   the middle. Do you see that?
24   A. Yes, ma'am.
25   Q. Can you go to page 64 of that number?

[Page 1418]

1   MCGIVERN - WASS

2   A. Yes.

3   Q. Have you got the page now?

4   A. Yes, ma'am.

5   Q. If you look at that page, there are two texts at the bottom

6   from Debbie Lloyd. Can you see it says at the top, in the

7   grey markings, "From: Participants from body"; do you see

8   that?

9   A. Yes, ma'am.

10   Q. If you go to "From", then the last two at the bottom are from

11   Debbie Lloyd, and they are to somebody called Deuters. You

12   know Stephen Deuters, I presume?

13   A. Yes, ma'am, I do.

14   Q. The first text says: "Bad night last night. They got into it

15   and it got violent again. I had to separate them and we are

16   at 80 now. Jerry aware". Do you see?

17   A. Yes, ma'am. I see that.

18   Q. Does that assist you that this was not a one-sided argument

19   where Ms. Heard was the only one at fault?

20   A. I am sorry, what was the question?

21   Q. Having read this text from Debbie Lloyd -- I ought to have

22   said, dated 23rd March 2015, so the date that we are talking

23   about -- does it assist you to recall that it was not only

24   Ms. Heard who was at fault during this episode?

25   A. No, that is not what I read from that; and having been there.

[Page 1419]

1   MCGIVERN - WASS

2   Q. Sorry?

3   A. As I said before, having been there, and knowing what

4   happened, I will reiterate that it was a one-sided physical

5   aggression.

6   Q. One-sided physical aggression. I think we understand. Just

7   look at Nurse Lloyd's second text, which should be at the

8   bottom of that page. She says: "I was there at 1.30 to give

9   him a shot. He said she was trying to start. He took his

10   meds and went to bed. But then she found texts to Rochelle

11   and all hell broke loose. He had Travis get me back there

12   around 4. Good thing he called or they would have hurt each

13   other. We had to physically restrain both of them"?

14   MR. JUSTICE NICOL: I think it is "the both of them".

15   MS. WASS: "The both of them", thank you. Do you see that,

16   Mr. McGivern?

17   A. Yes, I do.

18   Q. Both Ms. Heard and Mr. Depp had to be restrained, did they

19   not?

20   A. No, ma'am.

21   Q. Are you able to assist us as to Nurse Lloyd coming to that

22   conclusion, since she was there at exactly the same time,

23   looking at exactly the same argument?

24   A. You want me to tell you what Ms. Lloyd was thinking or confirm

25   how she felt was the situation?

[Page 1420]

1   MCGIVERN - WASS

2   Q. Nurse Lloyd is describing something quite different from what

3   you are describing, is she not?

4   A. I will concur that all hell had broken loose. I will also

5   again say that the only person that got physical that night

6   was Ms. Heard.

7   MR. JUSTICE NICOL: Mr. McGivern, having seen those two texts from

8   Debbie Lloyd, does it change your evidence about this dispute

9   between Mr. Depp and Ms. Heard?

10   A. No, it does not.

11   MS. WASS: And you are giving evidence on oath, are you, that

12   neither you nor Ms. Lloyd had to restrain Mr. Depp at any

13   stage?

14   A. I did not restrain him. After Ms. Heard punched him, I walked

15   him down the stairs to get him out of the situation and to

16   protect him.

17   Q. You had to pull Mr. Depp off Ms. Heard when he was trying to

18   punch her: what do you say about that?

19   A. Is that a question?

20   Q. That was a question. What do you say about it?

21   A. That is an unequivocal no, I did not.

22   Q. You are lying about your description of this argument in order

23   to assist Mr. Depp, who was extremely angry and extremely

24   violent on that occasion?

25   A. No, ma'am. I am not lying.

[Page 1421]

1   MCGIVERN - WASS

2   MS. WASS: Thank you very much, Mr. McGivern. That is all I ask

3   you.

4   MR. JUSTICE NICOL: Yes.

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[Page 1422]

1   McGIVERN

2   RE-EXAMINED BY MR. SHERBORNE

3 MR. SHERBORNE: Mr. McGivern, there are just a few questions.

4   I am going to ask you, because Ms. Wass was touching on it,

5   why were you asked to come to the Columbia building, Eastern

6   Columbia Building on that occasion?

7 A. I do not recall the text message. Mr. Depp just asked to come

8   to Penthouse 5 and to bring Nurse Lloyd.

9 Q. Do you remember why he asked you to bring Nurse Lloyd?

10 A. I do not.

11 MR. JUSTICE NICOL: Just a minute. (Pause) Yes.

12 MR. SHERBORNE: You were asked if you remembered the particular

13   cause or the cause of this particular argument -- I think that

14   was the way it was put -- and you said you did not. Is this

15   the only argument that you were aware of between Mr. Depp and

16   Ms. Heard?

17 A. On the date in question or in general?

18 Q. In general, Mr. McGivern, if you can?

19 A. No. This was not the only argument I am aware of.

20 Q. Were there a few arguments?

21 MS. WASS: This is not the subject of re-examination yet again.

22   I asked about one date and now Mr. Sherborne wants to open it

23   up again.

24 MR. JUSTICE NICOL: Well, Mr. McGivern has answered regarding

25   whether there was more than one argument. Mr. Sherborne, what

[Page 1423]

1   McGIVERN - SHERBORNE

2   is the next question?

3 MR. SHERBORNE: My Lord, I can move off it, but it was put to him

4   that he did not remember and obviously he said there were so

5   many arguments. That is what I was going to ask him.

6   Your Lordship will see the relevance of that.

7 MR. JUSTICE NICOL: You have established that this was not the

8   only occasion on which they had argued. I think you can move

9   to your next question.

10 MR. SHERBORNE: I was going to ask him whether there were a few.

11 MR. JUSTICE NICOL: I am not sure that that is going to be very

12   helpful. There is quite a lot of evidence about the volume of

13   arguments.

14 MR. SHERBORNE: Your Lordship is right. I will not ask. You were

15   asked, or it was put to you, Mr. McGivern, that Mr. Depp was

16   very angry and you said that he was. Had you seen Mr. Depp

17   that angry on a number of occasions before?

18 A. A few, yes.

19 Q. There is obviously a dispute between you and Ms. Wass about

20   how you entered that penthouse apartment, but can I ask ----

21 MR. JUSTICE NICOL: Just a minute. Mr. Sherborne, Ms. Wass does

22   not engage in a dispute. There were questions that were put

23   and answers that were given.

24 MR. SHERBORNE: My Lord, yes. I was trying to avoid getting back

25   into that area. That is why I put it in that way. In terms

[Page 1424]

1   McGIVERN - SHERBORNE

2   of what happened when you were inside the apartment, did you

3   ever see Mr. Depp hit Ms. Heard?

4 A. No, I did not.

5 Q. It was put to you that your evidence was that there was only

6   one side at fault, and you answered that by saying that there

7   was only one side that punched anyone, that used physical

8   violence. Are you able to say who was or was not at fault in

9   relation to the argument?

10 A. No, I am not.

11 Q. Thank you. You have described in your witness statement that

12   Ms. Heard punched Mr. Depp in the eye with a closed fist.

13   That was, as I understand it, when you were standing between

14   Mr. Depp and Ms. Heard; is that correct?

15 A. That is correct.

16 Q. Were you facing Mr. Depp or Ms. Heard at the time?

17 MR. JUSTICE NICOL: Just a minute. (Pause) Yes. Can you remember,

18   Mr. McGivern, whether you were facing Mr. Depp or Ms. Heard?

19 A. Yes. I was facing Mr. Depp.

20 MR. SHERBORNE: Ms. Wass asked you about whether or not Ms. Heard

21   was acting in self-defence of her sister. Did you see

22   Ms. Heard act in self-defence of her sister at all?

23 A. No, I did not.

24 Q. If you had seen Mr. Depp be violent towards Ms. Heard or punch

25   Ms. Heard, as Ms. Wass was suggesting, would you have simply

[Page 1425]

1   McGIVERN - SHERBORNE

2   stood by and let this happen?

3 A. Absolutely not.

4 Q. You see, it is suggested to you, Mr. McGivern, that you have

5   come here to lie on Mr. Depp's behalf. Do you agree with that

6   or disagree?

7 A. I wholeheartedly disagree with that.

8 MR. SHERBORNE: Thank you, Mr. McGivern. I have no further

9   questions.

10 MR. JUSTICE NICOL: Mr. McGivern, thank you again for coming to

11   give your evidence and thank you again for making yourself

12   available at such an unpleasant hour in the morning. Thank

13   you for your evidence. We are going to terminate the link

14   now.

15   (The witness withdrew)

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[20] (Pages 1422 to 1425)

[Page 1426]

DISCUSSION

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2 MR. SHERBORNE: My Lord, that completes the witnesses for this
3   morning.
4 MR. JUSTICE NICOL: Yes. (Pause) Are you still on course for
5   completing the claimant's case today?
6 MR. SHERBORNE: My Lord, yes.
7 MR. JUSTICE NICOL: There were some witnesses that I seem to
8   recall that were outstanding questions about. I think you
9   were asked whether you were going to call Mr. Patterson.
10 MR. SHERBORNE: My Lord, I think it is just Mr. Patterson. We are
11   not intending to call him, no.
12 MR. JUSTICE NICOL: Just a minute.
13 MR. SHERBORNE: He is the Eastern Columbia Building supervisor,
14   I think.
15 MR. JUSTICE NICOL: Right. Then I think probably the next
16   question is to Ms. Wass. Ms. Wass, there was an issue raised,
17   as I recall, by Mr. Wolanski about a potential application to
18   cross-examine Ms. de Cadanet.
19 MS. WASS: Yes. I think that has been abandoned in the greater
20   scheme of things.
21 MR. JUSTICE NICOL: Right. Just a minute. (Pause) Good. So, we
22   are on course to complete the claimant's case today.
23 MR. SHERBORNE: My Lord, yes, we are.
24 MS. WASS: We are. There is a matter that I know Mr. Wolanski
25   wants to raise, I do not know if that is better after the

[Page 1427]

DISCUSSION

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2   short adjournment or now. I wonder if Mr. Wolanski, he has to
3   come, he cannot be heard unless he moves.
4 MR. JUSTICE NICOL: Yes. Of course. (Pause)
5 MS. WASS: I am reminded by Ms. Hamer that in fact
6   Ms. de Cadanet's declaration or deposition, whichever one it
7   was, should be removed from the trial bundle, since it is no
8   longer relied on by either side.
9 MR. JUSTICE NICOL: Well, I am not sure about that, because.
10 MR. SHERBORNE: Exactly.
11 MR. JUSTICE NICOL: You either had or floated the idea of an
12   application to cross-examine Ms. de Cadanet. You have told me
13   that is not being pursued. If that is the case, then her
14   witness statement would be -- well, maybe I am going ahead,
15   because maybe I should hear Mr. Wolanski first.
16 MS. WASS: Exactly. Thank you.
17 MR. JUSTICE NICOL: Mr. Sherborne, let me hear what Mr. Wolanski
18   has to say first.

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APPLICATION

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2 MR. WOLANSKI: My Lord, this is the first of two matters I would
3   like to address your Lordship on. The application to
4   cross-examine Ms. de Cadanet was made on the basis that it was
5   our understanding that the claimant wished to rely on
6   Ms. de Cadanet's declaration in the US proceedings as a
7   hearsay statement.
8 MR. JUSTICE NICOL: Just a minute.
9 MR. WOLANSKI: Of course, were the claimant to seek to rely on the
10   contents of that declaration as a hearsay statement, we would
11   be entitled to prima facie cross-examine her, subject to ----
12 MR. JUSTICE NICOL: You would be entitled to ask to cross-examine
13   her.
14 MR. WOLANSKI: To ask, yes. We, therefore, as your Lordship
15   knows, made an application since it was our understanding that
16   was the reason for the attempt by the claimants to include
17   Ms. de Cadanet's declaration in the trial bundle. However,
18   having made the application, it was confirmed to us in
19   writing -- I do not have the e-mail in front of me -- that in
20   fact the claimant will not be relying on Ms. de Cadanet's
21   evidence.
22 MR. JUSTICE NICOL: Just a minute. (Pause) Yes.
23 MR. WOLANSKI: Declaration as hearsay evidence. In those
24   circumstances, there is no need for us to apply, nor indeed we
25   cannot apply, to cross-examine her. Because the declaration

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APPLICATION

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2   is not being relied on as hearsay evidence, we do wish it to
3   be removed from the trial bundle because it has no status in
4   the proceedings. As I understand the position, the claimants
5   do not disagree that it should be removed from the trial
6   bundle. Again, that is in an e-mail which I can find over the
7   lunchtime adjournment.
8 MR. SHERBORNE: I can deal with that.
9 MR. JUSTICE NICOL: Well, yes. All right.
10 MR. WOLANSKI: I have it here.
11 MR. JUSTICE NICOL: Mr. Sherborne, what is the position. I did
12   try gently to suggest that I, at first blush, did not think
13   that Ms. de Cadanet took the matter of this litigation a great
14   deal further one way or the other.
15 MR. SHERBORNE: My Lord, I understand that. So your Lordship
16   understands there is no confusion, strangely put by the
17   defence, if I can put it that way. Ms. de Cadanet was
18   originally intended to be a witness for the defendants. They
19   served a witness summary and she was included in the list of
20   friends of Ms. Heard who are coming to give evidence. The
21   defence then did not seek to rely upon her evidence, but
22   instead Ms. de Cadanet swore a declaration in the American
23   proceedings saying that she felt she had been misled by
24   Ms. Heard in relation to Ms. Heard's account of her
25   relationship with Mr. Depp and violence between them, if I can

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APPLICATION

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2   put it neutrally.
3   We included the declaration in the bundle, and
4   your Lordship will have seen there are a very large number of
5   declarations and other such documents in the bundle. The
6   defendants assumed from that that we were going to call
7   Ms. de Cadanet or that we rely on that declaration as part of
8   our evidence by way of a hearsay notice. We have never said
9   we did, and we have said that we do not.
10   MR. JUSTICE NICOL: Right.
11   MR. SHERBORNE: But, my Lord, sorry to interrupt.
12   MR. JUSTICE NICOL: It is all right.
13   MR. SHERBORNE: Therefore, if the defendants are so keen to have
14   it expunged from the trial bundle, we can remove it from the
15   trial bundle. But what we have made clear in our e-mail and
16   what I repeat to your Lordship is that we are entitled, if we
17   choose, to put it to Ms. Heard during her cross-examination.
18   It is entirely up to your Lordship whether it is therefore
19   expunged from the bundle or not. That is really, if I may
20   say, something of a side issue.
21   MR. JUSTICE NICOL: Well, not entirely, because, as I recall,
22   there was a point being made, I think, at some earlier hearing
23   by Mr. Wolanski, that the working assumption was that
24   documents which were in the trial bundle could be relied upon
25   even if they were hearsay statements, unless objection was

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APPLICATION

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2   taken to them. Maybe I have misunderstood?
3   MR. SHERBORNE: Your Lordship will have seen and your Lordship
4   commented yesterday on the vast array of documentation.
5   MR. JUSTICE NICOL: Indeed. That rule -- if I have understood the
6   rule correctly, if I have not people will in turn correct me
7   -- has a convenience, because it does mean that the trial
8   judge can at least look at the documents that are put before
9   him or her.
10   MR. SHERBORNE: It does, although your Lordship will obviously
11   accord such weight ----
12   MR. JUSTICE NICOL: Weight is a different matter.
13   MR. SHERBORNE: Of course, my Lord, yes.
14   MR. JUSTICE NICOL: What I mean is that their inclusion in the
15   trial bundle, if my understanding is right, is not without
16   significance. Anyway, can I try and short-circuit this.
17   MR. SHERBORNE: Of course.
18   MR. JUSTICE NICOL: And ask whether you intend, you on behalf of
19   the claimant, intend to rely on Ms. de Cadanet's statement
20   other than, as you have indicated in advance, in the course of
21   cross-examination of Ms. Heard?
22   MR. SHERBORNE: My Lord, no. That is clear. We do not need to
23   rely on it by way of hearsay evidence. (Pause)
24   MR. JUSTICE NICOL: Well, then, that is helpful. Let me then ask,
25   I think it is Mr. Wolanski, is it not, who is dealing with

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APPLICATION

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2   this topic. Mr. Wolanski, let me back up. There is no
3   reason, is there, why Ms. Heard cannot be asked about other
4   documents, whether or not they have been formally proved?
5   MR. WOLANSKI: Well, there might be. If what Ms. de Cadanet has
6   said in the declaration is put to her on the basis that what
7   Ms. de Cadanet has said in the declaration is true, then it is
8   being relied on as hearsay evidence. So, there may be a
9   problem if what is put to Ms. Heard in cross-examination is
10   that what Ms. de Cadanet said in her declaration is correct.
11   If that happens our position is that we would wish to
12   cross-examine Ms. de Cadanet, because what she says in her
13   declaration ----
14   MR. JUSTICE NICOL: You would want to apply.
15   MR. WOLANSKI: Sorry, to apply to cross-examine her, because our
16   position is that what Ms. de Cadanet has said in the
17   declaration, as outlined by Mr. Sherborne just now, is untrue.
18   We would want to explore with her exactly why she has changed
19   the information that she has provided in relation to her
20   dealings with Ms. Heard. It is quite a striking story, and we
21   would wish to put it to her and challenge her directly about
22   it.
23   MR. JUSTICE NICOL: Mr. Wolanski, perhaps you can, rather than me
24   recollect, take me to where her declaration is in the bundles
25   at the moment. (Pause)

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APPLICATION

1
2   MR. WOLANSKI: I will need assistance with that. (Pause)
3   MR. JUSTICE NICOL: Do you want to consult with your junior about
4   this?
5   MR. WOLANSKI: If that is all right.
6   MR. JUSTICE NICOL: Yes, of course. (Pause)
7   MR. WOLANSKI: My Lord, it is bundle 3, tab F95A. (Pause)
8   MR. JUSTICE NICOL: Well, Mr. Wolanski, I have been reminded of
9   this declaration. With the greatest respect to
10   Ms. de Cadanet, how am I going to be helped by her view of why
11   she is less keen to give evidence on behalf of the defendants
12   now? I mean, where does it go?
13   MR. WOLANSKI: My Lord, we could not agree more. We absolutely
14   could not agree more, which is why we remain mystified as to
15   why it is that Mr. Sherborne ----
16   MR. JUSTICE NICOL: Mr. Sherborne has indicated what use he was
17   going to make of the document. He has done that, having heard
18   my -- and I emphasise -- provisional views about the value of
19   this piece of evidence. If he wants to try and make more of
20   it, is that not a matter for him?
21   MR. WOLANSKI: Well, it is. But, as I say, if he does try to make
22   more of it, then we will apply to cross-examine Ms. de Cadanet
23   because ----
24   MR. JUSTICE NICOL: If that application is made, I hope that
25   I have indicated that I am not favourably inclined to it, at

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APPLICATION

1 the moment. If you want to develop the application, then you
2 are able to do so.
3 MR. WOLANSKI: Very well. Can I address your Lordship ----
4 MR. JUSTICE NICOL: Can I ask, are you applying to cross-examine?
5 MR. WOLANSKI: Absolutely not, no, we are not applying now.
6 Because, as I say, as things stand, we have been reassured by
7 the claimant's confirmation that they will not be relying on
8 the contents of this declaration as hearsay evidence.
9 MR. JUSTICE NICOL: All right. Just a minute. (Pause)
10 MR. SHERBORNE: I understand what your Lordship says, and I will
11 take my course, so to speak. I do not understand what the
12 cross-examination would be of her, but we will address it if
13 we need to. Can I just, before ----
14 MR. JUSTICE NICOL: Are we going to go any further on
15 Ms. de Cadanet at the moment?
16 MR. SHERBORNE: My Lord, as I understand it, no. It was the
17 defendants' application, it was nothing to do with the
18 claimant. Mr. Wolanski is, as I understand it, going to raise
19 an application notice, which was issued this morning and, with
20 the greatest respect to him and his team, it would be helpful
21 for me to have an opportunity to actually look at this
22 application notice.
23 MR. JUSTICE NICOL: This is separate from Ms. de Cadanet?
24 MR. SHERBORNE: This is what Mr. Wolanski has come into the well

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APPLICATION

1 of the court to deal with.
2 MR. JUSTICE NICOL: I have not heard anything about more than
3 Ms. de Cadanet at the moment. Sit down for a moment,
4 Mr. Sherborne, and let me ask Mr. Wolanski, this, first of
5 all, is a separate matter is it?
6 MR. WOLANSKI: It is.
7 MR. JUSTICE NICOL: All right. Is this an application notice that
8 has been issued today?
9 MR. WOLANSKI: Yes.
10 MR. JUSTICE NICOL: Mr. Sherborne tells me that he has not had an
11 opportunity to consider it. He ought to have that
12 opportunity. I wonder if then the best thing is for me to say
13 we will look at it at two o'clock.
14 MR. WOLANSKI: Very well.
15 MR. JUSTICE NICOL: Mr. Sherborne, you will have until two o'clock
16 and you can tell me then if that is insufficient.
17 MR. SHERBORNE: My Lord, I am grateful. Thank you very much.
18 MR. JUSTICE NICOL: All right. Two o'clock.
19   (Adjourned for a short time)
20
21 MR. JUSTICE NICOL: I see that the message was passed to you.
22 MR. SHERBORNE: My Lord, yes. Thank you very much. Your Lordship
23 mentioned just before we adjourned at 1 o'clock, and you asked
24 me about the application notice.

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APPLICATION

1 MR. JUSTICE NICOL: Yes.
2 MR. SHERBORNE: My Lord, I am not in a position to deal with this
3 now. Can I explain that briefly. It was issued today. It
4 relates to an application for permission to adduce expert
5 evidence for the defendants. It is an application which
6 contains a letter, a without prejudice letter, from I presume
7 it is the proposed expert who was sent material as long ago at
8 least as the 13th, so the first day of this week.
9 MR. JUSTICE NICOL: As long ago as, that is a sign of the pace at
10 which things are moving.
11 MR. SHERBORNE: My Lord, that may be right, but that means that
12 the defendants has had that material for at least four, five
13 days, which is an advantage on myself, because I literally
14 have only just been able to look at this. It is not an issue
15 which, in my submission, we should be required to deal with
16 now. I need to have a look at it and properly consider it.
17 As I understand it, there has been correspondence between the
18 parties and a letter was sent by my instructing solicitors
19 this morning.
20 MR. JUSTICE NICOL: Mr. Sherborne, this was an application, as you
21 say, that was issued this morning.
22 MR. SHERBORNE: Yes.
23 MR. JUSTICE NICOL: If you tell me you are not in a position to
24 deal with it now, I can understand that.

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APPLICATION

1 MR. SHERBORNE: Then I am grateful. I will not labour the point,
2 my Lord.
3 MR. JUSTICE NICOL: Yes. Mr. Wolanski?
4 MR. WOLANSKI: My Lord, can I explain the position why this is
5 time sensitive, and whilst we perfectly understand why
6 Mr. Sherborne personally may not have had time to get to grips
7 with the issue, it has been in play for a little while, and it
8 is time-critical. The reason why it is time-critical is
9 because if this expert is to prepare a report he has informed
10 us that he requires two working days to do it. Obviously,
11 that takes us to Tuesday.
12 MR. JUSTICE NICOL: Mr. Wolanski, the application notice was only
13 issued this morning.
14 MR. WOLANSKI: It was.
15 MR. JUSTICE NICOL: Time critical as it may be, it is only fair
16 that the claimant have a reasonable opportunity to address it,
17 or consider it. Mr. Sherborne tells me that he has not had
18 the time so far. Well, is that not the end of the matter?
19 MR. WOLANSKI: In my respectful submission, it is not, and can
20 I explain why. I think your Lordship has had a chance to look
21 at the application.
22 MR. JUSTICE NICOL: I have.
23 MR. WOLANSKI: You will see it relates to metadata and that
24 metadata is metadata which was disclosed not by us, but by the

[23] (Pages 1434 to 1437)

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1   claimant in January of this year. It is only this morning
2   that the claimant first told us that they are challenging the
3   authenticity of the images which they themselves disclosed to
4   us. We raised the issue of the metadata a week ago and there
5   were two prompts for raising the issue then. The first was
6   the fact that Mr. Sherborne had said, I think it was first in
7   re-examination of his client, that the claimant had at least
8   doubts about the reliability of the metadata in general in the
9   case. This was with specific reference to the Boston plane
10   recording. Your Lordship may recall what happened in
11   re-examination is that Mr. Sherborne referred to documents
12   which he explained had been put into the trial bundle that
13   morning and they had been prepared by the solicitors and they
14   showed what I hope it is not unkind to describe as urzance(?)
15   metadata. It was metadata which the claimant's team had
16   decided to cut and paste into pieces of A4 paper and put
17   before the court, apparently in order to demonstrate how easy
18   it is to manipulate metadata.
19   So, it was the claimant who first, last Friday, raised
20   the question of whether or not the metadata that relates to
21   the images, and they are crucial images the subject of this
22   application, is reliable. As I say, these are images and this
23   is metadata which the claimant himself had disclosed.
24   MR. JUSTICE NICOL: As I have understood it, what was disclosed in

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1   January by Brown Rudnick were material that had been produced
2   by Ms. Heard in the American libel proceedings.
3   MR. WOLANSKI: That is right. Two of these were disclosed by the
4   claimant on 20th January, one was the digital images, for the
5   May 2016 pictures. The other was a schedule which Brown
6   Rudnick themselves had prepared which purported ----
7   MR. JUSTICE NICOL: Just a minute. (Pause) I have seen it, but
8   just remind me where the schedule is.
9   MR. WOLANSKI: There is a letter appended to Mr. Smeele's witness
10   statement as an exhibit, at JS3.1. Then behind that is the
11   schedule. The letter is dated 29th January 2020. You will
12   see that the letter refers to copies of the documents. Those
13   are the digital documents, including the images, and then 2 is
14   an Excel spreadsheet, and what is said is containing the
15   metadata provided with those documents. Then over the page is
16   the spreadsheet. However, the spreadsheet is wrong because
17   the spreadsheet contains a number of fields for, for example,
18   the time at which images were taken.
19   MR. JUSTICE NICOL: The dates ----
20   MR. WOLANSKI: The dates are right.
21   MR. JUSTICE NICOL: The dates are consistent with what you say are
22   the dates of the photos.
23   MR. WOLANSKI: The dates are right, but the times are wrong. Now,
24   that was unfortunate because what then happened is that that

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1   table found its way into the trial bundle. The Excel
2   spreadsheet found its way into the trial bundle, which was, of
3   course, prepared by Schillings, as if that table accurately
4   represented the metadata relating to the May 2016 images.
5   MR. JUSTICE NICOL: Yes.
6   MR. WOLANSKI: In fact, the times on that spreadsheet are wrong.
7   There is now no dispute that they are wrong. Schillings
8   accept that.
9   MR. JUSTICE NICOL: Just a minute. (Pause) I think, when I looked
10   at this briefly, all the times are 0000.
11   MR. WOLANSKI: That is correct.
12   MR. JUSTICE NICOL: It does not take a genius to imagine that
13   there is something funny about those times.
14   MR. WOLANSKI: Yes, that is so. What then happened, as I say, is
15   that nothing happened in relation to the metadata in the case
16   until last Friday. What happened on Friday was that Ms. Heard
17   provided those instructing me with her files of the May 2016
18   images.
19   MR. JUSTICE NICOL: Just a minute. Now, just pause a moment.
20   There is not a further witness statement from Ms. Heard
21   exhibiting those additional documents, is there?
22   MR. WOLANSKI: No, they have been disclosed to the other side ----
23   MR. JUSTICE NICOL: I appreciate they have been disclosed to the
24   other side, but there is not a witness statement from

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APPLICATION

1   Ms. Heard.
2   MR. WOLANSKI: Exhibiting those documents, no. So, what happened
3   on Friday is we obtained the documents and the correct
4   metadata from Ms. Heard and wrote to Schillings ----
5   MR. JUSTICE NICOL: Just a minute. (Pause) What I have understood
6   is that you have got the documents which are now exhibited to
7   Mr. Smeele's latest witness statement from JS8 onwards; is
8   that right?
9   MR. WOLANSKI: That is right.
10   MR. JUSTICE NICOL: And the JS8 document then has next to each
11   photograph what appears to be metadata.
12   MR. WOLANSKI: That is right. It is some of the metadata, not all
13   of it. If you look at the box of metadata, what you will
14   notice is that on the right, there is a bar, a scroll bar, and
15   it is at the top, the top of the box. So, what one can see is
16   ----
17   MR. JUSTICE NICOL: Yes, but what you want is the time that each
18   photo was taken.
19   MR. WOLANSKI: That was initially what was of interest to us. It
20   is the time because obviously the time is critical. The time
21   at which these pictures were taken is very important.
22   MR. JUSTICE NICOL: Yes.
23   MR. WOLANSKI: That therefore prompted us to write to Schillings
24   that evening. You will see the e-mail, again in Mr. Smeele's

[24] (Pages 1438 to 1441)

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1   APPLICATION
2   exhibit at page JS3.5.
3   MR. JUSTICE NICOL: This is on 10th July.
4   MR. WOLANSKI: 10th July, so it is last Friday evening.
5   MR. JUSTICE NICOL: I think Mr. Depp was still in the middle of
6   giving his evidence then.
7   MR. WOLANSKI: Yes, he was, so those photos are not disclosed.
8   The request accompanying the e-mail is, "Please confirm by
9   return that you agree with the metadata and add all of these
10   photographs to the trial bundle." So it is all the metadata.
11   One has to turn to the previous page to see that on the
12   next day, 11th July, at 12:44 in the morning, Mr. (Unclear)
13   sent a chaser e-mail: "Please can you confirm by the end of
14   today" -- that is last Saturday -- "whether there is any
15   challenge or dispute to the metadata attached to the 21 May
16   2016 photographs disclosed in our email."
17   The response came back last Sunday, so the next day, and
18   that is just above it, at 4.30: "We would like to take
19   instructions once we are able to engage with our client."
20   First of all, "Further to your email, the metadata reference
21   in your client's updated disclosure in relation to the
22   printout for the audio is not agreed as we are still reviewing
23   it." The audio is a reference to the Boston claim, which is a
24   separate metadata. So it is not agreed as we are still
25   reviewing it.

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1   APPLICATION
2   So at that point last Sunday, they were already
3   reviewing the metadata: "We would like to take instructions
4   once we are able to engage with our client and we anticipate
5   being in a position to refer after court tomorrow", so that
6   would be Monday. So, as of last Sunday and Monday, we
7   expected to have an answer as to whether there was any
8   challenge to the metadata by the end of the day, but there was
9   no response at all.
10   So, we wrote on 15th July. This is JS3.6.
11   MR. JUSTICE NICOL: Just a minute. (Pause)
12   MR. WOLANSKI: By the time we wrote this letter -- before I invite
13   your Lordship to read it perhaps I could explain. By the time
14   this letter was written two days ago, those instructing me had
15   gone back to the digital documents disclosed by Brown Rudnick
16   on 29th January and had realised that embedded within those
17   digital documents was the original metadata of the images and
18   that metadata exactly matched the metadata which had been
19   provided by Ms. Heard on the previous Friday. So, in other
20   words, by the time this letter was written on 15th July, it
21   had become apparent to those instructing me that the metadata
22   that was disclosed by the claimant himself was correct. That
23   was obviously very reassuring and showed -----
24   MR. JUSTICE NICOL: But not correct as in Brown Rudnick's
25   schedule.

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1   APPLICATION
2   MR. WOLANSKI: No, the schedule was wrong. It is now apparent
3   that the schedule was wrong. So, we wrote pointing this out
4   and you will see at the end of that letter at JS3.7 that we
5   asked for confirmation of two things.
6   MR. JUSTICE NICOL: Yes.
7   MR. WOLANSKI: "We require your confirm that (a) you accept that
8   the time and date metadata...(reads to the words)... as
9   extracted from the Jpeg files..." -- this is the metadata that
10   the claimant had himself had disclosed -- "is accurate in
11   respect of each image enclosed ...(reads to the words)... and
12   that the May 2016 images have not been manipulated."
13   That was the deadline we set. It was not met. However,
14   this morning, at just before 10 a.m., we received this letter.
15   Let me pass it up. (Same handed). "We do not dispute the
16   accuracy of the date/time metadata", so it is not in dispute
17   that the images were made when the metadata says they were
18   made. They are not contending that the schedule is not right.
19   But then this: "We do not accept that the May 2016 images have
20   not been edited or otherwise manipulated...(reads to the
21   words)... Some files have edited in the file name."
22   So what we therefore learned for the first time this
23   morning, just before ten, is that it is the claimant's case
24   that images which are at the very heart of this case have been
25   manipulated or edited. That is the first we have ever heard

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1   APPLICATION
2   of it. It was not in the opening statement, it is never been
3   pleaded and it is not in any witness statement or
4   correspondence. That is the first time we have heard of th
5   is. It is obvious why the claimant has to maintain this case.
6   MR. JUSTICE NICOL: Sorry, what did you say it was not in?
7   MR. WOLANSKI: It was not a pleaded case that these images have
8   been manipulated. It is not in any witness statement and it
9   has not been said in correspondence. We have had no
10   notification at all that the claimant's case is that these
11   images have been manipulated. It is now essential to this
12   case because if we are right that, for example, the image
13   which your Lordship finds behind Mr. Smeele's witness
14   statement at JS3.8 ----
15   MR. JUSTICE NICOL: Just a minute. (Pause)
16   MR. WOLANSKI: Does your Lordship have that?
17   MR. JUSTICE NICOL: Yes.
18   MR. WOLANSKI: It is an image you have seen many times in the case
19   before. That image was taken on the 21st and according to the
20   metadata, which is not disputed, at 20:23. That, of course,
21   is whilst Mr. Depp is still in the building, but before the
22   police officers arrive, and it shows bruises. It is important
23   evidence on any view for reasons which I need not elaborate
24   on. It is wholly critical evidence and now we learn, for the
25   first time, that it is said that this image has been

[25] (Pages 1442 to 1445)

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1   APPLICATION

2   manipulated.

3   That is an issue that your Lordship is going to be

4   invited to determine: has this image been manipulated? The

5   same goes for the images which follow. Again, they are images

6   which will be familiar to your Lordship from the evidence.

7   They all show injuries to Ms. Heard's face on the evening of

8   the 21st May and we now know when they were taken because we

9   finally have the accurate metadata.

10   As I say, the question of whether or not these pictures

11   have been, as Schillings put it, "saturated or otherwise

12   photoshopped" is an important issue. What an expert can do is

13   explain, by analysis of the metadata, the probability that

14   that is the case. We know that because the letter from

15   Mr. (unclear), which is at the back of Mr. Smeele's exhibit,

16   explains that. He is an IT expert working for IDiscovery

17   Solutions. What he says, in summary, is that he has examined

18   the metadata relating to the May 2006 images. He explains the

19   two types of metadata that one can derive in relation to

20   digital images. He explains that metadata called internal

21   metadata is far more informative than what is called system

22   metadata, so he has examined the internal metadata in relation

23   to the May 2016 images, or most of them. There are one or two

24   exceptions, but they are not images which are particularly

25   important in the case. He has examined all the important

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1   APPLICATION

2   ones.

3   He says that he is able to examine from the metadata

4   whether or not the pictures, as he puts it, appear to have

5   been altered or manipulated in any manner. He has conducted

6   an investigation and his conclusion is that the pictures do

7   not appear to have been altered or manipulated in any manner.

8   At paragraph 3, he explains what he has done in order to

9   arrive at those conclusions. I need not read it out. You

10   will see that he has conducted a number of different types of

11   analysis.

12   Now, it is right, as Mr. Sherborne points out, that this

13   is a job which he has conducted this week. He says that he

14   was asked to carry this job out yesterday, on the 16th, but

15   your Lordship will appreciate that we have been waiting since

16   the weekend to find out whether or not the claimant is in fact

17   going to challenge any aspect of the metadata. It is only

18   this morning that we found out and because of the time

19   sensitivity of the matter, we cannot be blamed for instructing

20   Mr. Latulle(?) to carry out the exercise yesterday. Going to

21   Part 35 ----

22   MR. SHERBORNE: My Lord, I am sorry, but Mr. Wolanski has

23   basically just made the application. Your Lordship asked him

24   the question of whether I was able to deal with it or not. I

25   understand why Mr. Wolanski, on behalf of his client, wants to

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1   APPLICATION

2   make the speech, but I will deal with it in response properly.

3   Your Lordship is either going to let him make the application

4   or not. We are now getting to the CPR being brought out so

5   I do not see that Mr. Wolanski is doing anything other than

6   trying to make the application. Your Lordship asked him ----

7   MR. JUSTICE NICOL: Mr. Wolanski, I was asking about whether now

8   was the right time to make the application. I think

9   Mr. Sherborne has a point.

10   MR. WOLANSKI: Yes. I hope your Lordship appreciates why it is

11   that we did not make it earlier in the week.

12   MR. JUSTICE NICOL: Yes, but the question is whether you can

13   properly make it now when Mr. Sherborne has not had a chance

14   to reflect on it.

15   MR. WOLANSKI: My Lord, our position on that is that we can. It

16   is a very simple application. It arises out of a change of

17   case extremely late in the day, which the claimant only

18   notified us of finally this morning, despite the fact that we

19   have been chasing for a response for a week, and had no

20   notification that this was his case at all until this morning.

21   He has been stalling, or rather his legal team have been

22   stalling in responding. This was a matter which required a

23   response immediately last Friday and we did not get it for a

24   week. That is the story and it does not lie comfortably in

25   Mr. Sherborne's mouth ----

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2   MR. SHERBORNE: I am sorry ----

3   MR. JUSTICE NICOL: Just a minute, Mr. Sherborne. You will get a

4   chance to respond in a moment.

5   MR. WOLANSKI: Your Lordship, in my submission, it does not lie in

6   Mr. Sherborne's mouth to accuse us of making an application at

7   short notice when we have been making very clear that we

8   wanted a prompt response on this critically important matter

9   for a week and have not had one. If Mr. Sherborne makes a

10   very simple application, we do not see why it is that he needs

11   more time to deal with it. If he does, we would invite

12   your Lordship to deal with it at the earliest opportunity, by

13   which time we will have obtained a final report from

14   Mr. Latulle(?), but we cannot sit on this. If Mr. Sherborne's

15   decision to not respond to the application means that his

16   client has himself not had time to instruct an expert, that

17   will a problem of his own making.

18   MR. JUSTICE NICOL: That is a matter to deal with on the substance

19   of the application.

20   MR. WOLANSKI: It is.

21   MR. JUSTICE NICOL: I am just dealing at the moment with the

22   timing of this.

23   MR. WOLANSKI: Yes. Hopefully, I have made clear to your Lordship

24   that certainly as far as we are concerned, this is a matter

25   which really cannot wait because it is time-critical. We have

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1
2 to slot this in. I am told by Ms. Wass that there is time, if
3 necessary, to call expert evidence next week. It can be
4 slotted in. The only question is how much time do we need for
5 the experts to do their work? As I said, Mr. Latulle can
6 prepare a report by Tuesday. We would have thought it would
7 be wise for the claimant to prepare a ----
8 MR. JUSTICE NICOL: Well, now, just a minute, please.
9   Mr. Sherborne, sit down for a moment. Mr. Wolanski, at the
10   moment, as I have tried to make clear, I am asking about the
11   timing of your application. Is there anything else that you
12   want to say as to why I should deal with it this afternoon?
13 MR. WOLANSKI: There is not, my Lord.
14 MR. JUSTICE NICOL: Mr. Sherborne, I do not need to hear from you.
15 MR. SHERBORNE: Can I say ----
16 MR. JUSTICE NICOL: No. Mr. Sherborne, I have said that I do not
17   need to hear from you because I am sympathetic that you ought
18   to have an opportunity to respond. It clearly is something
19   that needs to be dealt with pretty quickly. What I am
20   suggesting is that we do it on Monday morning.
21 MR. SHERBORNE: I am very grateful for that, but it is very clear
22   that your Lordship understands several things. First of all
23   -- and I will keep it very brief and I appreciate
24   your Lordship indicating that -- it is simply not right that
25   we have been asked any question up until the final letter

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1
2 about whether we accepted that there had been no alteration or
3 editing of the photographs. The only question we have been
4 asked all along is about the metadata timing.
5 MR. JUSTICE NICOL: Mr. Sherborne, can I interrupt you, please.
6 MR. SHERBORNE: Of course.
7 MR. JUSTICE NICOL: I have said that I am not willing to deal with
8   the application now. That was the objection that you
9   initially raised. I am with you.
10 MR. SHERBORNE: I understand.
11 MR. JUSTICE NICOL: Yes. If there are further matters, we can
12   deal with them as and when I do address the application.
13 MR. SHERBORNE: I understand. It is simply that Mr. Wolanski has
14   made a number of statements about not only the correspondence
15   which, for my solicitors' benefit, if no one else, I am
16   obliged to at least say we simply do not accept the
17   characterisation.
18 MR. JUSTICE NICOL: Mr. Sherborne, I am not, by acceding to your
19   objection, intending to reflect at all on the comments that
20   Mr. Wolanski has made in the course of developing the
21   background, if I can put it that way, to the application.
22 MR. SHERBORNE: My Lord.
23 MR. JUSTICE NICOL: But, it does seem to me that it needs to be
24   dealt with urgently. My next question to you is, any reason
25   why it could not be on Monday morning?

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APPLICATION

1
2 MR. SHERBORNE: My Lord, no. No reason, I think. In terms of the
3   timing, you will have seen from what is said to be an expert
4   report, that ----
5 MR. JUSTICE NICOL: Well, by Monday, it may be that the
6   application can include an expert report in proper form.
7 MR. SHERBORNE: My Lord, yes. What you will see is, it refers to
8   the provision, this is why I said it, to this individual of
9   images, they were sent to them on 13th July, so they have had
10   them for four days, in which they have produced this draft
11   letter. I have not had an opportunity to consider how long,
12   if your Lordship does grant permission, and once you have
13   heard what the actual dispute is, maybe your Lordship does not
14   regard there as being an issue in dispute. But if there is an
15   issue in dispute and your Lordship holds that there should be
16   expert evidence, then we will obviously need to consider how
17   long to provide our own expert. Because we do not accept what
18   is said in that ----
19 MR. JUSTICE NICOL: Part of the evidence, if you wish to provide
20   evidence in response to the application, will address that
21   question.
22 MR. SHERBORNE: My Lord, yes, it is whether we have enough time to
23   do that by Monday morning. I hope that we do. I will make
24   enquiries as soon as we finish.
25 MR. JUSTICE NICOL: Mr. Sherborne, while I am sympathetic to you

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APPLICATION

1
2 not dealing with the matter this afternoon, we really do have
3 to get on with this. We are in the middle of the trial.
4 MR. SHERBORNE: Of course.
5 MR. JUSTICE NICOL: So, unless there is anything else that you
6   want to say, I am going to suggest that we deal with this at
7   9.30 on Monday morning.
8 MR. SHERBORNE: I am absolutely happy to do that. All I am going
9   to say is, it may be this is dealt with in two stages, because
10   your Lordship may take the view there is no -- Mr. Wolanski
11   will proceed on the basis that your Lordship will grant
12   permission for expert evidence, and your Lordship will be
13   aware ----
14 MR. JUSTICE NICOL: That is the application. That is the
15   application.
16 MR. SHERBORNE: My Lord, yes, but there are two stages to any
17   application for expert evidence. I do not need to develop it
18   further. It may be because of the timing, we deal with the
19   first stage on Monday, your Lordship decides whether or not
20   there is really an issue in dispute and then, if necessary,
21   reports can be obtained. That is all I was going to say.
22 MR. JUSTICE NICOL: No, Mr. Sherborne. If I accede to the
23   defendants' application, any expert response from the
24   claimant's side will have to be provided pretty quick.
25 MR. SHERBORNE: Of course, of course.

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1   APPLICATION

2 MR. JUSTICE NICOL: I am not wanting to accede to the comment that

3   we will deal with things in two stages. We will have to get

4   on with this.

5 MR. SHERBORNE: Of course, my Lord. I appreciate the two stages

6   may come very quickly. I just cannot answer at this stage how

7   quickly a report could be produced if your Lordship decides

8   one needs, and that is all I was saying.

9 MR. JUSTICE NICOL: Those are enquiries that you or your

10   solicitors will have to make over the weekend.

11 MR. SHERBORNE: My Lord, I will do that. In terms of hearing the

12   application, of course, 9.30 on Monday morning.

13 MR. JUSTICE NICOL: I have indicated 9.30, because I am very

14   conscious that Ms. Heard is due to give evidence and to start

15   giving her evidence at 10 o'clock on Monday.

16 MR. SHERBORNE: Yes, we would not want to distract from that

17   exercise.

18 MR. JUSTICE NICOL: I am also conscious that whoever is going to

19   be cross-examining Ms. Heard will no doubt want to have the

20   full time available to do that. Anything else you want to say

21   that it should not be 9.30 on Monday morning that I deal with

22   this?

23 MR. SHERBORNE: My Lord, no, I was not trying to dissuade your

24   Lordship from 9.30 Monday morning.

25 MR. JUSTICE NICOL: Mr. Wolanski, 9.30 Monday morning?

[Page 1455]

1   APPLICATION

2 MR. WOLANSKI: Yes.

3 MR. JUSTICE NICOL: I assume it is you who will be making the

4   application on the defendants' behalf.

5 MR. SHERBORNE: My Lord, can I deal then with one further matter.

6 MR. JUSTICE NICOL: Is this Mr. Harrell?

7 MR. SHERBORNE: It is, my Lord, yes.

8 MR. JUSTICE NICOL: Just a minute. I have received -- yes.

9 MR. SHERBORNE: You will have received the application notice, and

10   as you will have seen, we have set out the basis.

11 MR. JUSTICE NICOL: First of all, can I ask whether --

12   Mr. Wolanski, are you dealing with this?

13 MR. WOLANSKI: My Lord, yes, and we consent.

14 MR. JUSTICE NICOL: You consent.

15 MR. WOLANSKI: We do make a cross-application under 33.5 of the

16   Civil Procedure Rules.

17 MR. JUSTICE NICOL: Just a minute. (Pause) Yes.

18 MR. WOLANSKI: For permission to call evidence to attack the

19   credibility of Mr. Harrell. I think formally speaking, we

20   probably do not need permission, but this is by way of notice,

21   which perhaps can be recorded in the order that is made in

22   relation to this application, that we have provided notice and

23   we shall be serving evidence pursuant to 33.5 to attack the

24   credibility of Mr. Harrell.

25 MR. JUSTICE NICOL: Let me look at 33.5. (Pause) It seems to me

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1   APPLICATION

2   you probably have a right to do it.

3 MR. WOLANSKI: We do indeed have a right to do it, and it is

4   formally recorded that we shall be taking advantage of that

5   position.

6 MR. JUSTICE NICOL: Mr. Sherborne, anything you want to say?

7 MR. SHERBORNE: I am sure, Mr. Harrell, who is not very well, will

8   be pleased to hear that!

9 MR. JUSTICE NICOL: There we are. All right. Perhaps between

10   you, you could draw up an order that reflects that comment.

11 MR. SHERBORNE: My Lord, we are due at three o'clock to have

12   Ms. Divenere, as I understand it, who is being compelled to

13   attend by the defendants.

14 MR. JUSTICE NICOL: Yes.

15 MR. SHERBORNE: I think that is the next witness.

16 MR. JUSTICE NICOL: Is there anything further we can do before

17   three o'clock?

18 MR. SHERBORNE: I am told Ms. Divenere is here, so it may well be

19   can start earlier.

20 MR. JUSTICE NICOL: Here is metaphorical!

21 MR. SHERBORNE: Sorry, I keep lapsing by saying "here". She is

22   not in the building, but she is apparently ready to give

23   evidence in Los Angeles.

24 MR. JUSTICE NICOL: Then it would be convenient to do that once we

25   have established the link.

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1   APPLICATION

2 MR. SHERBORNE: I am very grateful, my Lord.

3 MR. JUSTICE NICOL: Okay.

4   (A short break)

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[28] (Pages 1454 to 1457)

[Page 1458]

1   DIVENERE
2   MR. JUSTICE NICOL: Yes, Mr. Sherborne.
3   MR. SHERBORNE: My Lord, I am not sure it is really for me to deal
4   with this witness. It was Ms. Wass and the defendants who
5   compelled Ms. Divenere to come here. We have relied on her
6   declaration.
7   MR. JUSTICE NICOL: Yes. Then, Ms. Wass.
8   MS. WASS: I am happy to ask her to take the oath, if that is the
9   way of dealing with this. Of course, Ms. Saenz, the officer,
10   was also hearsay evidence.
11   MR. SHERBORNE: I am happy to deal with it. I will deal with
12   this.
13   MR. JUSTICE NICOL: Ms. Divenere, are you able to hear me?
14   THE WITNESS: Yes.
15   MR. JUSTICE NICOL: What is going to happen, after I have thanked
16   you for coming to give evidence at this trial, is for you to
17   be sworn or affirmed to tell the truth. It is a matter for
18   you as to which you choose to do. Would you prefer to swear
19   or would you prefer to affirm?
20   THE WITNESS: Does it matter?
21   MR. JUSTICE NICOL: It is up to you, as to whether you affirm or
22   whether you swear an oath to tell the truth.
23   THE WITNESS: I will swear an oath.
24   MR. JUSTICE NICOL: All right. Is there a bible in the room where
25   you are?

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1   DIVENERE
2   THE WITNESS: Yes.
3   MR. JUSTICE NICOL: If you could take the bible in your hand when
4   you are taken through the terms of the oath by the usher. Do
5   you understand?
6   THE WITNESS: Yes.
7   MR. JUSTICE NICOL: Listen to what the usher is saying and repeat
8   those words after her.
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[Page 1460]

1   DIVENERE
2   MS. LAURA DIVENERE, SWORN
3   EXAMINED BY MR. SHERBORNE
4   (via video link)
5   MR. JUSTICE NICOL: Yes.
6   MR. SHERBORNE: Ms. Divenere, I am counsel on behalf of Mr. Depp.
7   I am going to ask you to locate your declaration. If you look
8   to your left, you should have a file number 3.
9   THE WITNESS: Yes.
10   Q. Can you look inside that bundle, there should be a tab divider
11   numbered 86.
12   A. That is correct. It is in front of me.
13   Q. I am very grateful. Does that say "The declaration of
14   Laura Divenere"?
15   A. It does.
16   Q. Can I ask you to turn over the page to the end of your
17   statement. Does that say Laura Divenere and can you confirm
18   that signature?
19   A. It is my signature.
20   Q. Can I ask you to confirm that the contents of this declaration
21   are true?
22   A. Yes.
23   MR. SHERBORNE: Thank you very much, Ms. Divenere. If you wait
24   there, Ms. Wass on behalf of the defendants, may ask you some
25   questions.

[Page 1461]

1   DIVENERE
2   CROSS-EXAMINED BY MS. WASS
3   Q. Ms. Divenere, can you hear me all right?
4   A. Yes.
5   Q. I am going to ask you to look at one or two documents, if
6   I may. Can we start at file 4, you have some files to your
7   left. Take number 4 please, keep the declaration nearby.
8   A. It is right here.
9   Q. File 4, tab 120.
10   A. Okay.
11   Q. Can you see at the bottom of that document there is a number
12   F698? (Pause)
13   MR. JUSTICE NICOL: Ms. Divenere, do you first of all have
14   volume 4? Can you have a look on the front and check that it
15   is volume 4.
16   THE WITNESS: It is. It is 120.
17   Q. Have you got tab 120, that is the divider number 120?
18   A. Correct.
19   Q. Can you look at the bottom of the page, bottom right, and see
20   if that says F698?
21   A. Oh, I am sorry, yes, it is.
22   MR. JUSTICE NICOL: You have the right document. Then, just
23   listen to the question that is going to be put to you.
24   MS. WASS: I would like to help you to identify this text, please.
25   It is sent to somebody "Dear Laura", I am going to suggest

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DIVENERE - WASS

1
2 that is you, I will read it to you. The date of the sending
3 of the text appears to be Saturday, 22nd June, can you
4 remember that was in 2019, it was just a year ago that you got
5 this text?
6 A. Yes.
7 Q. I will read it to you and then if there is any problem with
8 the date, please feel free to tell me. "Dear Laura, I assume
9 you are fearful of something and you needn't be....(reads to
10 the words)... please call me if it's the former", and the
11 number is given and it is signed "Adam". Is that a text to
12 you from somebody called Adam Waldman?
13 A. Yes.
14 Q. Did you forward that text to Ms. Heard?
15 A. I did.
16 Q. Thank you. I am going to ask you, please, to go to file 9.
17 Now, you can put that document away, file 4 away. Would you
18 go to file 9, tab 142, please. Do you have that,
19 Ms. Divenere?
20 A. Yes.
21 MS. WASS: Does my Lord have a copy?
22 MR. JUSTICE NICOL: I do.
23 MS. WASS: (To the witness) What I am going to ask you, please, it
24 is a transcript of a recording and I am going to ask to you
25 listen to the recording and then I am going to ask you just

[Page 1463]

DIVENERE - WASS

1
2 one or two questions about it. All right?
3 THE WITNESS: Uh-huh.
4 Q. So, if you would be kind enough to follow the recording which
5 starts at page M4 at the bottom.
6 A. Okay.
7 MS. WASS: We can play it.
8 (Recording played to the court)
9 MR. JUSTICE NICOL: Just a minute, please, Ms. Wass, is there
10 going to be a question?
11 MS. WASS: Yes.
12 MR. JUSTICE NICOL: Can the questions be asked in the middle of
13 the tape or do we need to get to end?
14 MS. WASS: I am going to ask it runs, it is going to take up the
15 bulk of the cross-examination and it will become apparent why
16 afterwards. I am going to ask that it runs and then I ask
17 very few questions after that.
18 MR. JUSTICE NICOL: Right. Resume the tape, please.
19 (The recording continued)
20 MR. JUSTICE NICOL: Yes.
21 MS. WASS: Ms. Divenere, can I ask you one or two questions about
22 the two documents we have just looked at, starting with the
23 text that you received from Adam Waldman. All right?
24 THE WITNESS: Yes.
25 Q. Prior to receiving that text from Adam Waldman, did you want

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DIVENERE - WASS

1
2 to become involved as a witness in the dispute between
3 Ms. Heard and Johnny Depp?
4 A. No.
5 Q. As a result of Mr. Waldman's text, did you feel uncomfortable?
6 A. Yes.
7 Q. Did you feel you were being put under undue pressure to make a
8 declaration?
9 A. I felt pressured.
10 Q. Sorry?
11 A. I did feel pressured.
12 Q. You felt pressured. We have heard the tape itself, the
13 conversation, and you have suggested in the course of what you
14 said on that transcript that you felt pressurised by
15 Adam Waldman to say things which were unfavourable about
16 Ms. Heard. Is that how you felt when you interacted with
17 Adam Waldman?
18 A. Yes.
19 Q. It was in the tape when you suggested that you felt
20 pressurised by Mr. Waldman to suggest that Ms. Heard had been
21 involved romantically with both James Franco and Elon Musk.
22 Did you feel under pressure to say something about that to
23 Mr. Waldman?
24 A. I felt pressured with most of the questions; so, yes.
25 Q. Thank you for that answer. I will not go through it all but

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DIVENERE - WASS

1
2 I would like you to look at the actual deposition itself.
3 MR. JUSTICE NICOL: Declaration.
4 MS. WASS: Declaration, forgive me. Is it still in front of you?
5 It is not very long and I hope not to keep you here very long,
6 Ms. Divenere. What I will do is, I will read it and then
7 I will ask you questions.
8 MR. JUSTICE NICOL: Is it necessary to reread the whole lot, or
9 can you take the paragraphs you want to ask questions about.
10 MS. WASS: My Lord, very well. Can you go to paragraph 5, please,
11 Ms. Divenere. What you say is: "I was with Amber and
12 interacted with her frequently on the days immediately
13 following her abuse allegations of May 21st 2016, including at
14 least on the 23rd, the 24th and 25th May." You mentioned
15 being told that there was CCTV of you in the Eastern Columbia
16 Building. Do you remember that?
17 THE WITNESS: Yes.
18 Q. "On those days, I worked with Amber, retrieved packages for
19 her, rode elevators with her and saw her close up in person.
20 On none of those days, immediately following the abuse claims,
21 did I observe any signs of physical abuse or injury, including
22 any redness, swellings, cuts, bruisings or damage of any
23 kind." Now, that phrase, let me read it to you again. I am
24 going to ask you whether those are your words or words that
25 Mr. Waldman has suggested went in that deposition, do you

[Page 1466]

1   DIVENERE - WASS
2   understand? So, let me say it again. "On none of those days
3   immediately following the abuse claims, did I observe any
4   signs of physical abuse or injury, including any redness,
5   swelling, cuts, bruising or damage of any kind." Were those
6   your words or Mr. Waldman's words?
7 A. Mr. Waldman wrote the declaration. I just, you know, approved
8   and signed it.
9 Q. I understand. You said on the recording we have just listened
10   to at one stage that you only saw Ms. Heard's face when it was
11   swollen and it was red. Do you remember that?
12 A. I do remember her looking very upset. I attributed it at the
13   time that she had been crying.
14 MR. JUSTICE NICOL: Sorry, Ms. Divenere. Can you just speak a
15   little slower, so I can make a note of what you are saying.
16 THE WITNESS: Apologise.
17 Q. That is all right. Can you just repeat your last answer?
18 A. I do not recall specific days, but I do remember throughout
19   the time that I was with Amber, most of that summer, the times
20   that I had seen her, you know, she was, she had clearly been
21   upset, so, again, I saw her, you know, I attributed it to
22   crying and her face was red and puffy, but again I did not see
23   any -- the way that Mr. Waldman was describing it, would be
24   that I would be seeing, you know, it would be very visible to
25   me that it was an injury, and I do not recall see that. But

[Page 1467]

1   DIVENERE - WASS
2   I do recall seeing that, you know, she was visibly upset or,
3   you know, she had been crying.
4 MS. WASS: There is also in the recording we have just heard a lot
5   of reference made to Kate, that is Kate James, is it not?
6 A. Yes.
7 Q. This court has heard from Kate James. She was Ms. Heard's
8   assistant for a while until February 2015, I think. Are you
9   aware of that?
10 A. Yes.
11 Q. Did you feel under pressure to give some sort of evidence
12   adverse to Ms. Heard about Ms. Heard's treatment of Kate
13   James?
14 A. Yes.
15 Q. But in fact, I think it is a matter of record that is not
16   included in the declaration that we have been looking at? You
17   might want to take my word for that. There is no mention of
18   Kate James in this declaration. What you do mention in the
19   declaration at paragraph 9 is: "I am aware from news articles
20   that Amber was arrested and spent the night in jail for
21   domestically abusing her former wife." Do you see that?
22 A. Yes.
23 Q. Whose idea was it to include that paragraph in your
24   declaration?
25 A. That was Mr. Waldman. I did not know about that until he told

[Page 1468]

1   DIVENERE - WASS
2   me.
3 MR. JUSTICE NICOL: Just a minute. (Pause)
4 MS. WASS: I am corrected, my Lord, and I am going to -- yes,
5   Ms. Divenere, I have made a mistake and I want to correct it
6   straightaway. Because if we go to paragraph 8 of your
7   document, your declaration, there is a sentence about Kate
8   James. Do you see paragraph 8?
9 A. Correct.
10 Q. "I witnessed Amber being verbally abusive towards her former
11   assistant, Kate James, screaming at her on the phone. Her
12   then assistant called me several times in tears ,very upset
13   regarding the treatment she received from Amber." Now, whose
14   idea was it to include paragraph 8 in that declaration?
15 A. Mr. Waldman's.
16 Q. We heard what you said in the recording about Kate James, was
17   that the truth?
18 A. It was the truth.
19 MR. JUSTICE NICOL: Just a minute. (Pause) Was it true, then, that
20   you heard Ms. Heard being verbally abusive to Kate James; had
21   you heard that?
22 THE WITNESS: I did on that one incident. On a regular basis, no.
23 MS. WASS: The reason that it appears in the format that it does
24   on paragraph 8, whose drafting was that, who wrote that?
25 MR. JUSTICE NICOL: You have asked that.

[Page 1469]

1   DIVENERE - WASS
2 THE WITNESS: Mr. Waldman.
3 MS. WASS: All right. Can you put the declaration away, and
4   I just want to ask you about one more document, and that will
5   be it. Could you take file 7 and go to file 56A.
6 MR. JUSTICE NICOL: Tab 56A.
7 MS. WASS: Thank you. Tab 56A. That should have H206 at the
8   bottom right-hand corner.
9 MR. JUSTICE NICOL: Wait a minute. (Pause)
10 THE WITNESS: I am sorry, 56A and H203.7.
11 MS. WASS: Can you stick with the H numbers and go to H206. Has
12   my Lord got ----
13 A. 207?
14 Q. 206?
15 A. Okay. Yes.
16 Q. All right. This is a text from you to Ms. Heard, dated 16th
17   July, 2019, and we can remind ourselves that your declaration
18   was signed by you, according to the document, on 28th June
19   2019; all right? So, this is after the declaration and after
20   the call, as we will see in a moment. This is a text from you
21   to Ms. Heard: "Just tried to call you. There was not a lie in
22   anything I told you last week. I told Waldman I didn't know
23   anything worth anything just as I told Rick." Was Rick one of
24   Ms. Heard's lawyers ?
25 A. I think so.

[31] (Pages 1466 to 1469)

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[Page 1470]

1   DIVENERE - WASS
2   Q. Okay. "They had statements" -- sorry? Did you want to say
3   something?
4   A. No, no, I was -- no, I was agreeing with you.
5   Q. Okay. "They had statements from Kate, I believe Kevin too. I
6   either had to lie or tell the truth ...(reads to the words)...
7   get me to sign a declaration for you so its in the context
8   I know." Does this text reflect your views and feelings about
9   Ms. Heard?
10 A. Yes.
11 Q. That the last thing you wanted to do was to say anything
12   against her?
13 A. Correct.
14 Q. That you had made that plain to Adam Waldman; yes?
15 A. I did.
16 Q. But that you were put under enormous pressure to make the
17   declaration?
18 A. Correct.
19 Q. And finally this, Ms. Divenere. Johnny Depp is a very
20   powerful figure in Hollywood, is he not?
21 A. Yes.
22 Q. And was that something that played on your mind when you were
23   signing and going along with Mr. Waldman's declaration?
24 A. No ----
25 Q. What was it about ----

[Page 1471]

1   DIVENERE - WASS
2   A. ---- I do not think so.
3   Q. It was nothing to do with Mr. Depp; it was just to do with
4   Mr. Waldman, was it?
5   A. Yes.
6   Q. But you knew, did you not ----
7   MR. SHERBORNE: My Lord, I am going stop Ms. Wass, and I will tell
8   your Lordship why. When you apply to cross-examine someone on
9   a statement, you are only entitled to put in cross-examination
10   questions within the ambit of the statement. I allowed
11   Ms. Wass to say one question before I got up. She got the
12   answer she did not want. With respect, I can take
13   your Lordship to the case law, but cross-examination, when you
14   have compelled a witness to come along in relation to a
15   statement relied on by way of hearsay, is confined only to the
16   ambit of the statement.
17 MR. JUSTICE NICOL: All right.
18 MR. SHERBORNE: I am in your Lordship's hands. Ms. Wass had the
19   answer that she did not want. To keep asking the witness
20   further questions, in my submission, just takes it even beyond
21   the bounds of what we say is not permitted in any event.
22 MR. JUSTICE NICOL: Is there anything you want to say, Ms. Wass?
23 MS. WASS: My Lord, this is an unusual case because the
24   voluntariness of the statement has been called into question.
25   The information I have asked ----

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1   DIVENERE - WASS
2   MR. JUSTICE NICOL: You have put your cross-examination, you have
3   put your case, and I think that is it.
4   MS. WASS: If that is it, then I will sit down. Thank you very
5   much, Ms. Divenere, for answering my questions.
6   MR. JUSTICE NICOL: Yes, Mr. Sherborne.

[Page 1473]

1   DIVENERE
2   RE-EXAMINED BY MR. SHERBORNE
3   MR. SHERBORNE: Ms. Divenere, you have made it clear that you do
4   not want to be here to give evidence; is that not correct?
5   A. Yes.
6   Q. You have said that you did not want to upset Ms. Heard; is
7   that correct?
8   A. True.
9   Q. Do you have file 8 to your left?
10 A. Okay.
11 Q. Before I ask you that, we were played the whole of a recording
12   and I am not going to ask you to listen to it again, but that
13   was a recording made with or without your knowledge by
14   Ms. Heard?
15 A. I was not aware of it.
16 Q. You were not aware that you were being recorded?
17 A. No.
18 Q. Can I ask, why did you go to see Ms. Heard? Did she ask you
19   to come and see her?
20 A. She did.
21 Q. She asked you to come and see her? Is that because she had
22   heard about your declaration?
23 A. Yes.
24 MR. JUSTICE NICOL: Just a minute. (Pause) Yes.
25 MR. SHERBORNE: Can I just then ask you to look at an e-mail. You

[Page 1474]

1   DIVENERE - SHERBORNE
2   should have file 8. There should be a tab 186D.
3 MR. JUSTICE NICOL: 186.
4 MR. SHERBORNE: Do you have 186D, D for David?
5 MR. JUSTICE NICOL: I am not sure I have it.
6 MR. SHERBORNE: 86D. I am so sorry.
7 MR. JUSTICE NICOL: Forget about the 1, Ms. Divenere. Just look
8   for 86D.
9 THE WITNESS: I have it.
10 MR. JUSTICE NICOL: Just a moment. (Pause) What is the number at
11   the bottom of the page, please?
12 MR. SHERBORNE: We are going to start with I48.11.
13 MR. JUSTICE NICOL: Just a moment. (Pause) Mr. Sherborne, I have
14   an 86A with 148.1. I am not sure that I have got -- in fact,
15   I do not have a tab 86D, I think you said.
16 MR. SHERBORNE: My Lord, that is what -- (Pause) If your Lordship
17   gives me a moment.
18 MR. JUSTICE NICOL: Just wait a minute, please, Ms. Divenere.
19   (Pause)
20 MR. SHERBORNE: It should be the last tab of the bundle. It is
21   86D. Well, mine actually says 186, but it should actually
22   only say 86D. Do you have a page 148 or I48.11?
23 MR. JUSTICE NICOL: No.
24 THE WITNESS: Yes.
25 MR. SHERBORNE: I am very sorry, my Lord. Ms. Divenere, whilst we

[Page 1475]

1   DIVENERE - SHERBORNE
2   are handing the page to his Lordship, do you have I48.11?
3 A. I do.
4 MR. SHERBORNE: Thank you. I will just wait for his Lordship to
5   see the copy. (Pause)
6 MR. JUSTICE NICOL: I apologise, Ms. Divenere. I am going to pass
7   my bundle to Mr. Sherborne and he can see what I have got.
8   Will you wait, please, Ms. Divenere.
9 MR. SHERBORNE: Perhaps Ms. Wilson can just have a look. (Pause)
10 MR. JUSTICE NICOL: Mr. Sherborne, we are going to have to sort
11   this out afterwards, but can you just read to me the passage
12   that you want to ask a question about?
13 MR. SHERBORNE: It is quite important this. I do not know if
14   your Lordship wants to rise for one minute and we can sort it.
15 MR. JUSTICE NICOL: Ms. Divenere, I am sorry that you have been
16   delayed by this, but it is quite important for me to
17   understand the document that you are being asked about. Would
18   you mind just, please, waiting there while my papers are
19   sorted out; all right?
20 THE WITNESS: Sure.
21 MR. JUSTICE NICOL: I am going to rise for a few minutes.
22 MR. SHERBORNE: My Lord, thank you.
23   (A short break)
24
25 MS. WASS: My Lord, may I quickly explain what has happened while

[Page 1476]

1   DIVENERE - SHERBORNE
2   my Lord was out of court. It was apparent that Ms. Divenere
3   was being spoken to by somebody. An inquiry was made as to
4   who that was. The gentleman in question said that he was her
5   lawyer and he wished to take an objection to the document or
6   the questioning about the document. I cannot be precise, but
7   it may be, given that this is a document which is between her
8   and her lawyer, that this might be something that he should be
9   given an opportunity to be heard on.
10 MR. SHERBORNE: My Lord, it is a slightly unorthodox way of doing
11   this, but I was going to take Ms. Divenere to an e-mail she
12   wrote. Ms. Divenere, have you got this e-mail at I48.10?
13 MR. SHERMAN: My Lord, I apologise for the interruption. My name
14   is Lee Sherman and I am the lawyer for Ms. Divenere. I looked
15   at the documents I48.11 and I48.12 and they include internal
16   conversations between myself and my client that are protected
17   by attorney/client privilege. I have no idea how The Sun
18   obtained these documents, or how anybody obtained these
19   documents, but they were at best inadvertently sent and should
20   not be made public or part of this trial. They represent
21   confidential attorney/client privilege communication.
22 MR. JUSTICE NICOL: Just a minute. (Pause) Yes. Right. Thank
23   you. Well, Mr. Sherborne, how do you want to respond?
24 MR. SHERBORNE: My Lord, first of all, we see that these are
25   e-mails that are sent. You can see that it is from

[Page 1477]

1   DIVENERE - SHERBORNE
2   Ms. Divenere with the intention of sending this to all
3   lawyers. You will see, if you look at Tuesday, March 10th on
4   148.10, that she is making this clear ----
5 MR. JUSTICE NICOL: Sorry, where am I now?
6 MR. SHERBORNE: If you look at I48.10, you will see the start of
7   an e-mail in which Ms. Divenere says, "I want it to be clear
8   to everyone that her declaration", that is the one you have
9   seen, "is 100% truthful."
10 MR. JUSTICE NICOL: Just a minute. (Pause)
11 MS. DIVENERE'S LAWYER: Your Honour ----
12 MR. SHERBORNE: Can I please finish? I do not know who this
13   gentleman is. I think it is Mr. Sherman, but can I just make
14   what I need to say ----
15 MR. JUSTICE NICOL: Mr. Sherman, let me just hear from counsel in
16   this case, please, before you continue. Yes.
17 MS. DIVENERE'S LAWYER: Thank you, your Honour.
18 MR. SHERBORNE: You have an e-mail from Ms. Divenere to
19   Mr. Sherman. She has received an application, as
20   your Lordship sees, to compel her to give evidence. That is
21   the 17.82 application.
22 MR. JUSTICE NICOL: Just a moment. (Pause) "My declaration is
23   100% truthful".
24 MR. SHERBORNE: ".... 100% truthful. That will not change. In
25   retrospect, where I may have thought I was unduly pressured to

[Page 1478]

1   DIVENERE - SHERBORNE
2   write and sign my declaration, I now believe that was not the
3   case", so she is saying she was not compelled by Mr. Waldman.
4   Then she says this: "My declaration" -- that is the one that
5   she was just being asked about -- "went through three
6   iterations", so there were three different changes, "with my
7   complete involvement and understanding." So she makes clear
8   that it was her who agreed all these changes and that she was
9   not pressured to do so. "Again, I signed my declaration
10   knowing that my declaration was truthful to the best of my
11   recollection. I did the best I could." Then she says,
12   "I find the communications from the The Sun's lawyers
13   extremely burdensome and threatening. I told the truth and
14   continued to tell the truth here in my letter. I want to be
15   left alone."
16   Then she says this: "Please forward this letter" -- I
17   have deliberately left the other paragraph out just as a
18   courtesy to Ms. Divenere, but I am more than happy to read it
19   -- "to all counsel involved for Depp, Heard and the The Sun
20   newspaper."
21   MR. SHERMAN: Your Honour -- pardon me.
22   MR. JUSTICE NICOL: Just wait, please, Mr. Sherman. Yes.
23   MR. SHERBORNE: And then you will see that Mr. Sherman responds to
24   her, "Good morning, Laura. Here is the draft response." He
25   has received her e-mail and he prepares a response saying,

[Page 1479]

1   DIVENERE - SHERBORNE
2   "Good morning, Alexander." Alexander is, as I understand it,
3   the counsel for News Group, the local counsel for News Group.
4   MR. JUSTICE NICOL: Sorry, where is Alexander referred to?
5   MR. SHERBORNE: It is halfway down that e-mail, so that is the
6   draft. Does your Lordship see, "Good morning, Alexander. I
7   have now had the opportunity to discuss these matters with my
8   client." It is on I48.10.
9   MR. JUSTICE NICOL: I see. Sorry.
10   MR. SHERBORNE: It is going backwards. We are going back up the
11   chain, if I can put it that way. So, you have Mr. Sherman.
12   MR. JUSTICE NICOL: Yes.
13   MR. SHERBORNE: Mr. Sherman then is sending a draft to counsel for
14   News Group, based on what Ms. Divenere has told him in that
15   e-mail, that the declaration is 100% truthful, and you will
16   see he says this. This is the draft to go to News Group's
17   lawyers. Again, it cannot be privileged: "I now have had the
18   opportunity to discuss these matters with my client...(reads
19   to the words)... her testimony will be completely consistent
20   with that position." That is the declaration we have.
21   "As I mentioned to you the other day, the declaration in
22   question went through three versions with my client,
23   requesting changes to ensure accuracy before she signed it."
24   So it is quite clear that she made changes, felt able to and
25   did make changes without any pressure, and signed it. Then

[Page 1480]

1   DIVENERE - SHERBORNE
2   you will see what else he says. That ----
3   MR. JUSTICE NICOL: Now ----
4   MR. SHERBORNE: That e-mail exchange was passed by Ms. Divenere to
5   a third party. It is her privilege, not the privilege of
6   Mr. Sherman.
7   MR. JUSTICE NICOL: Just a minute. (Pause) Yes.
8   MR. SHERBORNE: My Lord, Ms. Divenere, if this was privileged at
9   one stage, which we say it is not ----
10   MR. JUSTICE NICOL: Well, now, is there anything further you want
11   to say, Mr. Sherborne, about the admissibility of this
12   exchange?
13   MR. SHERBORNE: My Lord, if this is going to be challenged, then
14   there are further documents from Ms. Divenere that I will want
15   to put before the court to demonstrate that this is
16   Ms. Divenere's account of the declaration, namely, it is a
17   100% truthful, she made changes, she did not see the injuries
18   that Ms. Heard has asked her about. I was hoping not to have
19   to go further into this, but if this is going to be, then we
20   will want to adduce further documentation from Ms. Divenere.
21   MR. JUSTICE NICOL: Now, is it Mr. Sherman?
22   MR. SHERMAN: Yes, your Lordship.
23   MR. JUSTICE NICOL: Mr. Sherman, I stopped you from speaking while
24   Mr. Sherborne was speaking, but is there anything further that
25   you want to say about why you say that this is privileged

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1   DIVENERE - SHERBORNE
2   material that should not be deployed?
3   MR. SHERMAN: Absolutely, your Honour. If you look at the "From"
4   lines and the "To" lines of these e-mails, they are between me
5   and my client. My secretary is copied on that, but she is
6   within the privileged. These are draft e-mails. The e-mail
7   to which Mr. Sherborne referred from Laura Divenere is not to
8   anybody but me; it is from Laura Divenere to me. This is a
9   draft ----
10   MR. JUSTICE NICOL: Just, please, take it slowly so I can make a
11   note. (Pause) Yes, sorry, was there something else you wanted
12   to add?
13   MR. SHERMAN: Yes, my Lord, it was a draft, it was never sent, it
14   certainly was not under penalty of perjury, and it is
15   completely attorney/client privileged information.
16   Pursuant to our rules here, if this was inadvertently
17   forwarded to Mr. Rufus Isaacs, which is the only way I can
18   think of that these folks could have obtained this document
19   without somehow hacking into my e-mail, if it was
20   inadvertently forwarded, Mr. Rufus Isaacs is under ethical
21   obligation, pursuant to our professional rules here, to
22   immediately destroy the e-mail and notify me of the
23   inadvertent transfer. His failure to do that is an ethical
24   violation, if in fact that is what occurred. These documents
25   are absolutely privileged and should not be admissible or made

[34] (Pages 1478 to 1481)

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DIVENERE - SHERBORNE

1
2   a public record.
3   MR. JUSTICE NICOL: Thank you. Yes, Mr. Sherborne.
4   MR. SHERBORNE: I do not know who Mr. Rufus Isaacs is. This
5   e-mail chain was provided by Ms. Divenere to Mr. Kevin Murphy.
6   MR. SHERMAN: My Lord, if I may ----
7   MR. JUSTICE NICOL: Mr. Sherman, I want to have this as orderly
8   submissions, please. I am now hearing from Mr. Sherborne.
9   Provided to Kevin ----
10   MR. SHERBORNE: Mr. Murphy by Ms. Divenere. Ms. Divenere's e-mail
11   to Mr. Sherman, in which she confirms the declaration is 100%
12   truthful, is not a draft at all. These are her instructions,
13   which she has asked to be forwarded to everyone.
14   MR. JUSTICE NICOL: Just a minute. (Pause)
15   MR. SHERBORNE: As I say, she has waived the privilege, if there
16   was privilege in this e-mail. This is being sent to other
17   counsel as well. In any event, if this really is going to be
18   a challenge -- this has been in the bundle and disclosed --
19   I will call other evidence to demonstrate that Ms. Divenere,
20   for example, provided, I think, three drafts of a press
21   statement to go to the Hollywood reporter in which she said
22   almost exactly the same thing, namely, that her declaration
23   was 100% truthful and will not change, that she did not see
24   the injuries, and how she has a deep sense of frustration at
25   being compelled to give evidence in these proceedings (by the

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DIVENERE - SHERBORNE

1
2   defendants). In that, she says, "Please forward it to all
3   counsel."
4   So, this is Ms. Divenere's position. This has been
5   provided to Mr. Murphy in any event. This has waived any
6   privilege. It is her privilege, not Mr. Sherman's. As I
7   said, it has been disclosed and is in the bundle.
8   MR. JUSTICE NICOL: Yes.
9   MR. SHERMAN: Your Honour, may I respond briefly?
10   MR. JUSTICE NICOL: Just remind me where I see that it was
11   forwarded to other counsel.
12   MR. SHERBORNE: Well, as I understand it, that is exactly what was
13   asked to be done. It is I48.10. If you look at I48.11 in the
14   middle of the page ----
15   MR. JUSTICE NICOL: Oh, "Please forward this letter to all
16   counsel". Yes, right.
17   Mr. Sherman, was there anything else you wanted to say?
18   There is no need to repeat the points that you have already
19   made. Is there anything else you want to say?
20   MR. SHERMAN: Yes, there is no reference to Kevin Murphy or
21   nothing showing that this e-mail was forwarded to Kevin Murphy
22   or anyone else other than me anywhere in this exhibit. So,
23   without any foundation that my client somehow waived the
24   privilege and sent this to Mr. Murphy, the only thing you have
25   in front of you is private attorney/client privilege

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DIVENERE - SHERBORNE

1
2   communications between my client and me. There is nothing
3   referencing Kevin Murphy in this package at all.
4   MR. JUSTICE NICOL: Thank you very much. I am not going to make a
5   decision on this now. It will be part of the overall judgment
6   that I have to make in this case.
7   MR. SHERBORNE: I am grateful, my Lord.
8   MS. WASS: My Lord, may I make an observation, because if the
9   position is that there is going to be cross-examination on
10   this, it appears to us that Mr. Sherborne is proposing to
11   impugn his own witness.
12   MR. JUSTICE NICOL: Well, Ms. Wass, the point has been taken amply
13   by Mr. Sherman on behalf of the witness. It is part of what
14   I will have to make a decision on in the overall judgment.
15   MS. WASS: Yes, all right. I will not press it, but this is akin
16   to cross-examination, in my respectful submission.
17   MR. JUSTICE NICOL: Yes.
18   MR. SHERBORNE: Ms. Divenere, you have already said that when
19   I asked you to swear your declaration, you had sworn your
20   declaration. Here, in your e-mail to Mr. Sherman, you have
21   referred to your declaration again. Are the contents of your
22   e-mail to Mr. Divenere (sic) correct or not correct; your
23   e-mail to Mr. Sherman, correct or not correct?
24   A. I do not know. I will have to read it. I am not sure what
25   I am looking at.

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DIVENERE - SHERBORNE

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2   Q. Was this an e-mail you wrote to Mr. Sherman, I48.10? From
3   Laura Divenere to Lee Sherman. (Pause for reading)
4   A. Are you talking about the "Highly apologise for the delay"?
5   Q. Yes. That is your e-mail, is it?
6   A. It seems to be.
7   MR. SHERBORNE: I am grateful, Ms. Divenere. No further
8   questions.
9   MR. JUSTICE NICOL: Right. Now, that brings Ms. Divenere's
10   evidence to a conclusion, does it?
11   MR. SHERBORNE: My Lord, it does, yes.
12   MR. JUSTICE NICOL: Ms. Divenere, can I thank you for coming to
13   give evidence at this trial and for doing so under compulsion.
14   I am not quite sure what the time is now in Los Angeles.
15   THE WITNESS: Do not know. Eight o'clock.
16   MR. JUSTICE NICOL: Eight o'clock in the morning?
17   THE WITNESS: Yes.
18   MR. JUSTICE NICOL: All right. Well, that is probably not the
19   time that you would choose to be awake and giving evidence for
20   an English trial, but thank you for doing so. All right? We
21   will now terminate the link. Thank you very much.
22   (The witness withdrew)
23
24   MR. SHERBORNE: My Lord, that leaves Ms. Kendall, I wonder if
25   your Lordship would rise for a few moments.

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1   DIVENERE - SHERBORNE

2 MR. JUSTICE NICOL: She is also giving evidence through a link, is

3   she?

4 MR. SHERBORNE: She is, in Los Angeles, yes.

5 MR. JUSTICE NICOL: All right. I will rise.

6   (A short break)

7

8 MR. JUSTICE NICOL: Do sit down.

9 MR. ISAACS: My Lord, may I be heard for one second?

10 MR. JUSTICE NICOL: Is that Mr. Sherman?

11 MR. ISAACS: No, your Honour. My name is Alexander Rufus Isaacs.

12   I am counsel for News Group Los Angeles, I was also a member

13   of the bar in England in 1982.

14 MR. JUSTICE NICOL: Just a minute, please. Ms. Wass, am I hearing

15   from somebody in America?

16 MS. WASS: This is the lawyer, as I understand it, from News Group

17   in America, he has been referred to by Mr. Sherman and, as

18   I understand it, he would like to make an observation to

19   my Lord about some of the allegations that were made by

20   Mr. Sherman.

21 MR. JUSTICE NICOL: Are you asking for me to hear this on the

22   defendants' behalf?

23 MS. WASS: This is not my witness.

24 MR. JUSTICE NICOL: You are representing along with the

25   illustrious other people.

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1   DIVENERE - SHERBORNE

2 MS. WASS: I understand. If the position is that something has

3   been said about the character and conduct of Mr. Rufus Isaacs,

4   it will take a moment or two for him to deal with it and

5   I would ask that he is given that opportunity?

6 MR. JUSTICE NICOL: Well, Ms. Wass, I do want to get on with this

7   case. I understand why Mr. Isaacs might have felt that he

8   ought to come along. Mr. Isaacs, it really is not something

9   that I am going to spend a great deal of time on. I want to

10   get on with hearing the evidence in this case, please.

11 MR. ISAACS: Of course, your Honour, I do understand. I really

12   wanted to clarify the fact that allegations ----

13 MR. JUSTICE NICOL: Well, you may have wanted to do that, but ----

14 MR. ISAACS: ---- (unclear due to overspeaking) stand down, your

15   Honour.

16 MR. JUSTICE NICOL: Thank you very much. Yes. This is

17   Ms. Kendall, is it?

18 MR. SHERBORNE: It is, my Lord, yes.

19 MR. JUSTICE NICOL: Ms. Kendall, can you hear me?

20 THE WITNESS: I can, yes.

21 MR. JUSTICE NICOL: First of all, I want to thank you for coming

22   to give evidence in this case and doing so at what I have been

23   told not the time of day you would ordinarily choose to be

24   awake; but thank you for doing that. In a moment, the first

25   stage for any witness giving evidence is for them to either be

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1   DIVENERE - SHERBORNE

2   sworn or to affirm to tell the truth. Which would you prefer

3   to do?

4 THE WITNESS: I will swear.

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[Page 1489]

1   KENDALL

2   MS. KATHERINE KENDALL, SWORN

3   EXAMINED BY MR. SHERBORNE

4   (via video link)

5 MR. JUSTICE NICOL: If you would be more comfortable sitting down.

6 THE WITNESS: I am sitting down.

7 MR. SHERBORNE: Can you give your full name to the court, please.

8 A. My full name is Katherine Kendall-Butler.

9 Q. Thank you. Before I take you to your witness statement, can

10   I say one thing that we have said to all witnesses giving

11   evidence in Los Angeles by way of video link, other than thank

12   you very much for doing so. Given there is a little bit of a

13   time delay between questions being heard and answers, what we

14   will try and do on our side is wait for you to finish an

15   answer before we ask you another question. If, in return, you

16   can wait to make sure you have heard the question before you

17   answer, then that will be very helpful indeed. The only other

18   thing I would ask, before I take you to your statement is, his

19   Lordship is making a note of what you are saying, the answer

20   rather than the question. So, if you can give your answers

21   slowly, that would be very helpful.

22 A. Okay.

23 Q. Can we begin then, by locating your witness statement. It

24   should be in file 2, to your left-hand side. If you open that

25   file and turn to tab 39, you should hopefully find your

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KENDALL - SHERBORNE

1 witness statement; is that correct?

2 A. Okay. Yes, I have it. Yes. Thank you.

3 Q. Can I ask you just to turn over the page. Do you see a

4   signature there?

5 A. Yes, I do.

6 Q. Can you confirm, Ms. Kendall, is that your signature?

7 A. Yes, it is my signature.

8 Q. Final question from me, Ms. Kendall, can you confirm that the

9   contents of your witness statement are true?

10 A. Yes. I can confirm they are true.

11 MR. SHERBORNE: Thank you very much. If you wait there, Ms. Wass

12   on behalf of the defendants may have some questions for you.

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KENDALL

CROSS-EXAMINED BY MS. WASS

3 Q. Ms. Kendall, can you hear me all right?

4 A. Yes.

5 Q. I think you describe yourself in your witness statement as an

6   actress, a survivor of abuse and a public advocate for the

7   #MeToo movement; yes?

8 A. Yes.

9 Q. The #MeToo movement was generated after allegations of a very

10   serious nature were made against Harvey Weinstein in October

11   2017; is that correct?

12 A. Yes, that is correct.

13 Q. Harvey Weinstein was an immensely powerful man in Hollywood

14   and indeed in America; do you agree?

15 A. Yes, I do agree.

16 Q. He had an army of people acting on his behalf to maintain his

17   denials of wrongdoings when he was accused?

18 A. That is correct.

19 Q. Can you confirm from your own experience how difficult it was

20   for a person to call out the misconduct of a powerful

21   influential figure in Hollywood?

22 A. Yes. I can say that it took 20 years to finally have the

23   courage to call him out publicly.

24 Q. Forgive me, carry on. Please forgive me.

25 A. No, no, it was absolutely one of the scariest most difficult

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KENDALL - WASS

1

2 things I have ever done.

3 Q. Scary because you and other women who made allegations against

4   him were the subject of personal attacks; do you agree?

5 A. Yes.

6 Q. Being accused of being fantasists; yes? Gold-diggers, and

7   people with their own agenda?

8 A. Yes.

9 Q. And that is your experience of standing up to a very powerful

10   man in Hollywood?

11 A. Yes.

12 MS. WASS: Thank you very much indeed, Ms. Kendall, for answering

13   my questions.

14 MR. JUSTICE NICOL: Any re-examination?

15 MR. SHERBORNE: Would your Lordship give me a moment, please.

16   Ms. Kendall, I am just going to ask you this. I am not going

17   to ask to you go back through your experiences with

18   Mr. Weinstein, because that is not obviously what you are here

19   to discuss. Can I ask you this: what happened to

20   Mr. Weinstein as a result of the accusations that were made

21   against him?

22 A. He was convicted, and he is in prison.

23 Q. Convicted by whom, Ms. Kendall?

24 A. A judge.

25 Q. Was that after a court case or was that in the media?

[Page 1493]

KENDALL - WASS

1

2 A. It was after a court case.

3 Q. So, a court heard the allegations and determined that he was

4   guilty. Did he plead guilty?

5 A. (Pause) No ----

6 Q. It was heard by -- sorry, I am talking across you.

7 A. No no. Go ahead.

8 Q. So, it was ----

9 A. Sorry.

10 Q. So, as you said, it was heard by a court?

11 A. Yes.

12 Q. He gave evidence and he was then convicted by a court.

13 A. Yes.

14 Q. Do you think that is an appropriate ----

15 MR. JUSTICE NICOL: Well now, Mr. Sherborne, no. Mr. Sherborne,

16   I am not sure that is going to assist me one way or the other

17   in deciding this case.

18 MR. SHERBORNE: I understand your Lordship.

19 MR. JUSTICE NICOL: Right. Is there any other questions that you

20   want to ask in re-examination?

21 MR. SHERBORNE: My Lord, no.

22 MR. JUSTICE NICOL: Good. Ms. Kendall, thank you very much for

23   coming to give your evidence at this trial, and thank you for

24   doing so, as I have said already, at an uncomfortable time of

25   the day. The link is now going to be terminated. That

[37] (Pages 1490 to 1493)

[Page 1494]

1   KENDALL - WASS
2   concludes your evidence.
3   (The witness withdrew)
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[Page 1495]

                DISCUSSION
2   MR. SHERBORNE: My Lord, can I just say this, by way of a marker.
3   Ms. Kendall was required to give here to give evidence and she
4   was not cross-examined on a single part of her witness
5   statement, and I will have things to say about that. That is
6   just my marker to Ms. Wass.
7   Can I read out the hearsay notice. Before I do, just to
8   make good what I said to your Lordship, can I hand up copies
9   of Ms. Divenere's e-mails that we were looking at, that were
10 forwarded to Mr. Murphy. We only have two copies at the
11 moment, so can I give one to Ms. Wass. (Same handed) These
12 are Ms. Divenere. I think you can see at the top that is her
13 e-mail address. I think that is the e -- mail address she
14 uses when she works for Mr. Musk. That is forwarded to
15 Mr. Murphy, and you will see below are the e-mails we were
16 looking at to which Mr. Sherman took objection. You may have
17 seen Ms. Divenere's face when I said to her this was forwarded
18 to Mr. Murphy; and this is why.
19 MR. JUSTICE NICOL: I would rather keep documents together. Is
20   there a suitable place for this?
21 MR. SHERBORNE: My Lord, yes. It should go behind where they
22   were, so in file 8, it was 86D. We had that confusion. I do
23   not know why mine suddenly goes to 186, but it is 86D.
24 MR. JUSTICE NICOL: Just a minute. (Pause)
25 MR. SHERBORNE: Your Lordship has 148.10 to 12.

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1   DISCUSSION
2   MR. JUSTICE NICOL: I think it is "I", did we not establish?
3   MR. SHERBORNE: Yes, sorry, my Lord. Then, probably we can make
4   it 148.14 and following.
5   MR. JUSTICE NICOL: Just a moment.
6   MR. SHERBORNE: Sorry, my Lord. (Pause)
7   MR. JUSTICE NICOL: I have an I48.11 and then I go to I48.12, so
8   these are probably going to have ----
9   MR. SHERBORNE: Does your Lordship have I48.13 as well, behind?
10 MR. JUSTICE NICOL: I do.
11 MR. SHERBORNE: If we make the front page the one of Ms. Divenere
12   e-mailing it to Mr. Murphy from her interiors e-mail,
13   Mr. Musk, I48.14 and then I48.15 and then I48.16, and I48.17.
14   So, it should go I48.14 to I48.17 and they replicate those
15   e-mails but forwarded, as I say, to Mr. Murphy.
16 MR. JUSTICE NICOL: Yes. Good. Now, I am going to hear the
17   application for expert evidence on Monday.
18 MR. SHERBORNE: Yes, I have not quite finished our case yet.
19 MR. JUSTICE NICOL: I beg your pardon.
20 MR. SHERBORNE: It is just a formality. It is the hearsay
21   notices.
22 MR. JUSTICE NICOL: Before we get to that, while it is in my mind
23   -- and this is a point directed to you and to Mr. Wolanski --
24   if you have the opportunity, and I am sure you will have much
25   to do at the weekend, I am going to add to your task. It will

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1   DISCUSSION
2   just mean that on Monday morning, we will be able to move a
3   little swifter if I can see an outline (skeleton) of what you
4   want to say. Of course, Mr. Sherborne, if you are putting in
5   evidence in response to the application notice, then that
6   should be served on Mr. Wolanski with as much notice as you
7   are able to give.
8   MR. SHERBORNE: Of course, my Lord, yes.
9   MR. JUSTICE NICOL: I am not going to make a direction about
10   skeletons, but it will just assist me and allow things to go a
11   little quicker ----
12 MR. SHERBORNE: I understand.
13 MR. JUSTICE NICOL: ---- if I can have at least an outline of your
14   argument in writing.
15 MR. SHERBORNE: My Lord, yes. I think we are all keen to start at
16   10 o'clock with the evidence.
17 MR. JUSTICE NICOL: That is what I have had in mind. Now, I am
18   sorry, I cut across you because you were about to say
19   something about your hearsay notice.
20 MR. SHERBORNE: I was merely going, I think as a matter of
21   formality, to just take your Lordship to the two hearsay
22   notices that we also rely on. The hearsay notice is formally
23   in file 2 and it is at tab 55. Your Lordship will find there
24   the references to the two depositions given by Officer Saenz
25   and Officer Hadden.

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1   DISCUSSION
2   MR. JUSTICE NICOL: Officer Saenz has already given evidence, has
3   she not?
4   MR. SHERBORNE: Yes, Officers Saenz and Hadden were compelled to
5   give evidence under cross-examination, as was Ms. Divenere.
6   Just for your Lordship's note, I can tell you where their
7   depositions are. They are in file 3. Officer Saenz's is in
8   file 3, tab 87, F43-F44, and tab 88 for Officer Hadden,
9   F55-F69. Then we have the declaration of Mr. Judge, who has
10   unfortunately passed away, as we have heard. His declaration
11   is to be found behind tab 83 in file 3. I will not read it
12   out unless your Lordship wishes me to do so.
13   MR. JUSTICE NICOL: No, there is no need.
14   MR. SHERBORNE: It is pages F34-F35. Your Lordship has seen the
15   declaration of Ms. Divenere, but just to remind your Lordship
16   in case you are writing it all in one place, it is file 3, tab
17   86, pages F40 ----
18   MR. JUSTICE NICOL: 3/86.
19   MR. SHERBORNE: It is pages F40-F42. Then, finally, we have the
20   hearsay notice in relation to Mr. Harrell, and just to remind
21   your Lordship ----
22   MR. JUSTICE NICOL: That is the one that came this morning.
23   MR. SHERBORNE: It did. I do not know where your Lordship put
24   that. There is a schedule attached to the notice. Does
25   your Lordship have that? It should be on the back of the

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1   DISCUSSION
2   hearsay notice. There should be a draft order after the
3   application notice, then beyond the draft order is a hearsay
4   notice, then on the back of the hearsay notice page is a
5   table.
6   MR. JUSTICE NICOL: Yes.
7   MR. SHERBORNE: And if I just give your Lordship the references to
8   put against the documents, just for the sake of convenience,
9   the deposition of Mr. Harrell, dated 28th July 2016, is to be
10   found in file 3, tab 94, pages F149-F160. The deposition
11   dated 31st January 2019 ----
12   MR. JUSTICE NICOL: Sorry, that was the 28th ----
13   MR. SHERBORNE: 28th July 2016.
14   MR. JUSTICE NICOL: Yes.
15   MR. SHERBORNE: The next one is the deposition of 31st January
16   2019, and that is tab number 95.
17   MR. JUSTICE NICOL: Just a minute, please. (Pause) That is
18   volume 3/95, yes.
19   MR. SHERBORNE: F161-F176. Then finally, there is the witness
20   statement of Cornelius Harrell dated 12th December 2019. That
21   is file 2, tab 49, pages D140-D146. My Lord, that, as they
22   say, completes the claimant's case.
23   MR. JUSTICE NICOL: Right. Thank you. Good. Now, could I ask
24   that if they are not already in the bundles, which they may
25   well be, I think, homes be found for the documents that we

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1   DISCUSSION
2   have just been dealing with. Now, there was a draft order,
3   was there not?
4   MR. SHERBORNE: My Lord, they should have been with that bundle of
5   documents ----
6   MR. JUSTICE NICOL: Just let me turn it up.
7   MR. SHERBORNE: Of course. (Pause) Yes, I am very grateful,
8   my Lord.
9   MR. JUSTICE NICOL: This is by consent, is it not?
10   MR. SHERBORNE: It is, my Lord, yes.
11   MR. JUSTICE NICOL: Right. Well, I will make that order.
12   MR. SHERBORNE: I am grateful, my Lord.
13   MR. JUSTICE NICOL: I will do so by consent. That can be passed
14   back to whoever at Schillings is dealing with those things.
15   MR. SHERBORNE: Thank you my Lord.
16   MR. JUSTICE NICOL: Good. Anything else this evening?
17   MR. SHERBORNE: My Lord, no.
18   MR. JUSTICE NICOL: All right. Then 9.30 on Monday. Thank you.
19   (Adjourned till 9.30 Monday morning)
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